



Board of Public Works & Safety and Stormwater Board

Regular Meeting Agenda

4:00 p.m., August 1, 2024

Goshen Police & Court Building, 111 East Jefferson Street, Goshen, Indiana

To access online streaming of the meeting, go to <https://goshenindiana.org/calendar>

Call to Order by Mayor Gina Leichthy

Approval of Minutes: July 25, 2024

Approval of Agenda

1) Blue Knights IN VIII Law Enforcement Motorcycle Club request: Approve street closures and related requests for the 26th annual Riding to Remember Fallen Police, Firefighter and Veteran charity motorcycle ride on Sunday, Sept. 8, 2024 (Officer James Ballard)

2) Environmental Resilience Department request: Authorize the purchase of Bloomerang software to assist in managing communications, donations, and volunteers

3) Engineering Department request: Approve and authorize the Mayor to sign the Financial Rescission Letter to be submitted to the Indiana Department of Transportation

4) Clerk-Treasurer's Office request: Approve revised agreements for City employee time and attendance services with Right Stuff Software Corp. and ADP, through Baker Tilly

Privilege of the Floor

Approval of Civil City and Utility Claims

Adjournment



**BOARD OF PUBLIC WORKS & SAFETY & STORMWATER BOARD
MINUTES OF THE JULY 25, 2024 REGULAR MEETING**

Convened in the Goshen Police & Court Building, 111 East Jefferson St., Goshen, Indiana

Present: Mayor Gina Leichty, Mike Landis, Orv Myers, Mary Nichols and Barb Swartley
Absent: None

CALL TO ORDER: Mayor Leichty called the meeting to order at 4:00 p.m.

REVIEW/APPROVE MINUTES: Mayor Leichty presented the minutes of the July 11, 2024 Regular Meeting as prepared by Clerk-Treasurer Richard R. Aguirre. Board member Mary Nichols moved to approve the minutes as presented. The motion was seconded by Board member Orv Myers. The motion passed 5-0.

REVIEW/APPROVE AGENDA: Mayor Leichty presented the agenda with the addition of new agenda item #9, *Engineering Department request: Approve Denver Street road closure for repairs.* Board member Nichols moved to approve the agenda as amended. Board member Myers seconded the motion. The motion passed 5-0.

1) **Downtown Goshen Inc. request: Approve a street closure time change on First Friday, Aug. 2, 2024**
Amanda Rose, Director of First Fridays for Eyedart Creative Studios, asked the Board to approve changes to the approved street closures on Aug. 2, 2024 for First Friday activities. She asked for earlier street closures. Rose said she was requesting the closure of Main Street, from Jefferson to Lincoln streets, and East Washington Street, from Main Street to the alley, for First Friday set up and activities. She asked to close Main Street from 8 a.m. to 11 p.m. and East Washington Street from noon to 11 p.m. She also requested street barricades and signs. Rose confirmed to Mayor Leichty that affected businesses have been informed of the earlier closures. Mayor Leichty mentioned that that the theme for Aug. 2 was pickleball. Nichols/Myers made a motion to approve the requested street closures for First Friday, Aug. 2, 2024. The motion passed 5-0.

2) **Legal Department request: Award bid for purchase of 2024 Street Sweeper and approve purchase agreement with Hoosier Equipment, LLC**
City Attorney Bodie Stegelmann told the Board that the City solicited sealed bids for the purchase of a 2024 or newer street sweeper for the Goshen Street Department. The bid tabulation was as follows:

Bidder	Total bid purchase price
Hoosier Equipment, LLC, Plymouth, Indiana	\$356,980
Jack Doheny Company, Northville, Michigan	\$363,710

Although Hoosier Equipment, LLC had several exceptions listed in their bid, it has been determined that these exceptions do not have a material impact on Hoosier Equipment being the lowest responsive bidder. Therefore, Stegelmann recommended that that Hoosier Equipment, LLC be awarded the bid, and that the Board authorize Mayor Leichty to execute the attached purchase agreement in the total cost of \$356,980. Nichols/Myers made a motion award the bid for the purchase of a 2024 street sweeper to Hoosier Equipment, LLC as the lowest responsive and responsible bidder and approve and authorize Mayor Leichty to execute the purchase agreement regarding the same at a cost to the City of \$356,980. The motion passed 5-0.



3) Legal Department request: Approve Resolution 2024-17, Interlocal Agreement with the County of Elkhart for the Establishment of the Marion Branch Quiet Zone

City Attorney Bodie Stegelmann said the Board previously approved the terms and conditions and authorized execution of the Interlocal Agreement with the County for the establishment of the Marion Branch Quiet Zone. **Stegelmann** said under the agreement, the County is approving the establishment of the new quiet zone and delegating to the City the authority to take all such actions as required by the federal regulations to establish the new train quiet zone. This specifically includes the County Road 42 grade crossing as well as at the location of the closed County Road 40 crossing that are outside the City limits.

Stegelmann said the City Redevelopment Commission has agreed to provide the funding for the implementation of one or more safety measures required for the establishment of the new quiet zone. He said the City and County have negotiated revisions to the agreement, including the establishment of a joint board to facilitate decision making under for the project. He asked the Board to approve the terms and conditions of the revised Interlocal Agreement, and again authorize Mayor Leichy to execute the Interlocal Agreement on behalf of the Board and the City.

Nichols/Myers made a motion to adopt Resolution 2024-17, Interlocal Agreement with the County of Elkhart for the Establishment of the Marion Branch Quiet Zone. The motion passed 5-0.

4) Environmental Resilience Department request: Authorize Mayor Leichy to accept the terms of a Phragmites Adaptive Management Program Grant

Theresa Sailor, the Grant Writer and Educator for the City Environmental Resilience Department, told the Board that the City has received a grant of \$12,145.18 from the Great Lakes Commission to participate in removal research for phragmites, an invasive plant species that is quickly spreading in Northern Indiana and has a foothold in the Goshen area.

Sailor said this research is intended to develop best management standards for phragmites removal and the information from the outcomes will give Goshen managers the tools to work at keeping phragmites in check on City properties and to provide information and public education for land owners in our area.

Sailor said properties that are a part of this research include parks properties and two stormwater retention basins, including Fidler Pond, Abshire Park, and stormwater retention basins at 828 East Lincoln Ave. and 2427 Kercher Road. Both the Parks and Stormwater departments were consulted for developing this grant request.

Sailor said the phragmites removal will be contracted and that work is out for bid. The contract for that work will come through the Board at a later date. There are no match requirements for this grant.

Nichols/Myers made a motion to authorize Mayor Leichy to accept the terms of a Phragmites Adaptive Management Program Grant. The motion passed 5-0.

5) Water & Sewer Office request: Move \$6,894.23 in uncollected finaled accounts from active to collection, sewer liens and write offs for the period through May 10, 2024

Kelly Saenz, Manager of the Goshen City Utilities Office, told the Board that the original amount of unpaid final Water/Sewer accounts, for the period through May 10, 2024, was \$7,021.49. Collection letters were sent out and payments of \$127.26 were collected.

The uncollected amount was \$6,894.23. So, **Saenz** asked the Board to move the office's uncollected final accounts from active to Collection, Sewer Liens and Write offs for the period. Of the uncollected amounts, \$2,787.82 came from water accounts and \$4,106.41 from sewer accounts.

Saenz said since the request was filed an additional \$1,100 was collected. The new amount of uncollected finaled accounts as of today was \$5,773.28. In response to a question from the **Mayor, City Attorney Stegelmann** confirmed that the Board could amend the amount of the uncollected finaled accounts in its action today.



Saenz also confirmed, in response to questions from Board member Landis, that the amount of uncollected finaled accounts was larger than usual and that the time frame covered can vary. She also explained the payment process. Nichols/Myers made a motion to move the Goshen Water and Sewer Office's \$5,773.28 in uncollected finaled accounts for this period from active to Collection, Sewer Liens and Write offs. Motion passed 5-0.

6) Engineering Department request: Approve and authorize the Mayor to sign the agreement with Abonmarche for \$57,500 to provide potholing services for the U.S. Environmental Protection Agency lead and copper project

City Director of Public Works & Utilities Dustin Sailor told the Board that attached to the agenda packet was an agreement with Abonmarche Consultants to provide Hydro-Excavation "Potholing" services for the final 100 of 400 representative locations throughout the City of Goshen to identify piping materials on the customer and City side of the curb-stop valve.

Sailor said this work will complete development of a piping material inventory to be submitted to the Indiana Department of Environmental Management by Oct. 16, 2024, as part of a nationwide mandate of the Environmental Protection Agency Lead and Copper Rule. The first 300 locations were funded under a grant from IDEM.

Nichols/Myers made a motion to approve and authorize the Mayor to sign the agreement with Abonmarche for \$57,500 to provide potholing services for the EPA lead and copper project. The motion passed 5-0.

7) Engineering Department request: Approve and authorize the Mayor to sign the Financial Commitment Letter to be submitted to the Indiana Department of Transportation for the Community Crossings Matching Grant Fund application process

City Director of Public Works & Utilities Dustin Sailor told the Board that the City is preparing to apply for the Community Crossings Matching Grant Fund through the Indiana Department of Transportation in which the City can be awarded up to \$1,500,000.

In order to be eligible for application, Sailor said a Financial Commitment Letter must be signed by Mayor Leichty and submitted during time of application stating that Goshen will meet the financial match requested in the amount of \$1,500,000.

Nichols/Myers made a motion to approve and authorize the Mayor to sign the Financial Commitment Letter to be submitted to INDOT during CCMG application. The motion passed 5-0.

8) Engineering Department request: Approve Change Order No. 2 for Niblock to take control of the County Courts Consolidation Roadway Improvements project MOT (Maintenance of Traffic) from the Indiana Department of Transportation for an increase of \$24,966

City Director of Public Works & Utilities Dustin Sailor told the Board that attached to the agenda packet was Change Order No. 2 for the County Courts Consolidation Roadway Improvements project.

Due to unforeseen circumstances, Sailor said the Maintenance of Traffic (MOT) between the Indiana Department of Transportation multi-use path project and the City's project conflicted.

Sailor said all parties met and agreed upon the MOT for the INDOT project, would remain in place, effectively closing the intersection for Reliance Road and U.S. 33. This allowed for safe conditions for the general public and the utility relocation efforts on Reliance Road.

Sailor said all parties also agreed that Niblock would take control of that portion of the MOT once it was not needed for the INDOT phasing. On July 3, 2024, Niblock took down this MOT and installed the contract MOT for the current phase of this project.



Sailor said the original contract amount was \$4,165,762.30. Niblock taking control of the MOT from INDOT will increase the contract by \$24,966.00, for a revised contract amount of \$4,193,995.06, an increase of 0.68%. **Nichols/Myers made a motion to approve Change Order No. 2 for Niblock to take control of the project Maintenance of Traffic from the Indiana Department of Transportation for an increase of \$24,966.00. The motion passed 5-0.**

ADDED AGENDA ITEM:

9) Engineering Department request: Approve closure of Denver Street for repairs

City Director of Public Works & Utilities Dustin Sailor told the Board that earlier this afternoon a vehicle hit and sheared off a fire hydrant on Denver Street, west of the Kroger supermarket adjacent to Pike Street. He said the impact jarred the connected water main causing it to break in multiple locations.

Sailor said City Utilities was working to restore water service to connected customers and also will need to assemble materials for a larger water main repair in the coming days. He also said the damage to the roadway was significant and staff estimated that 180 feet of the southbound lane of Denver Street will need to be repaired.

With repairs and restoration, **Sailor** said City employees anticipate the road will not be restored until Friday, Aug. 9. He added that road closures will occur as necessary to facilitate different phases of the work.

In response to a question from **Mayor Leichthy**, **Sailor** said Kroger's operations will not be affected. He said Kroger will continue to be accessible from Denver Street, south of Pike Street. He said six customers were without water.

Nichols/Myers made a motion to approve the closure of Denver Street, from 213 Denver Street to 115 Denver Street, and to Pike Street as required for the replacement of the damaged water main and the restoration of Denver Street. Motion passed 5-0.

NOTE: Before the meeting, City Director of Public Works & Utilities Dustin Sailor distributed to Board members a memorandum, dated July 25, 2024, formally requesting closure of Denver Street for the repairs (**EXHIBIT #1**).

Privilege of the Floor (opportunity for public comment for matters not on the agenda):

Mayor Leichthy opened Privilege of the Floor at 4:19 p.m. There were no public comments.

Mayor Leichthy closed Privilege of the Floor at 4:19 p.m., recessed the meeting of the Board of Public Works and Safety and opened a meeting of the City Stormwater Board.

CITY OF GOSHEN STORMWATER BOARD

4:00 p.m., July 25, 2024

Goshen Police & Court Building, 111 East Jefferson Street, Goshen, Indiana

Members: Mayor Leichthy, Mike Landis and Mary Nichols

10) Accept the post-construction stormwater management plan for the Ancon Construction Office Relocation project

City Director of Public Works & Utilities Dustin Sailor told the Board that the developer of the Ancon Construction Office Relocation project, affecting one (1) or more acres of land and located at 2121 W Wilden Avenue, has submitted a sufficient postconstruction plan that is compliant with Ordinance 4329, "Uniform Requirements for Post Construction Stormwater Management."



The Stormwater Department requested that the Stormwater Board accept the plan.

Nichols/Landis made a motion to accept the post-construction stormwater management plan for the Ancon Construction Office Relocation project as it has been found to meet the requirements of City Ordinance 4329. The motion passed 5-0.

11) Accept the post-construction stormwater management plan for the Bethany Christian Schools expansion project

City Director of Public Works & Utilities Dustin Sailor told the Board that the developer of the Bethany Christian Schools Expansion project, affecting one (1) or more acres of land and located at 2904 South Main Street, has submitted a sufficient postconstruction plan that is compliant with Ordinance 4329, "Uniform Requirements for Post Construction Stormwater Management."

The Stormwater Department requested that the Stormwater Board accept the plan.

Nichols/Landis made a motion to accept the post-construction stormwater management plan for the Bethany Christian Schools Expansion project as it has been found to meet the requirements of City Ordinance 4329. The motion passed 5-0.

Mayor Leichty closed the City Stormwater Board meeting at 4:21 p.m. and opened a review hearing for a prior unsafe building order for 425 N. 9th Street (Christopher D. Jones, property owner).

CITY BOARD OF PUBLIC WORKS & SAFETY PUBLIC HEARING:

4:00 p.m., July 25, 2024

Goshen Police & Court Building, 111 East Jefferson Street, Goshen, Indiana

Members: Mayor Leichty, Mike Landis, Orv Myers, Mary Nichols, Barb Swartley

12) Review of the Order of the City of Goshen Building Commissioner for 425 N. 9th Street (Christopher D. Jones, property owner)

At 4:21 p.m., Mayor Leichty convened a hearing to review the Order of the City of Goshen Building Commissioner for 425 N. 9th Street (Christopher D. Jones, property owner).

BACKGROUND:

In a July 22, 2024 memo to the Board, Assistant City Attorney Don Shuler wrote that on March 28, 2024, the Board issued a Record of Action and Continuous Enforcement Order for the property at 425 N. 9th Street, Goshen. Shuler wrote that the Board's Order found the building at the property to be an unsafe building warranting of demolition, but that it could be repaired. Thus, the Board provided an opportunity for repair, permitting 90 days to complete repairs necessary to address all violations at the property. The Board's Order also set the matter for further review on July 25, 2024.

The motion made to approve the Board's Order was subject to the following:

1. The exterior of the property remaining clean and mowed.
2. The driveway to be taken to the approved dimensions of 25 x 50 feet or approval obtained from City Zoning for a larger space.
3. And that Christopher Jones take steps to clear title to the underlying real estate.

Shuler wrote that the Board had continuing jurisdiction over the enforcement of its Order. Therefore, the Board should receive any additional information and evidence concerning the property and its status.



At the conclusion of the hearing, Shuler wrote that the Board could take any of the following actions:

1. Continue the matter for further review at a future date.
2. Modify the Order in any of the following ways:
 - a. Provide additional time to make repairs
 - b. Order demolition of the unsafe building
 - c. Find completion of repairs and rescind the Order
3. Upon a finding of willful failure to comply, impose a civil penalty up to \$5,000.
 - a. The effective date of the civil penalty may be postponed for a reasonable period to permit repairs to be made.

On Feb. 29, 2024, the Board held an unsafe building hearing for the property at 425 N. 9th Street.

At that hearing, following the presentation of evidence and statements from the Goshen Building Department and the property owner, Christopher Jones, the Board tabled the matter and scheduled further review for March 28, 2024, with the following conditions:

(1) That Mr. Jones or his attorney provide a written summary of the current status of his litigation and collection efforts in Cause No. 20D05-2012-PL-238. This summary was to include a summary of the collection efforts to date, a reasonable time table for collection, and a statement as to the reasonable likelihood of success of collection.

(2) That Mr. Jones maintain the exterior of the property at 425 N. 9th Street, to include cleaning up the yard in compliance with City of Goshen ordinances. Specifically, this was to include the removal of accumulated materials outside the structure, such as lumber, appliances, cars, doors, books, tires, air conditioning parts, and other materials.

(3) The Goshen Building Department would be permitted to inspect the structure on the property prior to the March 28, 2024 hearing.

(4) Jones would appear at the March 28, 2024 hearing with his attorney or other representative.

The original Order of the City of Goshen Building Commissioner, dated April 13, 2023, required: **Demolition of the unsafe buildings at the Real Estate and removal of all demolition remains, trash, and debris on the Real Estate and return the site to natural grade, all of said work to be completed on or before May 19, 2023.**

The Order cited six violations of Goshen City Code Title 6, Article 3, Chapter 1. The Order also noted the structure was filled with trash, debris, materials, and other materials, and generally had not been kept in a clean and sanitary condition that would permit human habitation, occupancy, or use under City Code.

DISCUSSION AND OUTCOME OF CONTINUED BOARD HEARING ON JULY 25, 2024:

At 4:21 p.m., Mayor Leichty convened the review hearing.

Present were: Board members Leichty, Landis, Myers, Nichols and Swartley; City Attorney Bodie Stegelmann; Assistant City Attorney Don Shuler; City Building Inspector Travis Eash; Building Commissioner Myron Grise, Christopher Jones (property owner) and his attorney, Don Berger.

Assistant City attorney Don Shuler provided the background of the case and the reason for the review hearing. He also discussed actions the Board could take after considering evidence presented today.

After being sworn in by the Mayor to provide truthful testimony, City Building Inspector Travis Eash provided an update on the property at 425 North 9th Street. Eash distributed to Board members a memorandum, dated July 25, 2024, and two pages of color photographs showing the current condition of 425 North 9th Street. (EXHIBIT #1), Reading from his memo, Eash said that at the Board's last hearing, Jones was ordered to bring the exterior of the property into compliance with all City ordinances and maintain the exterior of the property in that manner as well. Eash said, 'Mr. Jones has achieved that for the most part ... Mr. Jones has communicated to me that he is still attempting to collect from a previous judgment and is doing his best at maintaining the exterior of the property.'



Eash said, "Mr. Jones has not provided the City proof of a clean title of the house at 425 N 9th Street, which is something else that was previously ordered." He thanked Jones and his representatives for their continued work and communication with the City.

Eash concluded by stating, "The house is still in an uninhabitable state, which is something I want to remind everybody, which is the main reason we're still here. We want to get this property in a habitable state."

Mayor Leichty swore in **Christopher Jones** and his attorney, **Don Berger** of South Bend, to give truthful testimony.

Berger said he has been working to resolve the title issue and has been in contact with **Eash** and **Shuler**. He said he has drafted a quiet title action, a procedure to resolve the ownership issue which will require publishing a notification in a local newspaper three times and, if there is no response, seeking a judgment for Jones to gain the title.

Berger said the newspaper notification will be published starting in mid-August and should be completed in mid-September. He thanked **Eash** for his cooperation.

Asked by the **Mayor** to provide an update, **Christopher Jones** said he has kept the lawns mowed, sometimes doing so twice a week. He said he has also refrained from accumulating more items outside the home and has kept things in order. He said a bus parked outside is now licensed and insured and he still plans to renovate it.

Mayor Leichty told **Jones** that she appreciated his efforts and for keeping City staff informed about his work. She expressed the hope the progress will continue and that the home someday will be restored.

Jones also discussed his lawsuit seeking the return of funds he paid to a contractor to renovate the home; the work was never done. He said he expected an update on the lawsuit in August or September.

Assistant City Attorney Shuler confirmed that he was informed by Jones' attorney that he expected to receive more information about a judgment.

Mayor Leichty asked **City Attorney Bodie Stegelmann** to clarify the appropriate action by the Board today.

Stegelmann said the Board was being asked to determine whether Jones was making adequate progress. If so, he said the Board could grant a continuance of the matter.

Board members and staff briefly discussed a future date for another review hearing.

Nichols/Myers then made a motion that the hearing be continued to Oct. 31. The motion passed 5-0.

At 4:37 p.m., **Mayor Leichty** adjourned the hearing and reopened the meeting of the Board of Public Works and Safety.

Approval of Civil City and Utility Claims

As all matters before the Board of Public Works & Safety were concluded, **Mayor Leichty/Board member Nichols** moved to approve Civil City and Utility claims and adjourn the meeting. Motion passed 5-0.

Adjournment

Mayor Leichty adjourned the Board of Public Works and Safety meeting at 4:37 p.m.



EXHIBIT #1: *Before the meeting, City Director of Public Works & Utilities Dustin Sailor distributed to Board members a memorandum, dated July 25, 2024, formally requesting closure of Denver Street for repairs of a water main, a hydrant and 180 feet of roadway. This request was approved by the Board as added agenda item #9.*

EXHIBIT #2: *A July 25, 2024 memorandum written by City Building Inspector Travis Eash and two pages of color photographs showing the present condition of 425 North 9th Street. This information was submitted during and for consideration of agenda item #12) Review of the Order of the City of Goshen Building Commissioner for 425 N. 9th Street (Christopher D. Jones, property owner)*

APPROVED:

Mayor Gina Leichthy

Mike Landis, Member

Orv Myers, Member

Mary Nichols, Member



Barb Swartley, Member

ATTEST:

Richard R. Aguirre, City of Goshen Clerk-Treasurer



Richard Aguirre, City Clerk-Treasurer
CITY OF GOSHEN

202 South Fifth Street, Suite 2 • Goshen, IN 46528-3714

Phone (574) 533-8625 • Fax (574) 533-9740

richardaguirre@goshencity.com • www.goshenindiana.org

To: City of Goshen Board of Public Works & Safety
From: Clerk-Treasurer Richard R. Aguirre
Date: Aug. 1, 2024
Subject: City of Goshen support for the 26th Riding to Remember event

On July 16, 2024, the Clerk-Treasurer received the following email:

I am seeking approval for the 26th Annual Riding to Remember Fallen Police, Firefighter, and Veteran charity motorcycle ride to be held Sunday, September 8th.

Attached you will find the route and estimated time of arrival into Goshen, where a short Memorial service will be held. I am requesting Mayor Gina Leichty to speak along with other dignitaries during the Memorial. A representative of RTR (Steve Williams/Brian LaBelle) will be reaching out to the Mayor's office in the coming weeks regarding details of the Memorial.

I am requesting the following street closures for the Memorial service:

- 5th Street from Lincoln Ave South to Madison Street
- Overflow closure: 5th Street South of Madison Street to Monroe Street
- Jefferson Street from Main Street to 6th Street

I am also requesting coordination between the Police and Fire Departments as well as myself to provide traffic control along the route at the intersections listed in the attached documentation.

Thank you for your support and continued assistance. I really appreciate your help!

Kind regards,

Jim Ballard

President, Blue Knights IN VIII Law Enforcement Motorcycle Club

Chairman, Riding to Remember Fallen Police, Firefighter, and Veteran Charity Ride

RIDING TO REMEMBER FALLEN POLICE, FIREFIGHTER, & VETERAN CHARITY RIDE ROUTE

ESTIMATED TIMES OF ARRIVAL TO EACH TOWN/CITY

CITIZENS ARE RECOMMENDED TO ARRIVE 15 MINUTES PRIOR TO EACH ESTIMATED ARRIVAL TIME IN THEIR CITY / TOWN TO ENSURE OBSERVATION OF RIDE

SUNDAY - SEPTEMBER 8, 2024

STAGING & REGISTRATION FROM 10 A – 12 NOON @ HOOSIER HARLEY DAVIDSON

STAGING ON CR7 FACING SOUTHBOUND AT BRISTOL STREET TO HALLIE ROAD

MOTORCYCLISTS ARE ENCOURAGED TO APPROACH VENUE SOUTH ON CR 7 FROM CR 6

RIDE LEAVES HHD 720 W. Bristol Street at 12:30pm

Right on Bristol Street (CR10) turning into Nappanee Street (SR 19)

Right on Mishawaka Road (CR 20)

Left on County Road 3

County Road 3 veers off left at CR 24 outside of Jimtown

Continue South on CR3

Right on CR 28

Left on CR 3

WAKARUSA: Estimated arrival 1 P / 30 MINUTES

Continue South on CR 3 to downtown Wakarusa

Right CR 42 (Caution Quick sharp turns)

Left CR 3 (Arnot Street)

NAPPANEE: Estimated arrival 1:10pm / 10 MINUTES

Left on US Hwy 6

Left on SR15

GOSHEN: Estimated arrival 1:40pm / 30 MINUTES

SR 15 Northbound (Main Street)

Right on 5th Street (Library) transitioning North on 5th Street

STOP at Lincoln Avenue (DISMOUNT – 30 MINUTES / Bike Parking both North & South of Madison Street)

MEMORIAL CEREMONY AT GOSHEN POLICE DEPARTMENT (2:10 P – 2:40 P APPROX. 30 MINUTES)

END OF CEREMONY MOUNT MOTORCYCLE (2:40 P – 2:55 P APPROXIMATELY 15 MINUTES)

START OF 2ND LEG OF ROUTE BEGINS AT 2:55 P

Left on Lincoln Avenue

Right on N 3rd Street (SR15)

Right on CR126

Right on CR27

Left on CR22 - Orpha Drive

MIDDLEBURY: Estimated arrival between 3:10 p / 15 MINUTES

Left on SR13 (Main street)

Left on CR 8 (Bristol Ave)

CR 8 into Bristol (CR8 = E. Elkhart Street)

BRISTOL: Estimated arrival between 3:25p / 15 MINUTES

Right on Chaptoula Street

Left on East Vistula Street (SR120) turning into West Vistula Street (SR 120)

ELKHART: Estimated arrival between 3:45 P / 15 MINUTES

State Road 120 (East Jackson Boulevard) to Johnson Street (ELKHART)

Right on Johnson Street

Left on Beardsley Avenue

Right on Edwardsburg Ave (County Road 5)

Right on North Michigan Street (County Road 7)

Left on CR 6

Right into parking lot of the Elkhart Moose Lodge

Moose Lodge

1500 County Road 6

Elkhart, IN 46514

SATURDAY 09/07/2024

**HOOSIER HARLEY DAVIDSON SUPER SATURDAY
RIDING TO REMEMBER PRE-RIDE CELEBRATION**

10 A – 8 P

LIVE MUSIC 4 P – 8 P

SUNDAY 09/08/2024

26th ANNUAL

RIDING TO REMEMBER (RTR)

FALLEN POLICE, FIREFIGHTER, & VETERAN CHARITY RIDE

Benefiting

LOCAL VETERAN, ELDERLY, AND CHILDREN'S CHARITIES

Supported by



\$25 PER RIDER / \$35 RIDER WITH PASSENGER

Each Pre-Registered Rider or Rider/Passenger to receive a commemorative tee shirt.

Day of registered Riders or Rider/Passenger receive a tee shirt while supplies last.

Pre-Registration

On-line at www.blueknightsin8.org or in-person until end of business August 24th (Guaranteed T Shirt)

Hoosier Harley Davidson (720 W. Bristol Street Elkhart, IN)

North End Cycle (2426 Cassopolis Street Elkhart, IN)



Day of Registration 09/08/2024 from 10:00am until 12 Noon (Hoosier Harley Davidson)

POLICE ESCORTED ride leaves at 12:30pm

Memorial Service at Goshen Police Department at 2:10 P

Returning to Elkhart Moose Lodge (3:45 P), 1500 County Road 6 (Live Music, Food, Beverage)

For more information, contact James Ballard at 574/360-7152 or Jim.Ballard7152@gmail.com

**Riding to Remember
Fallen Police, Firefighter, & Veteran
Charity Ride
TWO DAY EVENT
September 7th and 8th, 2024**

PRESS RELEASE

Exiting news, the 26th annual Riding to Remember Fallen Police, Firefighter, and Veteran charity ride, a 72-mile police escorted motorcycle ride through Elkhart County remembering those that have gone before us, honoring those that currently serve us, and inspiring those who will is now a two-day event. Riding to Remember (RTR) is Elkhart County's largest and longest running police escorted motorcycle ride honoring local heroes.

On Saturday, September 7th RTR Kicks off with Fun, Food, Cold Beverages, and Friends gathering for the Hoosier Harley Davidson Super Saturday Riding to Remember Pre-Party from Noon until 8PM. Live local musical talent will take the stage at 4PM and will rock out until 8PM.

On Sunday, September 8th motorcyclist can register the day of RTR at Hoosier Harley Davidson located at 720 W Bristol Street in Elkhart from 10 AM until 12 PM. Commemorative T Shirts available while supplies last. Kick Stands Up (KSU) at 12:30 PM. The donation to ride is \$25 Rider or \$35 Rider/Passenger. A small fee applies if donating by credit/debit card.

RTR will travel through Wakarusa and Nappanee before stopping at the Goshen Police Department for a Memorial Service at approximately 2 PM. The ride will continue to Middlebury and Bristol before returning to the Elkhart Moose Lodge at approximately 3:45 PM with live music, food, and beverages until 7 PM.

The route with estimated times of arrival is included to encourage citizens to line the route showing their patriotic support. Significant traffic delays along the route will occur and motorist are asked to be patient or avoid the area completely.

This year RTR will once again benefit local charities supporting our elderly, children, public safety, and veterans as well as offset utility/upkeep expenses for a dedicated tiny home located at Faith Mission.

Hoosier Harley Davidson, North End Cycle, and the Blue Knights Indiana chapter VIII Law Enforcement Motorcycle Club are the organizers of "Riding to Remember!" Contact James Ballard at 574/360-7152 for additional information or if your business would like to become a sponsor.

Ride with Pride,

James Ballard / Jim.ballard7152@gmail.com (574/360-7152)

President

Blue Knights IN VIII

Law Enforcement Motorcycle Club (LEMC)

ELKHART COUNTY FALLEN HEROES

VIETNAM WAR

MARINE CORPS

Michael J. Sigsbee
Jack L. Johnson
Robert J. Alert, Jr.
Robert G. Toth
Douglas W. Armstrong
Steven G. Bloom
Evangelos K. Caranasios
Charles R. Grant
Dennis L. Tyson
Max I. Baer
Thomas D. Clem

ARMY

Robert E. Davis
Wayne A. Decker
Rodger D. Holmes
Charles H. Robinson
Richard L. Wiseman
Robert E. Quick
William E. Darnell
Gerald F. Gilbert
Dean R. Orn
Robert D. Paulus
Steven R. Smith
Jerry Borkholder

AIR FORCE

James N Galey
James C Wayne

NAVY

Michael M. Kauffman
Robert W. Yoder

PERSIAN GULF WAR

NAVY

Steven Kiser

WAR ON TERROR

U.S. MARINE CORPS

Aaron Seal

ARMY

Craig A. Boling

Mark A. Lawton

Jesse L. Williams

Marvin R. Calhoun, Jr.

Jeffrey W. Corban

Justin B. Shoecraft

David A. Wilkey Jr

James P. Snyder

Marvin L. Trost

Kyle G. Thomas

Travis K. Hunsberger

POLICE OFFICERS

Henry Wentz

Michael Swygart

Oren Shelmadine

Douglas Adams

Willard Burton

Thomas Goodwin

Brant "Butch" Nine

FIREFIGHTERS

Fred Shigley

Carl Rheinheimer

Terry Crouch

Gerald Freed

Earl Garl

Rick Genth

Edward Clark

Henry Wisolek

Travis Mahoney



Department of Environmental Resilience

410 West Plymouth Avenue • Goshen, IN 46526
Phone (574) 534-0076 • www.goshenindiana.org
Aaron Sawatsky-Kingsley, Department Head



MEMO

DATE: 7/30/2024

TO: Goshen City Board of Works and Public Safety

FROM: Aaron Sawatsky-Kingsley, D.H. Environmental Resilience

SUBJECT: Bloomerang Software

Environmental Resilience is requesting the purchase of software to assist in managing communications, donations, and volunteers. This software will allow the Department to regularly engage with persons and organizations that it interacts with as we provide services and bring public education to the community. This is especially important as we enter the three year forestry grant where the city will have unprecedented opportunities for the public to participate.

This software will provide event management assistance for workshops and events. It will also will allow the Department to engage volunteers online to participate in a multitude of opportunities from data entry to invasive removal. It will make the process efficient for both our personnel and to the volunteer who will be able to complete service wavers online.

Less known is the fact that tree planting is not solely paid for with the City's budget. The Trail of Hope has been primarily supported by donations. As times became tough during COVID, the Department has seen a reduction in large donations. This software is a database for managing relationships that can lead to donor opportunities. The Trail of Hope is one such example where donor generosity can make a difference. Thanks to the USDA Forestry grant, the city will benefit from an influx of new opportunities during the next three years. The Department believes that the City has many generous residents and businesses that would support this work beyond the grant period.

The Environmental Resilience Department has the funds to pay for the software, \$5,000 each year for two years.

Request: Motion to allow Mayor Leichty to electronically authorize the 2-year purchase of this software for \$5,000 per year.

Gina Leichty
Mayor of Goshen

Pricing Overview for City of Goshen

Bloomerang's all-inclusive CRM, conversion service, and support service includes the following items:

Service	Description	Annual
Bloomerang	Up to 1,000 Records Bloomerang Donor <ul style="list-style-type: none"> • Unlimited users • Unlimited chat, and email support • Unlimited access to live and on-demand webinars (via Bloomerang Academy) • Unlimited number of online forms • Nightly address updates and deceased status updates (via TrueGivers) • Built-in email marketing tool • DonorSearch ProspectView Integration • Giving+ Powered by Qgiv 	\$2,203.00
	Essentials Bundle <ul style="list-style-type: none"> • Unlimited Phone Support • Core Coaching Package • Masterclass Webinars Access • 1 Reserved Seat for Online Fundraising Basics Course 	\$1,750.00
	Bloomerang Volunteer - up to 250 volunteers	\$1,428.00
	Promotional Discounts with purchase of Essentials and Bloomerang Volunteer	(\$382.00)
	Total Recurring Fees:	\$4,999.00
		One Time Fees
Implementation	Jump Start Onboarding	\$599.00
Promotion	Promotional Discounts and Free Jump Start Onboarding valid with Signed Contract by August 15, 2024	(\$599.00)
	Total First Year Investment:	\$4,999.00

1. The pricing in this contract is valid for 45 days.

2. Total First Year Cost is due at signing.

3. If Database exceeds licensed record count, an overage charge will be invoiced at \$12.50 per 250 records. The invoice will be generated on a monthly basis in arrears for previous month's count.

4. All invoices may be subject to applicable sales tax. The customer will receive an exemption certificate request if the invoice is subject to sales tax.



Create donor relationships that last

Prepared for
City of Goshen

Presented By - Seth Delaney, Sr. Account Executive

Phone - 317-565-1118

Email - seth.delaney@bloomerang.com

Date Published - July 1, 2024

The pricing in this contract is valid for 30 days.



Helping nonprofits thrive

At Bloomerang, our vision is to empower fundraisers to do what they love and build a world inspired by giving. And it all starts with our mission and commitment to you—make fundraising easier, foster authentic donor relationships, and create thriving nonprofits. Because we know that when you have more time and resources to do what you love, you'll be able to create lasting change.

In 2022, we celebrated 10 years of helping move missions and currently work with more than 23,000 nonprofits.



23k+	78k	74.5M	\$9B
Nonprofit customers	Nonprofit users	Donors managed	Donations tracked
94%	93%	500+	
Satisfaction Rating	Renewal Rate	Employees	

Nonprofits love Bloomerang



With Bloomerang, we can document relationships, produce better-looking emails, segment donors, and find out who has the potential to give. It's so easy to use that I don't dread going into it to find what I need.

Savannah Lyon, Compass Nebraska



If you're ready for a software that will not only help you manage your donor information, but also your donor relationships, this is it.

Sandy Rees, Get Fully Funded



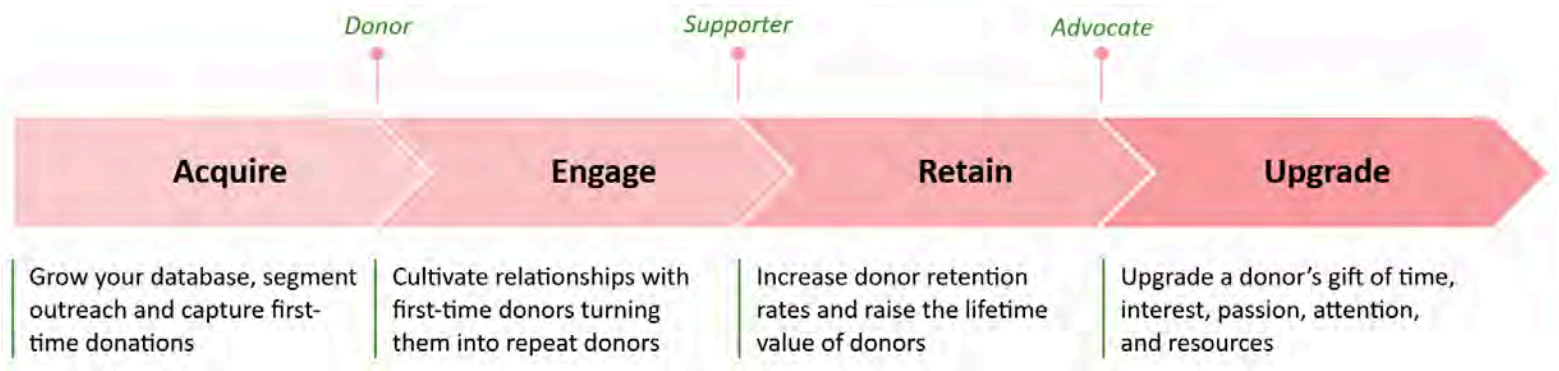
Bloomerang incorporates the best practices of fundraising, donor loyalty and constituent engagement into a user-friendly platform that's priced well for growing nonprofits.

Claire Axelrad, Clarification



Build authentic relationships

Donor Relationship Stages



Your donor relationships are in continuous motion. Donor engagement ramps up from the moment a constituent is first introduced to your organization. As you cultivate the relationship, donors become more engaged, whether that's in their giving, involvement, advocacy, fundraising, or volunteering

The Bloomerang Impact

+4-14%	2-3X	4X	87%
Bloomerang customers see +4-14% better retention rate than the industry average	Cost to acquire a new donor is 2-3X the initial donation	First-time donors that are thanked within 48 hrs are 4X more likely to give again	Donors who make a second gift in the first 18 months

Sources: *Fundraising Effectiveness Project; Bloomerang June 2022

First time donor retention rate, 2nd gift within 12 months

Pricing Overview for City of Goshen

Bloomerang's all-inclusive CRM, conversion service, and support service includes the following items:

Service	Description	Annual
Bloomerang	Up to 1,000 Records Bloomerang Donor <ul style="list-style-type: none"> • Unlimited users • Unlimited chat, and email support • Unlimited access to live and on-demand webinars (via Bloomerang Academy) • Unlimited number of online forms • Nightly address updates and deceased status updates (via TrueGivers) • Built-in email marketing tool • DonorSearch ProspectView Integration • Giving+ Powered by Qgiv 	\$2,203.00
	Essentials Bundle <ul style="list-style-type: none"> • Unlimited Phone Support • Core Coaching Package • Masterclass Webinars Access • 1 Reserved Seat for Online Fundraising Basics Course 	\$1,750.00
	Bloomerang Volunteer - up to 250 volunteers	\$1,428.00
	Promotional Discounts with purchase of Essentials and Bloomerang Volunteer	(\$382.00)
	Total Recurring Fees:	\$4,999.00
		One Time Fees
Implementation	Jump Start Onboarding	\$599.00
Promotion	Promotional Discounts and Free Jump Start Onboarding valid with Signed Contract by August 15, 2024	(\$599.00)
	Total First Year Investment:	\$4,999.00

1. The pricing in this contract is valid for 45 days.

2. Total First Year Cost is due at signing.

3. If Database exceeds licensed record count, an overage charge will be invoiced at \$12.50 per 250 records. The invoice will be generated on a monthly basis in arrears for previous month's count.

4. All invoices may be subject to applicable sales tax. The customer will receive an exemption certificate request if the invoice is subject to sales tax.

Here to help you succeed.

Our proven onboarding and conversion programs are designed to get you operational quickly, provide best practices for configuration, and familiarize your team with the Bloomerang platform—in a way that maximizes knowledge transfer and accelerates your success in the process.



We have loved our time working in Bloomerang. The training provided is great and we look forward to increasing our capabilities in the software!

Paige Vickery, Director of Finance United Way of Midland



Resources You Need	Regular Check-ins	Best Foot Forward
Your Success Path includes customized resources from our Knowledgebase and action steps to take within your database.	We're here to answer your questions and provide support as you set-up your database. In addition, one of our coaches will check-in on your progress twice during your onboarding and help you stay on track.	Once you have completed your onboarding process you'll have a one-on-one coaching session to ensure you are getting the most out of your database.

Make fundraising easier for your team and your donors




The easier your tools are to use, the easier it'll be to grow your mission. Bloomerang helps nonprofits decrease donor attrition and increase revenue. Connect with the donors, volunteers, and partners who will grow your mission.



Acquire

Collect donations anytime and anywhere.





Raise more funds by creating a seamless giving experience for donors. Expand your fundraising reach by empowering supporters to become effective online fundraisers.

-  Unlimited donation pages and forms
-  Event Registration & Ticketing
-  Dynamic donation button

Retain

Retain your donor community.





Retaining donors is critical to achieving a thriving fundraising operation. Bloomerang equips you with the tools you need to create relationships that last a lifetime and make a bigger difference.

-  Full CRM
-  Interactive dashboard
-  Data segmentation
-  Communication workflows

Engage

Create stronger connections with your community.





Achieve better fundraising results through tailored communications. Bloomerang's integrated marketing tools make it easy to send and track timely, personalized emails and mailings.

-  Email marketing
-  Letters and mailings
-  Donor Surveys
-  Log emails with BCC feature

Automate

Divided data comes together.

Automatic daily updates save you time and ensure your data freely and accurately flows between the apps you depend on.

-  Integration hub
-  Nightly NCOA
-  Task management
-  Scheduled reports

Measure

Easily report results.

Save time by prioritizing your campaigns and resources wisely. Generate reports that will help you refine fundraising efforts and discover and grow relationships.



Filter-based reporting



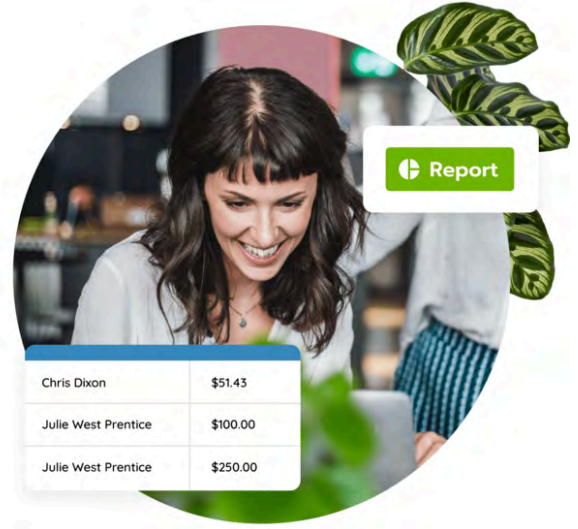
Engagement scoring and wealth screening



Donor retention insights



Email performance analytics



Chris Dixon	\$51.43
Julie West Prentice	\$100.00
Julie West Prentice	\$250.00

Raise more and worry less

With Bloomerang's payment processing solutions, amplify your nonprofit's impact by boosting your fundraising results and peace of mind.

Effortlessly grow donations

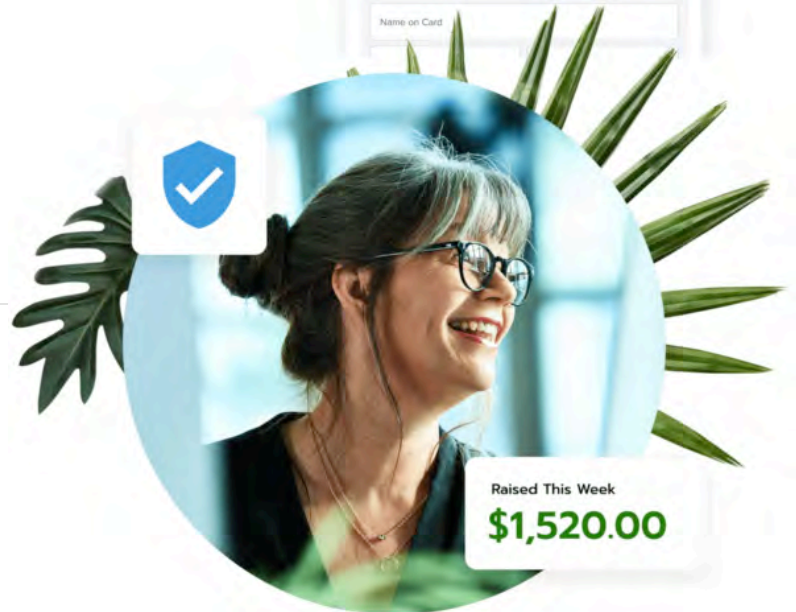
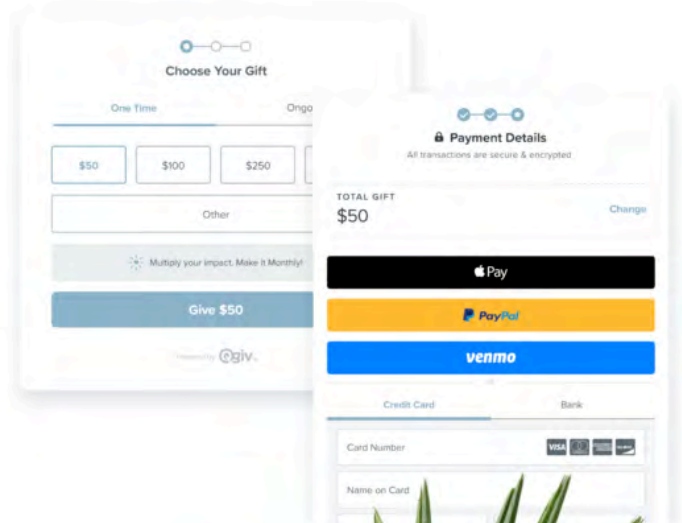
Raise your donation conversion rates by 38% with over six payment options including PayPal, Venmo, Apple Pay, debit, credit, ACH, in-person payments. Maximize fundraising without sacrificing time.

Save money for where it matters most

We automatically update expired cards and encourage donors to cover processing fees so more of your donations go to where they matter most.

Set up your organization for success

With industry-leading protection and PCI compliance, we work tirelessly to protect you from bad actors. Our integrated data, flexible payout schedules, and consolidated reporting make reconciliation a breeze. With full ownership of your recurring donation data, you'll never have to worry about the future since you can freely move data.






"With the addition of Bloomerang payment processing, we were able to transform our donation acceptance, while simultaneously eliminating staff time."

Liz L., Nonprofit CEO

Payment processors built for nonprofits.

No setup fees, support fees, or hidden merchant fees.

	Credit / Debit fee:	3.95% (*Qgiv + Merchant) \$0.30 per transaction
	PayPal fee:	1.95% (**Qgiv only)
	ACH fee:	1.95% (*Qgiv + Merchant) \$0.95 per transaction
	AMEX fee:	Add 1% per transaction

Stop chasing down outdated cards

Automatic updates to outdated payments help you feel confident relying on recurring donations without any difficult donor conversations on expired or declined cards.

Pay less on fees

Unexpected expenses and unnecessary fees are frustrating. More than 70% of donors opt-in to cover transaction fees*, saving you thousands annually. We cover additional merchant fees so you can focus on your mission with peace of mind.

Eliminate data entry

Seamlessly process online donations and flow payment data directly into your Bloomerang account, eliminating the need for manual data entry and reducing the risk of errors.

Feel confident in security

Our industry-leading fraud monitoring tools work tirelessly to detect and prevent fraudulent transactions so you can focus on your mission of making the world a better place. PCI compliant tools protect the confidentiality of your donors' data.

*When processing on 3rd party processors, Bloomerang fee is 1%, Qgiv fee is 1.95%.

**Based off approved PayPal nonprofit processing rate.



Put relationships at the heart of your fundraising

Automatically sync Qgiv fundraising data with Bloomerang to save time, make data-driven decisions and cultivate impactful, long-term relationships.



Powerful event management

Easily manage in-person and virtual guests with flexible ticketing, multi-attendee packages, discount options, QR code check-ins, and table seating. Raise more in sponsorships with custom packages, sponsor pages, and VIP sponsor experiences. Screencast your event goal progress in real-time to boost fundraising.

Seamless text fundraising

Accept donations through text, and automatically remind donors to complete their gift.

Recurring donation prompts

Convert 3x more one-time donors to recurring supporters with recurring donation upgrade prompts

Innovative donor-centric features

Donors see their first name in content while giving, can dedicate a gift with custom tributes, see customizable questions based on prior answers, and can quickly find matching employer gift options to double their impact.

Optimize conversion with smart amounts

Change default giving values dynamically to increase both the likelihood new donors will give and the average gift size.

Fundraising dashboard

Save time and get the answers you need with pre-built and custom reports and fundraising dashboards. Share campaign or event results with your board or leadership team in seconds

Additional fundraising tools

Add-on peer-to-peer, auctions, and outbound texting to level up your results..



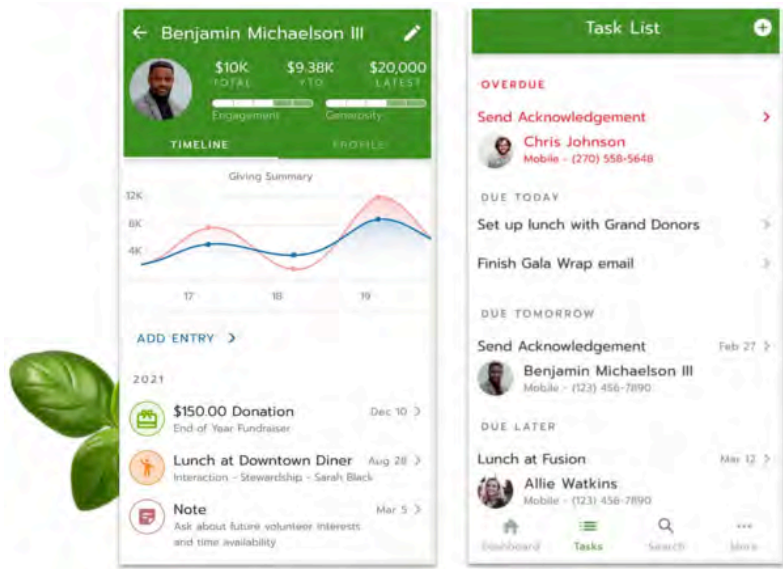
We particularly love Qgiv's integration with Bloomerang! This helps streamline our fundraising processes and makes us more efficient, but most importantly helps us focus our attention on our donor relationships and stewardship within Bloomerang.

Joseph Maley Foundation



Stay connected to your donors with the Bloomerang mobile app.

Whether you are hosting an event, exhibiting at a conference or gathering, or meeting in person with a donor, capture donations in the moment when constituents feel inspired and motivated to give. The app is available on iPad, iOS, and Android devices.



Donor insights at your fingertips

Access the information you need to create personal connections from anywhere. Just open the mobile app on your smartphone and access your full database.

Donation processing in real-time

With the Bloomerang mobile app and Stripe swiper, you can take credit card donations instantly while populating the constituent profile in Bloomerang.

Improve donor retention

New donors are highlighted on your mobile dashboard and give you the ability to easily call them right from the app. Click through to the donor's profile and text, email or call to thank them for their support.

Tap to Pay

Empower donors to give when they're inspired to support your mission.

Supercharge your event fundraising results by giving every team member the ability to collect donations in seconds.

How we do it

Save Time

Eliminate manual data entry by making processing donations a breeze for both you and your donors.

Increase Giving

Meet donors where they are by offering preferred payment methods so you never have to say "no" to a potential gift.

Strengthen Relationships

Data flows automatically into your Bloomerang CRM, so you can acknowledge and nurture your donors with ease.



Empower Your Volunteers and Increase Your Impact

With Bloomerang Volunteer you get precious time back in your day so you can focus on what matters, creating a volunteer experience that inspires and maximizing the impact of your programs.

Manage more volunteers in less time

Automate time-consuming processes and increase operational efficiency.

Recruit and retain more volunteers

Make it easy for volunteers to sign up and for you to qualify and schedule each applicant.

Turn volunteers into repeat donors.

Increase fundraising revenue when you invite engaged volunteers to become dedicated donors.



volunteers donate
10x
more than those who
aren't volunteers

67%
of volunteers
are also donors

40%
of donors were volunteers
before making their
first donation

[Click here to take a see how Bloomerang Volunteer turns dedicated volunteers into donors](#)

“ The volunteer profile integration is a wonderful advantage. This is a HUGE timesaver for our staff! Syncing is easy and quick and means that all of our constituent and volunteer information is in one place! Very grateful for Bloomerang Volunteer!

Anna Unruh, Joy Meadows Foster Community

SOURCE: [The Role of Volunteering in Philanthropy](#)

Bloomerang Essentials & Guidance

Unlock your organization's full potential when you combine guidance and tools designed to accelerate your path to fundraising success.



Essentials Bundle		
Focus	Component	Feature/Benefits
Accelerate your Bloomerang proficiency.	Unlimited Phone Support	Talk to one of our friendly Bloomerang-employed experts who will support you until questions is fully answered and you're feeling comfortable.
	Core Coaching Package	Four one-on-one coaching sessions to provide you with personal guidance from a dedicated Bloomerang coach. Together, you'll focus on enhancing your Bloomerang proficiency to elevate your fundraising performance.
	Masterclass Webinars	Get access to a full year of webinars taught by Bloomerang experts, and learn the strategic techniques you need to improve your fundraising performance.
	Fundraising Standard	Earn 40 CFRE credits towards your Fundraising CFRE Certification with renowned fundraising expert Dr. Adrian Sargeant and other leading authorities on fundraising best practices. 8 weeks/40 hours of self-paced, online fundraising training.
Fundraising Bundle		
Focus	Component	Feature/Benefits
Cultivate relationships. Attract new donors. Unlock giving potential.	Powerful event management:	Easily manage in-person and virtual guests with flexible ticketing, multi-attendee packages, discount options, QR code check-ins, and table seating. Raise more in sponsorships with custom packages, sponsor pages, and VIP sponsor experiences. Screencast your event goal progress in real-time to boost fundraising.
	Seamless text fundraising	Accept donations through text, and automatically remind donors to complete their gift.
	Recurring donation prompts	Convert 3x more one-time donors to recurring supporters with recurring donation upgrade prompts.
	Innovative donor-centric features	Donors see their first name in content while giving, can dedicate a gift with custom tributes, see customizable questions based on prior answers, and can quickly find matching employer gift options to double their impact.
	Fundraising dashboard	Save time and get the answers you need with pre-built and custom reports and fundraising dashboards. Share campaign or event results with your board or leadership team in seconds.

	Optimize conversion with smart amounts	Change default giving values dynamically to increase both the likelihood new donors will give and the average gift size
Find generous prospects who align with your mission.	DonorSearch Prospecting Suite	Expand your database by finding high-affinity prospects who align with causes like yours. Build a strong prospect pipeline by researching their philanthropic history, affinity alignment, and wealth capacity.

Accepting this contract electronically

Instructions to Finalize

This document allows for electronic acceptance and signature. If you wish to accept and sign online, please click the "Accept" button at the top-right of this page. Electronic acceptance of this document is legally binding.

Terms & Conditions

By clicking the "Accept" button, you are accepting the terms and conditions of an agreement to Bloomerang Donor as defined here: <http://bloomerang.co/tac>.

If Bloomerang Volunteer is included in your itemized pricing, you are also agreeing to the terms and conditions of an agreement as defined here: <https://bloomerang.co/tac/initlive>

If Giving+ or Fundraising Bundle is included in your itemized pricing, you are also agreeing to the terms and conditions of an agreement as defined here: <https://www.qgiv.com/terms-of-service>

This agreement is a **two (2) year agreement** that renews annually thereafter and requires forty five (45) day written cancellation notice.

Payment

Upon electronically signing this contract, you will also need to provide Bloomerang with a payment method. Please complete the [payment authorization form](#) (last page of this contract).

- Total First Year Cost is due at signing.
- You shall provide Us with accurate and valid ACH or credit card billing information via the Payment Authorization page in Your Proposal which will be used to pay for services rendered. Failure to do so will result in a service fee.



Billing Questions?

Email billing@bloomerang.com



Payment Authorization

By providing payment information below, I (we) authorize Bloomerang to debit this account for charges agreed to in this proposal as well authorize its use for future renewals and additional mutually agreed upon products and services.



BLOOMERANG SUBSCRIPTION AGREEMENT

This **AGREEMENT** governs Your acquisition and use of Our Services. This Agreement was last updated on January 1, 2023. It is effective between You and Us as of the date of Your acceptance of this Agreement (as indicated by the date on the signature page of the Proposal).

1. DEFINITIONS.

- 1.1. **“Agreement”** means the combination of this Subscription Agreement and the Proposal.
- 1.2. **“Fee Schedule”** means the table of customized pricing for Services listed in the Proposal.
- 1.3. **“Payment Authorization Form”** means either the page entitled Credit Card Payment Authorization or the page entitled ACH Payment Authorization from Your Proposal.
- 1.4. **“Proposal”** means the Donor Retention Software Proposal specifying the Services to be provided that is entered into between You and Us, including any addenda and supplements thereto.
- 1.5. **“Fees”** mean any amount due for any of the Bloomerang products or services.
- 1.6. **“Recurring Fees”** means the periodic fees for Your subscription to any subscription-based Services.
- 1.7. **“Services”** means any and all products and services that are ordered by You in the Proposal or subsequent agreement and made available by Us, including the core Database Services.
- 1.8. **“Database Service”** means the browser interface, data encryption, data access, Bloomerang software access and data storage.
- 1.9. **“Email Service”** means sending from, or receipt of, any electronic message (Email) through the Database Service.
- 1.10. **“Constituent Records”** means each unique account in your database.
- 1.11. **“Production”** means the environment and servers where all live data in use is housed.
- 1.12. **“Technical Requirements”** means the page entitled Technical Requirements in

Your Proposal.

1.13. **“We,” “Us” or “Our”** means Bloomerang LLC.

1.14. **“You” or “Your”** means you, the non-profit organization or other legal entity for which You are accepting this Agreement.

2. ACCEPTANCE OF AGREEMENT. This Agreement includes any terms and conditions listed in Your Proposal, starting at the Pricing Overview page, govern Your Use of Our Services. By signing the Donor Retention Software Proposal and/or using Our software, You acknowledge and agree that:

(i) You have read and understood this Agreement and agree to be bound by its terms and conditions, as amended from time to time, and

(ii) if You are entering into this Agreement on behalf of a non-profit organization or other legal entity, You represent You have the authority to bind such entity to these terms and conditions, in which case the terms “You” or “Your” shall refer to such entity.

If You do not agree with these terms, You must not accept this Agreement and may not use the Services.

3. CHANGES TO AGREEMENT. We reserve the right, from time to time, with or without notice to You, to change the terms of this Agreement, except for Sections 5, 7.1, 7.4.2, 9.1 and 9.4, in Our sole and absolute discretion. Such revisions shall be effective immediately. The most current version of this Agreement can be found at www.bloomerang.co/tac.

4. LICENSE. Subject to the terms and conditions of this Agreement, We grant You a non-exclusive, non-sublicensable and non-transferable license to access and use Our Services as defined in your Proposal for an UNLIMITED number of users.

5. TERM. Unless otherwise specified in your proposal, the initial term of this Agreement is two (2) years. The initial term begins the day the Agreement is signed. This Agreement shall automatically renew for additional one-year terms unless either party provides written notice of termination at least forty five (45) days prior to the end of the initial term or any subsequent extension.

6. PROVISION OF SERVICES. We shall make any Services purchased by You available to You during the term of the Agreement. You agree that Your purchase of any Services We offer are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Us regarding future functionality or features.

7. PRICING AND PAYMENT.

- 7.1. **Pricing.** Recurring Fees for Database Services are arranged into pricing tiers for a given range of records stored in Your database. Additional fees may apply for excessive use above your subscription amounts(e.g. constituents, emails sent, or attachment storage). For the most current Database Services pricing, check <https://bloomerang.co/pricing> or contact a sales representative. For a price quote for other Services, contact a sales representative.
- 7.2. **Payment Method.** You shall provide Us with accurate and valid ACH or credit card billing information via the Payment Authorization page in Your Proposal which will be used to pay for services rendered. Failure to do so will result in a service fee.
- 7.3. **Payment Authorization.** You authorize Us to process payment for Your Recurring Fees and any other fees or charges You may incur in connection with the use of Our Services at the current rate to Your Payment Method provided along with this Agreement.
- 7.4. **Billing.** We will process Your Recurring Fees on a yearly basis. Other fees are processed as outlined below or else at the time you agree to purchase a Service.
 - 7.4.1. **Database Services and Recurring Fees.** The start date of the Database Service and other recurring fees coincides with the start date of this Agreement's Term as defined in Section 5. Bloomerang will begin processing your ACH or Credit Card within one (1) day of that date.
 - 7.4.2. **Conversion, Consulting, and other Services.** Similar to Database Services outlined in 7.4.1, fees will be processed at the execution of this Agreement and processing for payment via ACH or Credit Card within one (1) day of that date.
- 7.5. **Additional Terms.** We reserve the right to change the Recurring Fees upon completion of any contract period. Current pricing can be found at <https://bloomerang.co/pricing>. We further provide that the annual change in Recurring Fees, if any, shall not exceed the annual change in the Bureau of Labor Statistics Consumer Price Index.
- 7.6. **Suspended Access.** We may suspend Your access to the Database Service if Your account is delinquent for more than ten (10) days. Your data is subject to permanent removal at thirty (30) days delinquency.

8. **CONVERSION, IMPLEMENTATION AND TRAINING.**

- 8.1. **The Conversion Service.** The "Conversion Service" consists of Us converting Your data into file structures that are compatible with the Bloomerang software. The Conversion Service necessarily involves a number of steps requiring Your cooperation with Us. Should You fail to respond/act in a timely manner, or if You

provide inaccurate or incomplete information, or if you use fields in a manner other than intended, the Conversion Service may be delayed and You may incur additional conversion charges.

8.2. **The Conversion Service Process.** The Conversion Service process shall generally follow these steps; however, We may determine, in our sole discretion, that Your data requires additional or modified processes:

(i) You provide Your data to Us;

(ii) We discuss how to convert/map Your data from its current form to Bloomerang's format with You;

(iii) A programmer writes a utility to convert Your data according to the mapping. We load Your data onto a test server. We perform a walkthrough of Your sample data to identify errors and/or changes;

(iv) Upon receiving Your written authorization approving the changes/corrections, Our programmer adjusts the utility based on input from the walkthrough. You continue to access and interact with Your data on the test server to familiarize Yourself with the software;

(v) We perform a final conversion and migration of the data onto the Production server and You fully assume control of the data.

(vi) Original data files used for the conversion are retained for 90 days after the final conversion date.

8.3. **Responsibility for Accuracy.** You are responsible for providing Your original data and ensuring the accuracy of the converted data throughout the Conversion Service process. You shall continue to monitor and review your data for accuracy and completeness and report any issues or problems to Us prior to having Your data loaded onto the Production server.

8.4. **Correction of Errors.** We will correct any issues or problems which are reported to Us within fourteen (14) days after these data are placed onto the Testing server for review. Our correction of the issue or problem reported in that period is Your exclusive remedy, and Our only liability, for any inaccuracy in the converted data. It is the responsibility of You to immediately review Our corrections and inform Us of any additional issues or problems. Once You have approved your data for loading onto the Production server (Go Live Acceptance), any changes or adjustments in the converted data are subject to additional costs. Should You cancel the conversion at any time after We have begun work on the Conversion Services, You will be responsible for the pro-rata percentage of the completed work at the time We receive written notice of the cancellation.

9. DATA.

9.1. **Title to Data.** All of Your data remains Your sole property. We will provide summary aggregate views of certain data as part of its reporting processes. Those views will never compromise any individual data.

9.2. **Access to Data.** You may download Your data for free via the standard reporting parameters provided by the Database Service any time during the term of this Agreement.

9.2.1. **Other Formats.** Furthermore, upon request, We will provide You Your data in a standard CSV format for a fee equal to the lesser of either four (4) months' value of Recurring Fees or \$1,500.00.

9.2.2. **Retention of Data After Termination of Agreement.** We are not responsible for storage or retention of Your data more than ninety (90) days after termination of this Agreement. Should You desire for Us to keep Your data protected on Our servers without access rights for a stated time period, there will be a fee of one-half (½) of Your Recurring Fees for Database Services.

9.3. **Protection of Data.** Once the Conversion is complete, You will control all logins and passwords which provide access to Your data. We shall not disclose Your data except:

(i) as required by law

(ii) as provided in Section 9.1 above and

(iii) that, in order to provide the best possible delivery and email service for our customers, We may utilize a third-party service to validate and verify the email addresses stored in the Bloomerang database (and bad email addresses may be collected and may be excluded from any email sent using the Email Service).

9.4. **Credit Card Information.** For all e-commerce transactions processed on Our hosted system, the credit card information that is collected is used solely for the purpose of completing the specific transaction. After the transaction is complete, the credit card data is encrypted and may only be used for future authorized transactions.

10. USE OF SERVICES.

10.1. **Acceptable Use.** You may not (directly or indirectly) use any Bloomerang services with content or in a manner that:

(i) is threatening, abusive, harassing, stalking, or defamatory

(ii) is deceptively false, misleading, or fraudulent

(iii) is invasive of another's privacy or violates another's legal rights

(iv) contains vulgar, obscene, indecent, or unlawful material

(v) advocates for or demonstrates hate, hostility, or violence towards members of any race, religion, color, sex, age, national origin or ancestry, or on the basis of genetic information, marital status, parental status, sexual orientation, gender identity and expression, disability, or status as a veteran

10.2. **Database Service.** The “Database Service” consists of a browser interface, data encryption, data access, Bloomerang software access, and data storage. You are responsible for obtaining and maintaining all computer hardware, software and communications equipment needed to access the Database Service, and for paying all third-party access charges (e.g., ISP, telecommunications) incurred while using the Database Service. Bloomerang reserves the right to monitor usage of the Database Service for diagnostic and security protection purposes and the right to improve and modify the Database Service at any time without notice.

10.3. **Email Service.** The “Email Service” consists of sending from or receipt of any electronic message (Email) through the Database Service.

10.3.1. **Limitations on Email Use.** By using this service, you agree to comply with all laws applicable to the sending of electronic messages. Bloomerang reserves the right to restrict, modify, or otherwise terminate your use of the service if the following policies are not adhered to:

(i) Use of non-permission based Email lists. This includes purchased or rented lists, as well as lists in which recipients have not explicitly granted permission to receive emails from You

(ii) Use of third-party email addresses, domain names, or mail servers without permission

(iii) Sending Emails that result in an unacceptable number of spam or UCE complaints

(iv) Failing to comply with any request from a recipient to be removed from your mailing list within 10 days of receipt of such request

10.4. **Application Programming Interface.** This section does not apply if You do not require access to Our Application Programming Interface ("API"), which enables third-party software to push data to, or pull data from Your Bloomerang database. The API is automatically licensed to You upon activation of Your Database Service.

10.4.1. **API Consulting and Support.** Once We provide You with access to the API, it will be deemed to be included in the Database Service for purposes of this Agreement, except that any consulting services, support or other assistance requested by You relating to the API are not included in any

Fees specified in the Proposal unless expressly stated.

- 10.4.2. **Limitations on API Use.** We may limit the amount of data that may be transferred by You through the use of the API, the number of total or concurrent requests that You may make using the API, and/or any other activity with respect to the API, in Our sole discretion and may change such limitations from time to time. We also reserve the right to terminate Your license to use the API for any reason. The API shall be treated by You as confidential information. Any breach of the foregoing restrictions (or this Agreement) by such third party service provider shall be deemed a breach of this Agreement by You.
- 10.5. **Third-Party Services.** The Services may include services developed, provided or maintained by third-party service providers (“Third Party Services”). In addition to the terms of this Agreement, Your access to and use of any Third Party Services is also subject to any other agreement separate from this Agreement that You may enter into (or may have entered into) relating to those Third Party Services (each, a “Third Party Service Agreement”). The terms of any Third Party Service Agreement will apply to the applicable Third Party Services provided under that Third Party Service Agreement in addition to the terms of this Agreement. Except as set forth in this Agreement, the terms of any Third Party Service Agreement will control in the event of a conflict between the terms of this Agreement and that Third Party Service Agreement. All other Third Party Services will be subject to the terms of this Agreement. Third Party Services may be subject to additional Fees as set forth on the Site. Notwithstanding the terms of any Third Party Services Agreement, Bloomerang may change, modify or discontinue any Third Party Service at any time and without notice to You. Except as expressly set forth in this Agreement or any Third Party Service Agreement, You are granted no licenses or rights, whether by implication, estoppel, or otherwise, in or to any Third Party Services.
- 10.6. **Reservation of Rights.** Subject to the limited rights expressly granted to You in this agreement, We reserve all rights, title and interest in all software related to the Database Service.
- 10.7. **Restrictions on Use.** You shall not
- (i) create derivative works based on Our software,
 - (ii) copy, frame, or mirror any part or content of the Database Service,
 - (iii) reverse engineer the Database Service, or
 - (iv) access the Database Service in order to build a competitive product or service or copy any features, functions, or graphics of the Database Service, or

(v) Allow any third party to access the Database Service for the purposes listed in (i) - (iv).

- 10.8. **Lawful Use.** You will use the Database Service in compliance with all applicable laws, including without limitation medical record, internet privacy, copyright, trademark, obscenity and defamation laws.
- 10.9. **Confidential Information.** During the term of this Agreement and at all times thereafter, neither party shall disclose, sell or transfer to any third party, other than for the performance of this Agreement or as required by law, any confidential information and intellectual property of the other party without the express written consent of the other party. This includes but is not restricted to personal and business information stored by either party.
- 10.10. **Passwords and Security.** You are responsible for any and all activities that occur under its account(s) and the confidentiality of all its passwords in connection with the Database Service. You shall notify Us of any unauthorized use of its account(s) or any other breach of security. We will suspend or change access to Your account within one (1) business day or less after receipt of written notice from You that a password has been lost or otherwise compromised.
- 10.11. **Technical Requirements.** You shall access the Database Service using a device with a minimum screen resolution of 1024x768 using the latest version of Chrome, Firefox, Safari, or Edge. We will not be liable for any service interruptions, errors or loss of data caused by malware or non-conforming hardware used by You.

11. TERMINATION AND SURVIVAL.

- 11.1. **Termination for Cause.** We may terminate this Agreement immediately or suspend Your access to the Database Service upon any material breach of this Agreement by You (such as failure to allow processing of payment for the Database Service) or if We determine that You may be performing activities harmful to Us or other users of the Database Service.
- 11.2. **Survival.** Section 7 (regarding Your obligation to pay any outstanding amounts), Section 12 and Section 13 will survive termination of this Agreement. Any Fees prepaid for Services that are not provided due to termination will be refunded to You after any unpaid invoice balances are deducted.

12. **WARRANTY DISCLAIMER.** Although We will take commercially reasonable steps to provide error-free and continuous service, **We do not represent, warrant or guarantee that the database service will be uninterrupted or error free. As a result, the database service is provided “as is” without warranty of any kind, and We disclaim ALL warranties, either express or implied, including, but not limited to, implied warranties of merchantability, and fitness for a particular purpose and non-infringement.** Some

states do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to You.

13. LIMITATION OF LIABILITY. Our **TOTAL LIABILITY**, if any, with respect to the subject matter of this agreement (including, but not limited to, liability arising out of contract, tort, strict liability, breach of warranty or otherwise) is **limited to the fees paid by You to Us under this agreement in the 12 months prior to the act or injury that gave rise to the liability; provided, however, that such limitation shall only apply to damages to You directly caused by willful or malicious misconduct by Us or Our employees. We will not be liable in any event for loss or inaccuracy of data, loss of profits or revenue, or indirect, special, punitive, incidental or consequential damages (including, without limitation, the cost of any substitute service), whether or not foreseeable and even if We have been advised of the possibility of such damages.** This section shall apply to any action or arbitration.

14. MISCELLANEOUS.

14.1. **Assignment and Delegation.** This Agreement cannot be assigned or delegated by You.

14.2. **Governing Law.** This Agreement is to be governed by and construed in accordance with the laws of Indiana, without regard to its conflict of law principles.

14.3. **Mandatory Choice of Forum.** Each party irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind whatsoever against any other party in any way arising from or relating to this Agreement and all contemplated transactions, in any forum other than the United States District Court for the Southern District of Indiana (Indianapolis Division) or the courts of the State of Indiana sitting in Indianapolis, Indiana, and any appellate court from any thereof. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees to bring any such action, litigation or proceeding only in such courts. Each party agrees that a final judgment in any such action, litigation or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

14.4. **Litigation Costs and Expenses.** If any party institutes any legal suit, action or proceeding against the other party to enforce this Agreement (or obtain any other remedy regarding any breach of this Agreement) or arising out of or relating to this Agreement, the prevailing party in the suit, action or proceeding is entitled to receive, and the non-prevailing party shall pay, in addition to all other remedies to which the prevailing party may be entitled, the costs and expenses incurred by the prevailing party in conducting the suit, action or proceeding, including reasonable attorneys' fees and expenses, court costs and other reasonable costs and expenses of litigation.

14.5. **Severability.** If any provision of this Agreement is illegal or unenforceable, that

provision is severed from this Agreement and the other provisions remain in force.

- 14.6. **Notice.** All notices under this Agreement shall *either* be given in writing or sent via email.
- 14.7. **Merger.** Your Proposal and the most current version of this Agreement set forth the entire understanding between You and Us with respect to its subject matter and supersedes all prior negotiations, understandings and agreements - express or implied - concerning such matters. In the event of any conflict between the terms and conditions of this Agreement and any subsequent ordering document, terms listed in the Proposal shall control first and the most current version of this Agreement shall control second.
- 14.8. **Internal References.** References to Sections are to Sections of this Agreement.



BLOOMERANG VOLUNTEER (FORMERLY INITLIVE) TERMS & CONDITIONS

BEFORE CLICKING ON THE “ACCEPT” BUTTON YOU (“YOU”, “CUSTOMER”), AS A CUSTOMER OF BLOOMERANG, LLC AND ANY OF ITS SUBSIDIARIES AND AFFILIATES (COLLECTIVELY OR INDIVIDUALLY REFERRED TO AS “BLOOMERANG” OR “INITLIVE”) MUST CAREFULLY READ THE TERMS AND CONDITIONS SET OUT BELOW GOVERNING CUSTOMER’S ACCOUNT AND ACCESS TO THE BLOOMERANG SERVICES (THE “SERVICES”) AND CUSTOMER’S USE OF THE INITLIVE MOBILE APPLICATION (THE “APP”). BY CLICKING ON THE “ACCEPT” BUTTON, CUSTOMER ACCEPTS AND AGREES TO BE LEGALLY BOUND BY THE TERMS AND CONDITIONS OF THIS LICENSE AGREEMENT (“AGREEMENT”). IF YOU, AS CUSTOMER, ARE ENTERING INTO THIS AGREEMENT ON BEHALF AN ORGANIZATION OR OTHER ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO LEGALLY BIND SUCH ORGANIZATION OR ENTITY, IN WHICH CASE “YOU” OR “CUSTOMER” SHALL REFER TO SUCH ORGANIZATION OR ENTITY. IF CUSTOMER DOES NOT AGREE WITH THESE TERMS AND CONDITIONS, CLICK ON THE “DO NOT ACCEPT” BUTTON AT THE END OF THIS AGREEMENT AND DO NOT SUBSCRIBE TO THE SERVICES.

1. THE SERVICES AND LICENSE TO THE SERVICES

1.1 Who the Services are for. The Services have been created for use by:

- i. Entities or individuals (“Event Managers”) who organize events (“Events”) and wish to use the Services to assist in scheduling and otherwise liaising with individual Participants (as defined below) who are participating in those Events; and
- ii. Individuals (who may be employees, contractors or volunteers) who wish to participate in Events (“Participants”).

Where we refer to “You” or “Customer”, we are referring to both Participants and Event Managers unless the section expressly contemplates otherwise.

1.2 License for Participants to use the Services. If You wish to use the Service as a Participant, Bloomerang grants and You hereby accept, subject to the terms and conditions contained herein, a limited, non-transferable, non-exclusive, worldwide, enterprise-wide and revocable license, without the right to sublicense, (the “License”) to access and use the Services and all materials offered as part of the Services including but not limited to documents, articles and reports (the “Content”) solely for your personal benefit and for the purpose of interacting with Event Managers through the Service. This license will commence upon Your completion of the online subscription process (the “Effective Date”) and will continue until You delete your account or until otherwise terminated in accordance with the terms of this Agreement.

1.3 License for Event Managers to use the Services. If You wish to use the Service as an Event Manager, then subject to Bloomerang’s acceptance of an order form submitted by You subscribing as an Event Manager, the terms of any such order form (which include limitations on the number of Events, number of Participants and/or other limitations that may be managed through the Service) and receipt of payment of the applicable Fees (as defined below), Bloomerang grants and You hereby accept, subject to the terms and conditions contained herein, a limited, non-transferable, non-exclusive, worldwide, enterprise-wide and revocable license, without the right to sublicense, (the “License”) to access and use the Services and all materials offered as part of the Services including but not limited to documents, articles and reports (the “Content”) solely for your personal benefit and for the purpose of interacting with Participants through the Service. This license will commence upon Your completion of the online subscription process (the “Effective Date”) and will continue until the end of the term specified in the applicable order form or until otherwise terminated in accordance with the terms of this Agreement.

1.4 License for App. Bloomerang grants and You hereby accept subject to the terms and conditions contained herein, a limited, non-exclusive, non-transferable, non-assignable license to install and use the App solely to access the Services on the terms of the licenses granted to you above.

1.5 Restrictions. You acknowledge that the Services, the App and the Content, constitute valuable trade secrets of InitLive and its licensors. Except as otherwise set out in this Agreement, Customer shall not (i) copy or use the Services, the App or the Content; (ii) alter, modify, duplicate, translate, de-compile, reverse engineer, or attempt to recreate the Services, App or the Content, in whole or in part; (iii) modify or create any derivative works

from the Services, App or the Content any part thereof; (iv) merge the Services or the Content with any other software; (v) disclose to any third party any performance information or analysis relating to the Services and the Content; (vi) license, sublicense, sell, convey, assign, transfer, give, lend, rent, transfer or otherwise grant any right to any of the Services, the App or the Content or any of Your rights hereunder, in whole or in part, voluntarily or involuntarily, by operation of law or otherwise, to any person, individual, legal or personal representative, partnership, company, corporation, syndicate, association, trust or governmental body otherwise; (vi) build an identical product to the Services or the App or a product with similar ideas, features and functionality as the Services or the App; and (vii) copy any ideas, features or functions of the Services or the App. You agree to retain, on all copies of any Content You download, all copyright and other proprietary notices contained in the Content. The Services, the App and the Content are protected by Canadian and worldwide copyright laws and treaty provisions. You agree to comply with all copyright laws worldwide in Your use of the Services, the App and the Content and to prevent any unauthorized copying of the Content. Except as expressly provided herein, InitLive does not grant any express or implied right or license to You under any intellectual property right, including under any patent, trade-mark, copyright, trade secret or confidential information of InitLive or its licensors.

2. CUSTOMER DATA

2.1 Customer Data. In the course of using the Services, You may upload certain information, data and material through the Services (the “Customer Data”). You agree that the Customer Data will (i) comply with all applicable laws; (ii) not contain infringing, obscene, threatening, libelous, or other illegal material or information (“Illegal Information”); (iii) not include material containing software viruses, worms, Trojan horses or other harmful computer codes, files scripts or programs designed to interrupt, destroy, or limit the functionality of any computer software or hardware telecommunications equipment; and (iv) not contain any content, work, name, logo or mark that infringes any intellectual property right of any person. You acknowledge that You have obtained the consent to use any Personal Information (as that term is defined in the Personal Information Protection and Electronic Documents Act (S.C. 2000, c.5) (“PIPEDA”) and all other applicable privacy legislation, including without limitation the General Data Protection Regulation (EU) 2016/679) contained in the Customer Data from the person to whom the Personal Information pertains, and that You have complied with all relevant privacy laws in collecting, using the disclosing such Personal Information.

2.2 Ownership. Subject to the below, the parties acknowledge that You own the Customer Data and all intellectual property rights therein, or that You have the right to grant the license to InitLive to use such Customer Data. You will have sole responsibility for the accuracy, quality, integrity, reliability, appropriateness and intellectual property ownership of the Customer Data and for obtaining the right to use all of the Customer Data submitted by You. You acknowledge that InitLive will have no responsibility or liability for the Customer Data. Where You are a Participant who liaises with Event Managers through the Services, you acknowledge that Event Managers may own personal information that relates to your interaction with them.

2.3 License. You agree to grant Bloomerang and its third party service providers a non-exclusive, worldwide, perpetual, irrevocable, royalty-free, sub-licensable right to use the Customer Data for the purposes of providing the Services to you and for analyzing, aggregating and preparing reports and recommendations and, upon obtaining Your prior explicit permission, to publish the Customer Data. Bloomerang will use the Customer Data in accordance with [Bloomerang's Privacy Policy](#). Bloomerang has no control over how Event Managers may use Customer Data, and such use will be a matter between you and the applicable Event Manager.

3. EVENT MANAGER FEES

This section only applies to Event Managers, and the use of “You” and “Customer” in this section shall be construed accordingly.

3.1 Fees. You shall pay Bloomerang (or its authorized reseller if subscribing through a reseller) for access to the Services in accordance with InitLive's current fee schedule and/or as otherwise specified in the order form or by the authorized reseller (the “Fees”). You shall pay the Fees, any renewal Fees and any additional Fees You incur in association with the purchase of additional services and features by payment methods identified during the ordering process. Bloomerang reserves the right to terminate your access to the Services if you fail to pay any Fees when due or if you provide false or fraudulent billing or contact information during the online subscription process. Bloomerang reserves the right to amend its fee schedule from time to time.

3.2 Taxes. All fees and other charges specified in this Agreement are exclusive of all applicable goods and services taxes and any other taxes imposed or levied by any

government or government agency, including sales or use taxes (the “Purchase Taxes”). You will pay all Purchase Taxes, other than taxes on Bloomerang’s net income, as a result of the transactions contemplated by this Agreement.

4. YOUR RESPONSIBILITIES

4.1 Account. You are responsible for all of the activity associated with Your account and You agree to notify Bloomerang immediately in the event of any unauthorized use of Your account or password or if You suspect Your account or password has been compromised in any way. You agree not to misrepresent Yourself in order to gain access to the Services. You are responsible for advising Bloomerang of any change in Your billing or contact information.

4.2 Sensitive Information. If You are an Event Manager creating events in the system, you shall not request that Participants submit any financial information (including, but not limited to, credit card or banking information), health-related information, Personal Information including: Race/ethnicity, Political Opinions, Religious/Philosophical Beliefs, Union Membership, Genetic Data, Biometric Data, Health Data, Sexual Orientation or any Illegal Information (collectively the “Sensitive Information”) to the Services.

4.3 Applicable Laws. You must abide by all applicable local, provincial, state and national laws and all relevant treaties and directives in Your use of the Services.

4.4 Limiting Access. You shall not permit persons other than Your authorized representatives to access the Services or to use the App. You represent that you are not a competitor of Bloomerang and agree that you shall not knowingly allow competitors of Bloomerang to access the Services.

4.5 No Responsibility. Bloomerang accepts no responsibility and shall not be held liable for any delays, performance issues, stoppages, outages, increased costs or other similar events relating to the Services or to the App resulting from Your failure to adhere to the provisions set out in this Section.

4.5 Updated Application. You are responsible for ensuring that you have downloaded the most recent version of the Bloomerang application and acknowledge that failure to do so may result in your inability to access and use the Services.

5. THIRD PARTIES.

5.1 Third Party Links. The Services may contain hyperlinks to websites managed by third parties. These links are provided for convenience only. Bloomerang has no control over websites owned by third parties and Bloomerang makes no representation or warranty regarding, and does not endorse, any linked websites, the information appearing thereon or any of the products or services described thereon, or the linked-party sources (including any viruses access through them), the quality of the products or services offered, the security of performing transactions on those websites or the privacy policies on the websites in question. Links do not imply that Bloomerang sponsors, endorses, is affiliated or associated with, or is legally authorized to use any trade-mark, trade name, logo or copyright symbol displayed on or accessible through the links or that any linked website is authorized to use any trade-mark, trade name, logo or copyright symbol of Bloomerang. Bloomerang cannot be held liable for possible damages arising from Your use of such third-party sites.

5.2 Content. The Services may from time to time contain materials, data or information provided, posted or offered by third parties. You agree that Bloomerang will have no liability whatsoever to You for any such third party material, data or information.

6. OWNERSHIP

6.1 Ownership of Software. Bloomerang and its licensors own all right, title and interest in and to the Services, the App and the Content, including without limitation, all copyrights, trade secrets, patents, and other intellectual property rights. Upon termination of this Agreement unless otherwise provided herein, all of Your rights in connection with the Services and the Content, including but not limited to the right to access and use the Services and the Content, will terminate.

6.2 Trade-marks. The trade-marks, logos and company names of Bloomerang or any of its affiliates and licensors used as part of the Services, the App and the Content may not be copied, imitated or used, in whole or in part, without the prior written consent of Bloomerang or any such affiliate or licensor. Other products, services logos and company names mentioned as part of the Services, the App and in the Content may be the trade-marks of their respective owners. You agree that Bloomerang may use your company or organization's name and logo for marketing purposes.

6.3 Proprietary Notices. You agree not to alter, remove, deface or destroy any copyright, trade-mark or proprietary markings or confidential legends placed upon or contained in the Services, the App and the Content or in or on any related material.

7. WARRANTIES

7.1 Services. Bloomerang warrants that the Services are designed to and shall operate in substantial conformity with the specifications set out in the user documentation.

7.2 Content. The Content may contain inaccuracies and typographical errors. Bloomerang makes no representation or warranty regarding the accuracy or completeness of the Content or information accessible while using the Services, or the reliability of any advice, opinion, statement or other information displayed or distributed through the Services. You acknowledge that any reliance on any of the foregoing and Your use of the Services and the Content shall be at Your sole risk. Bloomerang reserves the right, in its sole discretion, to correct any errors or omissions in any part of the Services or in any portion of the Content. Bloomerang may make any other changes to the Services and the Content at any time without notice.

7.3 General Warranty. Bloomerang warrants that (i) Bloomerang has the right to enter into this Agreement; (ii) to Bloomerang knowledge, neither the Services nor the Content infringes upon the Proprietary Rights of any third party; (iii) to Bloomerang's knowledge, there are no liens, encumbrances or claims pending or threatened against Bloomerang or that adversely relate to the rights or licenses granted in this Agreement or to the Services and the Content; and, (iv) subject to the standard conditions applicable to shrink wrap software and other foundational software used in the creation of, or required in conjunction with, the Services, no licenses, permission or releases of third party rights are necessary for Your use of the Services in accordance with the terms of this Agreement. For purposes of this Agreement, "Proprietary Rights" means any or all intellectual property and other property or proprietary rights, including, without limitation, patents, copyrights, trade secrets and trademarks.

7.4 Warranty Disclaimer. EXCEPT FOR THE WARRANTIES IN THIS SECTION 7, THE SERVICES, THE APP AND THE CONTENT ARE PROVIDED "AS IS" AND BLOOMERANG AND ITS LICENSORS HEREBY DISCLAIM ANY AND ALL WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY IMPLIED

WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. BLOOMERANG DOES NOT WARRANT THAT THE SERVICES, THE APP AND THE CONTENT WILL MEET YOUR REQUIREMENTS, THAT THE SERVICES, THE APP AND/OR THE CONTENT WILL BE FREE FROM ERRORS OR FUNCTION WITHOUT INTERRUPTION, THAT ANY STORED DATA WILL BE ACCURATE OR RELIABLE NOR THAT ANY CUSTOMER DATA CAN BE RESTORED FROM ANY PARTICULAR BACKUP PROCEDURE. BLOOMERANG DOES NOT WARRANT THAT USE OF THE SERVICES WILL ENABLE YOU TO ACHIEVE ANY PARTICULAR RESULT OR RESULTS IN YOUR BUSINESS OPERATIONS.

7.5 Evaluation License. YOU ACKNOWLEDGE THAT IF YOU ARE USING AND ACCESSING THE SERVICES AS PART OF AN EVALUATION OR TRIAL LICENSE OR IN ANY OTHER CIRCUMSTANCE WHERE YOU ARE NOT PAYING ANY FEES TO BLOOMERANG, THAT BLOOMERANG IS PROVIDING YOU THE SERVICES “AS IS” AND THE WARRANTIES SET OUT IN THIS AGREEMENT DO NOT APPLY TO YOU.

8. LIMITATION OF LIABILITY

8.1 IN NO EVENT WILL EITHER PARTY, ITS EMPLOYEES, DIRECTORS, OFFICERS OR AGENTS BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR INDIRECT DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF DATA, LOSS OF PROFITS, COST OF COVER, ARISING FROM OR RELATING TO THIS AGREEMENT, THE SERVICES OR THE CONTENT, HOWEVER CAUSED AND REGARDLESS OF THEORY OF LIABILITY. IN ADDITION, EXCEPT WITH RESPECT TO CLAIMS BASED ON WILFUL MISCONDUCT OR GROSS NEGLIGENCE, IN NO EVENT WILL BLOOMERANG BE LIABLE FOR ANY DAMAGES OF ANY KIND GREATER THAN THE LESSER OF: (I) \$10,000 AND (II) THE AMOUNT PAID TO BLOOMERANG HEREUNDER IN THE TWELVE (12) MONTHS PRECEDING THE DATE OF THE CLAIM. BLOOMERANG WILL NOT BE LIABLE FOR ANY DELAYS OR DAMAGES ATTRIBUTABLE TO PROBLEMS INHERENT IN INTERNET, WIFI, CELLULAR AND ELECTRONIC COMMUNICATION. THESE LIMITATIONS WILL APPLY EVEN IF BLOOMERANG HAS BEEN ADVISED OR IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES. THE LIMITATIONS OF THIS SECTION SHALL APPLY EVEN IN THE EVENT OF A FAILURE OF THE ESSENTIAL PURPOSE OF THIS PROVISION.

8.2 Bloomerang will not be liable for the deletion of, correction to, destruction of, damage to, loss of or failure to store the Customer Data.

9. INDEMNIFICATION

9.1 Indemnification by Bloomerang. Bloomerang shall indemnify, defend and hold You harmless from any claims, demands, liabilities, losses, damages, judgments or settlements, including all reasonable costs and expenses related thereto including legal fees, directly or indirectly resulting from any claimed infringement or violation by Bloomerang of any Proprietary Right with respect to the Services and the Content; provided, however, that the foregoing notwithstanding, Bloomerang's obligation to indemnify will not apply to an infringement or violation that is attributable to any unauthorized use, access or modification of the Services by You or Your employees, agents or customers.

9.2 Cooperation. Notwithstanding Section 9.1 of this Agreement, Bloomerang is under no obligation to indemnify and hold You harmless unless (i) Bloomerang receives notice of the suit or claim from You and is furnished with a copy of each communication, notice or other action relating to said claim promptly after You receive such notice and each such communication; provided that, failure to deliver timely notice shall not relieve Bloomerang of its obligations hereunder unless Bloomerang is materially prejudiced by such failure; (ii) Bloomerang will have the right to assume sole authority to conduct the trial or settlement of such claim or any negotiations related thereto at Bloomerang's expense; and (iii) You will provide reasonable information and assistance requested by Bloomerang in connection with such claim or suit, at Bloomerang's cost and expense. You reserve the right to participate in the defense of any such claim and to be represented by counsel of Your choice.

9.3 Indemnification by You. You shall indemnify, defend and hold Bloomerang harmless from any claims, demands, liabilities, losses, damages, judgments or settlements, including all reasonable costs and expenses related thereto including legal fees, directly or indirectly resulting from (a) any allegation that You have engaged in conduct, which if true would breach Your warranties or obligations under this Agreement; (b) any allegation that the Customer Data infringes the Proprietary Rights of any third party; (c) Your negligent or willful misconduct; (d) any violation by You of any privacy laws, regulations and directives relating to the collection, use or disclosure of any Personal Information provided to Bloomerang hereunder; and (e) any Sensitive Information collected, uploading and stored by You on the Services and any Sensitive Information that You requested that any Participant upload to the Services.

Bloomerang reserves the right to participate in the defense of any such claim and to be represented by counsel of its choice.

10. TERM AND TERMINATION

10.1 Term. This Agreement will commence on the Effective Date and will continue in full force and effect until terminated in accordance with the terms of this Agreement.

10.2 Termination Upon Insolvency. This Agreement will terminate, effective upon delivery of written notice by a party hereto, (i) upon the institution of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of debts of the other party, (ii) upon the making of an assignment for the benefit of creditors by the other party, or (iii) upon the dissolution of the other party.

10.3 Termination Upon Default. The non-breaching party may terminate this Agreement in the event that the other party materially defaults in performing any obligation under this Agreement and such default continues and is not remedied for a period of thirty (30) days following written notice of default; provided, however, that if either party contests either the existence or the basis of a breach asserted by the other party (a "Dispute"), then such Dispute shall be resolved pursuant to Section 12.3 and if such Dispute is resolved in favor of the party asserting such breach, then the other party shall have thirty (30) days to cure such breach as directed by the third party resolving such Dispute.

10.4 Auto Renewal. If you are an Event Manager subscribing for the Services, the term of your initial subscription shall be as set out in the applicable order form ("Initial Term") and the remainder of this section shall apply to you. On termination of the Initial Term, this Agreement shall be automatically renewed for successive one (1) year terms thereafter (each a "Renewal Term") until and unless either party provides the other party with sixty (60) days prior written notice to the end of the Initial Term or the then-current Renewal Term, as applicable. The Fees shall be payable in respect of any Renewal Term in accordance with the terms of this agreement and the applicable order form (as may be varied from time to time in accordance with the terms of this agreement). This section only applies to order forms submitted or accepted after October 1, 2018.

10.5 Termination for Convenience. Bloomerang may terminate this Agreement for convenience by providing You with at least fifteen (15) days written notice. You will be refunded a pro-rata amount of the Fees prepaid by You.

10.6 Survival of Certain Terms. All provisions of this Agreement reasonably required to survive termination based on the terms of this Agreement shall survive termination of this Agreement. All other rights and obligations of the parties will cease upon termination of this Agreement.

10.7 Effect of Termination. Upon termination of this Agreement for any reason Your access to the Services will end immediately and Your account will be disabled. For a period of thirty (30) days following termination of this Agreement for any reason, Bloomerang will make available to You a file of the Your Data if You so request at the time of termination. You agree and acknowledge that Bloomerang is not obliged to retain the Your Data, and after thirty (30) days following termination, may delete Your Data.

11. CONFIDENTIAL INFORMATION

Neither party shall use or disclose any Confidential Information of the other party. A party receiving Confidential Information from the other party will use the highest commercially reasonable degree of care to protect that Confidential Information. The Services and the Content, including methods, ideas or concepts utilized therein, and all information identified by a disclosing party as proprietary or confidential (“Confidential Information”) will remain the sole property of such disclosing party, and will not be used or disclosed to any third party without the express written consent of the disclosing party (except to employees or consultants who are bound by a written agreement with such party to maintain the confidentiality of such Confidential Information in a manner consistent with this provision). Items shall not be considered to be Confidential Information if they are (i) available to the public other than by a breach of this Agreement or an agreement with the disclosing party, (ii) rightfully received from a third party not in breach of an obligation of confidentiality, (iii) independently developed by employees of recipient without access to the Confidential Information of the disclosing party, (iv) rightfully known to the recipient at the time of disclosure, or (v) produced in compliance with applicable law or a court order, provided the other party is given reasonable notice of such law or order and an opportunity to attempt to preclude or limit such production. You agree that the terms and conditions of this Agreement will be considered to be Confidential Information of Bloomerang.

11.2 Data Protection. Notwithstanding anything in this Agreement to the contrary, Bloomerang shall maintain the appropriate security safeguards reasonably necessary to prevent unauthorized persons from accessing, using, disclosing, or otherwise committing any act that could breach or compromise the privacy, availability, integrity, or content of Your Confidential Information. Bloomerang shall transmit any and all Confidential Information in encrypted form using a commercially supported encryption solution. In the event Bloomerang or any of its representatives becomes aware of any unauthorized access to, use or disclosure of, or potential access to or use or disclosure of any of Your Confidential Information while it is in the possession of Bloomerang or its subcontractors or affiliates (a “Data Breach”), Bloomerang shall promptly, and at its own expense: (a) notify You of the Data Breach; and (b) cooperate with Your investigation, analysis, notification and mitigation activities. If you are an Event Manager subject to the terms of the GDPR You are bound by the terms of Bloomerang’s Data Protection Addendum [<https://www.initlive.com/terms-conditions/dpa>] which is incorporated by reference into these Terms and Conditions.

12. MISCELLANEOUS

12.1 Notices. Any notice required or permitted hereunder will be in writing and will be given by electronic mail at info@InitLive.com. Such notice will be deemed to have been received twelve (12) hours after it was sent.

12.2 Assignment. This Agreement may not be transferred or assigned, in whole or in part, by You.

12.3 Governing Law. This Agreement is to be governed by and construed in accordance with the laws of Indiana, without regard to its conflict of law principles.

12.4 Litigation Costs and Expenses. If any party institutes any legal suit, action or proceeding against the other party to enforce this Agreement (or obtain any other remedy regarding any breach of this Agreement) or arising out of or relating to this Agreement, the prevailing party in the suit, action or proceeding is entitled to receive, and the non-prevailing party shall pay, in addition to all other remedies to which the prevailing party may be entitled, the costs and expenses incurred by the prevailing party in conducting the suit, action or proceeding, including reasonable attorneys’ fees and expenses, court costs and other reasonable costs and expenses of litigation.

12.5 Severability. If any provision of this Agreement is illegal or unenforceable, that provision is severed from this Agreement and the other provisions remain in force.

12.6 Force Majeure. Under no circumstances will either party be liable to the other for any failure to perform its obligations where such failure results from causes beyond that party's reasonable control.

12.7 Independent Contractors. The relationship of Bloomerang and You established by this Agreement is that of independent contractors, and nothing contained in this Agreement will be construed to (i) give either party the power to direct and control the day-to-day activities of the other, (ii) constitute the parties as legal partners, joint venturers, co-owners or otherwise as participants in a joint undertaking, or (iii) allow either party to create or assume any obligation on behalf of the other party for any purpose whatsoever. All financial and other obligations associated with the businesses of Bloomerang and You are their sole respective responsibilities.

12.8 Entire Agreement and Waiver. This Agreement and all documents incorporated by reference hereto will constitute the entire agreement between the parties with respect to its subject matter, and all prior agreements, representations, and statements with respect to such subject matter are superseded. This Agreement may be changed by Bloomerang upon notification to You. No failure of either party to exercise or enforce any of its rights under this Agreement will act as a waiver of such breaches and the waiver of any breach will not act as a waiver of subsequent breaches.

Last Updated: Mar 1, 2023.

Qgiv Terms of Service

This Qgiv Terms of Service Agreement ("Agreement") is made and entered into as of the date of Your acceptance of this Agreement within the Qgiv Signup System (the "Effective Date") by and between Qgiv, Inc. a Florida corporation whose principal place of business is 207 Bartow Road, Lakeland, FL 33801 ("QGIV" or "Qgiv"), and the company listed in the Qgiv Signup System ("Organization") (each a "Party", collectively the "Parties").

WHEREAS, QGIV provides to organizations online management software for the acceptance of online donations and event registration and tracking, as well as integration with payment gateway services provided by various Merchant Providers and Processors to process online credit card and ACH transactions, as well as a variety of value added services, as more fully described herein and at www.qgiv.com (the "Site"), as such descriptions may be changed by QGIV from time to time (the "Qgiv Services"). In order for You, on behalf of Your Organization (individually or collectively, "You" or "Your"), to obtain or continue using those certain Qgiv Services, You must agree to and accept the terms and conditions of the Agreement. The Agreement sets out the terms and conditions under which You may utilize the Qgiv Services. Please read this Agreement carefully. It is important that You understand that You represent that You have reviewed and understand the Agreement and agree to be legally bound by all its terms and conditions; and that upon Your acceptance of this Agreement, by continuing to use any of the Qgiv Services and/or accepting this Agreement, it becomes a legally binding contract.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Your Capacity and Related Matters.

By accepting the terms and conditions of this Agreement, You represent and warrant that (a) You are 18 years of age or older, (b) all information You have provided to QGIV is true and correct in all respects, and (c) You will update QGIV by email with any changes to information You have previously supplied. You further represent and warrant that You have the legal authority to accept the terms and conditions of this Agreement on behalf of Your Organization and that such acceptance will be binding on Your Organization. QGIV reserves its right, in its sole discretion, to refuse to provide You with any Qgiv Service and terminate this Agreement, with or without notice. Words and phrases with initial letters capitalized and not otherwise defined herein shall have the meaning set forth in Section 13.17.

2. Undertakings of QGIV.

2.1 QGIV Grant.

QGIV hereby grants You a nonexclusive, royalty-free right, during the Term, to use the Qgiv Services, subject to the restrictions, terms, and conditions herein and any other restrictions, terms and conditions communicated by QGIV to You, only as necessary to perform hereunder and for no other purpose.

2.2 Qgiv Services.

QGIV shall provide the Qgiv Services to You in all material respects in accordance with the terms and conditions of this Agreement and consistent with all applicable laws and regulations.

2.3 ID and Password.

In connection with Your rights described in Section 2.1 and 2.2, QGIV will issue to You, or permit You to continue using the ID and password given to You by QGIV, to enable You and/or Your employees and agents to access Your portal account and use the Qgiv Services.

2.4 Relationship to Referred Processors and Gateways.

QGIV may provide you an account with a third-party merchant account processor, a third-party online gateway service, and/or a third party ACH processor that allow for acceptance of credit card and ACH transactions, and/or the communication between Qgiv Services and your Processor. QGIV is not responsible for any actions or negligence on behalf of QGIV Referred Processors and Gateways and/or related parties.

2.5 Customer Service.

During the Term, if You are current in payment of all fees owing to QGIV and are otherwise not in default under this Agreement, QGIV shall provide customer service to You, as set forth in the Support Services section of the QGIV Web site at the URL www.qgiv.com.

3 Your Responsibilities.

3.1 ID and Password.

You will restrict access to such ID, password, and account to Your employees and agents as may be reasonably necessary consistent with the purposes of this Agreement and will ensure that each such employee and agent accessing and using the account is aware of and otherwise complies with all applicable provisions of this Agreement regarding such use and access. You are solely responsible for maintaining adequate security and control of any and all IDs, passwords, or any other codes that are issued to You by QGIV for purposes of giving You access to the Qgiv Services. QGIV shall be entitled to rely on information it receives from You and may assume that all such information was transmitted by or on behalf of You. You shall comply with all QGIV recommendations and notices regarding the security of your ID, password, and portal account.

3.2 Compliance with Law and QGIV Guidelines.

In connection with the exercise of Your rights and obligations under this Agreement (including, without limitation, any related to individual privacy), You will comply, at Your own expense, with all laws, policies, guidelines, regulations, ordinances, rules applicable to You, Your business or the Transactions and/or orders of any governmental authority or regulatory body having jurisdiction over the subject matter hereof, including, without limitation, the rules promulgated by the Credit Card Associations, the electronic communication rules of the CANSPAM Act, and the privacy requirements of the Gramm Leach Bliley Act and regulations thereof. In addition, You shall comply with all the current policies, procedures and guidelines of QGIV governing the Qgiv Services, including, without limitation, QGIV's Acceptable Use Policy and Privacy Policy, both incorporated herein by reference. The QGIV Acceptable Use Policy and Privacy Policy are available at <https://www.qgiv.com/acceptable-use-policy> and <https://www.qgiv.com/privacy-policy>, respectively. QGIV reserves the right to amend, modify or change such policies, procedures, and guidelines at any time and will notify You, through an electronic communication, such as an e-newsletter or e-mail, of such changes as soon as is reasonably possible. You shall not use the Qgiv Services in any

manner, or in furtherance of any activity that may cause QGIV to be subject to investigation, prosecution, or legal action.

3.3 Limitations.

Your use of the Qgiv Services shall be restricted to a single entity and You shall not submit transaction data to QGIV or otherwise process orders on behalf of any other entity or individual. Any attempt by You to use the Qgiv Services for more than one entity or on behalf of another entity or individual shall result in an obligation to pay to QGIV additional fees and charges and/or QGIV's revocation of Your right to use the Qgiv Services and termination of this Agreement.

3.4 Relationship to QGIV Referred Processors and Gateways.

QGIV may provide you an account with a third-party merchant account processor, a third party online gateway service, and/or a third party ACH processor that allow for acceptance of credit card and ACH transactions, and/or the communication between Qgiv Services and your Processor. In addition to your agreement with the QGIV Referred Processors and Gateways, the terms and conditions of this Agreement govern your use and QGIV's provision of the Qgiv Services. You expressly acknowledge and agree that QGIV may share information about You and Your account with its QGIV Referred Processors and Gateways.

4 Data Privacy and Security.

4.1 Organization Obligations.

You are solely responsible for the security of data residing on server(s) owned or operated by You, or a third party designated by You (e.g., a Web hosting company, processor, or other service provider). You shall comply with all applicable laws and regulations governing the security, collection, retention and use by You of financial information, including credit cards, and all other personally identifiable customer information. You agree to provide notice to your customers on Your Web site that discloses how and why personal and financial information is collected and used, including uses governed by this Agreement.

4.2 QGIV Obligations.

QGIV may collect, and retain information and data collected from You and your customers (including data associated with the Qgiv Services) in accordance with QGIV's Privacy Policy. You hereby consent, as a condition of Your enrollment in and use of the Qgiv Services, to the collection, use, processing, and transfer of personal data as described in this Section 4.2 and QGIV's Privacy Policy. You are solely responsible for compiling and retaining permanent records of all Transactions and Data for Your reference. Except as otherwise provided herein, at no time shall QGIV have an obligation to store, retain, report, or otherwise provide any copies of or access to any records of Transactions or Data collected or processed by QGIV. You understand that QGIV may collect and hold personal or non-public information about You and Your customers, including but not limited to: Your name, address, telephone number, e-mail address, social security number and/or tax identification number for the purpose of considering eligibility for the Qgiv Services as well as Your customers' names, mailing & shipping addresses, email addresses, phone number, dollar amount of purchases, types of purchases and descriptions of purchases for the purpose of providing You with the Qgiv Services (collectively, "Data"). You also understand and agree that QGIV may obtain various consumer reports regarding You from third parties, run a credit

check, report unpaid collection issues to credit bureaus, and/or obtain other personal or credit information about You. You further understand and agree that QGIV, its subsidiaries, suppliers and/or their agents/contractors may transfer Data among themselves as necessary for the purpose of the provision and management of the Qgiv Services, and that QGIV may further transfer Data to third parties assisting QGIV in evaluating Your eligibility for, provision of, administration and management of the Qgiv Services, as well as under circumstances described in QGIV's Privacy Policy, as may be modified from time to time by QGIV.

4.3 Data Security.

You agree that, except as may be reasonably necessary in the ordinary course of business to carry out the activities to be performed by You hereunder or required by law, You will not disclose any consumer or customer information to any third party. While QGIV uses commercially reasonable efforts to safeguard Data and Transaction data transmitted while using the QGIV Service, QGIV does not warrant that Data and Transaction data will be transported without unauthorized interception or modification or that Data or Transaction data will not be accessed or compromised by unauthorized third parties (e.g., hackers). You agree that you will comply with all QGIV security protocols and security advisories in effect during the term of this Agreement. You are solely responsible for verifying the accuracy and completeness of all Transactions submitted and processed by QGIV associated with Your account and verifying that all corresponding funds are accurately processed. You acknowledge that QGIV shall not be liable for any improperly processed or unauthorized Transactions or illegal or fraudulent access to Your account, Data or Transaction data. QGIV's liability for improperly processed or unauthorized Transactions solely attributable to the negligence of QGIV is limited pursuant to Section 10, hereof. You warrant that You have taken such precautions as are necessary to ensure that Your server and electronic systems are secure from breach or intrusion by unauthorized third parties. In the event that Your system is breached and an unauthorized third party has access to or has accessed Your User ID and/or Password data, You shall notify QGIV promptly of such breach and shall take such precautions as may be necessary to prevent such breaches from occurring in the future.

5 Fees.

You shall pay to QGIV the service fees set forth in the Fee Schedule and ACH Debit Authorization, which is hereby incorporated into the terms of this Agreement by reference. Notwithstanding anything to the contrary and if agreed upon by the Parties, QGIV Referred Processors and Gateways may charge, bill, and collect such fees from You, in the amounts stated in and in accordance with the terms and conditions of the agreement between You and such QGIV Referred Processors and Gateways. If Your relationship with a QGIV Referred Processor or Gateway expires or terminates and such QGIV Referred Processor or Gateway was billing You for certain fees, then You may continue using the Qgiv Services with another Processor or Gateway supported by the Qgiv Services.

6 Payment Terms.

6.1 QGIV Bills You.

6.1.1 Billing Terms.

Billing shall begin on the Effective Date. You will remit any and all amounts payable to QGIV on a monthly basis, and the first payment shall be due on the first day of the month immediately following the

Effective Date. Unless otherwise specified herein, fees and payments for any subsequent time periods shall be due on the first day of the month. You hereby authorize QGIV to initiate transaction entries to Your depository account or, if QGIV is unable to collect owing amounts from Your depository account, to bill You, the numbers of which are to be provided to QGIV by You on or before the Effective Date, for any and all amounts owing to QGIV under this Agreement. Entries initiated to or from Your depository account will be in accordance with the rules of the National Automated Clearing House Association and/or any other regulatory body or agency having jurisdiction over the subject matter hereof. This authorization is to remain in full force and effect until QGIV has received written notification from You of Your termination in such time and manner as to afford QGIV and Your depository institution a reasonable opportunity to act on it. If Your depository account number changes, You shall promptly provide QGIV with written notice of the change and the new number(s). If You fail to provide QGIV with accurate current depository account, QGIV may discontinue its performance of the Qgiv Services for You, without liability, until such information is provided to QGIV or termination of this Agreement. You acknowledge that any change in account information may not be effective until the billing month following the second month in which QGIV receives such notice.

6.1.2 Non-Sufficient Fund Fee, Late Payment Fee, and Service Reactivation Fee.

You shall pay to QGIV a “Non-Sufficient Fund Fee” of \$35 US dollars, each time QGIV attempts to debit Your depository account for any amounts owing under this Agreement and receives a non-sufficient fund message from Your bank. Any amounts due to QGIV under this Agreement and not paid when due will be subject to a finance charge equal to one and one-half percent (1.5%) or the highest rate allowable by law, determined and compounded daily from the date due until the date paid. Payment of such finance charges will not excuse or cure any breach or default for late payment. QGIV may accept any check or payment from You without prejudice to its rights to recover the balance due or to pursue any other right or remedy. If You do not pay owing amounts on or before the first business day following the tenth (10th) day of the month, You will be subject to a late payment fee of \$35 US dollars per occurrence. If You have not paid all owing amounts on or before the first business day following the tenth (10th) day of the month in which they were due, QGIV may, in its sole discretion, discontinue its performance of the Qgiv Services for You and/or immediately terminate this Agreement. Unless QGIV has already terminated this Agreement, if You subsequently pay in full all owing fees and charges, within six (6) months of the date QGIV deactivated your account, QGIV agrees to restore Your access to the Qgiv Services upon QGIV's receipt of such payment. You agree to pay all costs and expenses of whatever nature, including attorneys' fees and costs, incurred by or on behalf of QGIV in connection with the collection of any unpaid charges and fees.

6.2 QGIV Referred Processor or Gateway Bills You.

Notwithstanding Section 6.1, if You are to be billed by a QGIV Referred Processor or Gateway, You shall pay the QGIV Referred Processor or Gateway in accordance with the terms mutually agreed upon between You and such QGIV Referred Processor or Gateway.

7 Term.

This Agreement shall commence on the date You accept this Agreement and remain in full force and effect until terminated pursuant to Section 8.

8 Termination and Suspension.

8.1 Termination by Organization.

You may immediately terminate this Agreement, at any time and for any reason, with or without cause, upon written notice to QGIV.

8.2 Termination by QGIV.

QGIV may immediately terminate this Agreement and/or Your access to the Qgiv Services, at any time and for any reason, with or without cause, including, without limitation, violation of the Acceptable Use Policy. Termination shall be accompanied by a written notice to You, sent electronically or otherwise.

8.3 Termination or Suspension of You by a QGIV Referred Processor or Gateway.

If QGIV receives notice from such QGIV Referred Processor or Gateway that it has terminated or suspended its relationship with You, QGIV may suspend and/or terminate Your right to access and use the Qgiv Services and/or this Agreement without notice and without liability. In addition, QGIV may suspend and/or terminate the Qgiv Services and/or this Agreement without notice and without liability upon receipt of notice from Your Processor or acquiring bank that You are no longer entitled to send an authorization message, settlement message, or other message or payment data related to a credit card transaction to Your Processor.

8.4 Effect of Termination.

Upon termination of the Term for any reason, all rights and obligations of the Parties under this Agreement shall be extinguished, except that: (a) all payment obligations hereunder shall survive such termination; and (b) the rights and obligations of the Parties that expressly survive termination, including, without limitation under Sections 8.4, 9.1, 10, 11, 12, and 13, all of which shall survive such termination.

9 Intellectual Property and Confidentiality.

9.1 QGIV.

The Parties agree that QGIV owns and retains all right, title and interest in and to the QGIV Marks, Qgiv Services and any related technology utilized under or in connection with this Agreement, including but not limited to all intellectual property rights associated therewith. No title to or ownership of any of the foregoing is granted or otherwise transferred to You or any other entity or person under this Agreement. You will not reverse engineer, disassemble, decompile, or otherwise attempt to discover the source code or trade secrets for any of the Qgiv Services or related technology.

9.2 QGIV Marks License.

Subject to the terms and conditions contained herein, QGIV hereby grants to You the right to use, reproduce, publish, perform, and display the QGIV and Qgiv Marks: (a) on Your Web site in connection with Your offering of online donations and event registrations to Your customers; and (b) in promotional and marketing materials and electronic and printed advertising, publicity, press releases, newsletters, and mailings about or related to any of the Qgiv Services.

9.3 Your Marks License.

Subject to the terms and conditions contained herein, You hereby grant to QGIV and its affiliates the right to use, reproduce, publish, perform and display Your Marks solely in connection with the development, use, reproduction, modification, adaptation, publication, display and performance of the Qgiv services offered and/or accessible through Your Web site, specifically as such use relates to each and every Qgiv donation form hosted on Qgiv Services in connection with this Agreement.

9.4 Use of Trademarks.

Each Party shall strictly comply with all standards with respect to the other Party's Trademarks contained herein or which may be furnished by such Party from time to time. Further, neither Party shall create a combination mark consisting of one or more Trademarks of each Party. All uses of the other Party's Trademarks shall insure to the benefit of the Party owning such Trademark. Each Party hereby acknowledges and agrees that, as between the Parties, the other Party is the owner of the Trademarks identified as its Trademarks in any written notice provided to the other Party pursuant to this Agreement. Either Party may update or change the list of Trademarks usable by the other Party hereunder at any time by written notice to the other Party.

9.5 Use the Appropriate ® or ™ Symbol.

You must reproduce any QGIV and Qgiv Marks without modification, including the exact reproduction of any proprietary markings or legends and including the appropriate ® or ™ symbol at the first and most prominent reference, or as soon as practicable thereafter.

9.6 Provide Appropriate Trademark Attribution.

You must include a statement of ownership when displaying or reproducing any QGIV and Qgiv Marks. The statement should read: "Qgiv and the Qgiv logo [or any other applicable mark] are trademarks or registered trademarks of Qgiv, Inc." If it is not feasible to include the attribution statement, it is acceptable to use a general-purpose attribution statement in a form such the following: "All other trademarks are the property of their respective owners."

9.7 Trademarks and Domain Registration.

You shall not use, register, or attempt to register any: (a) QGIV and Qgiv Marks; or (b) trademarks or domain names that are confusingly similar to any of the QGIV and Qgiv Marks or the Domain.

9.8 Trademark Restrictions.

You shall not (i) use the QGIV and Qgiv Marks except as expressly authorized in this Agreement; (ii) take any actions inconsistent with QGIV's ownership of the QGIV and Qgiv Marks and any associated registrations, or attack the validity of the QGIV and Qgiv Marks, its ownership thereof, or any of the terms and conditions of this Agreement; (iii) use the QGIV and Qgiv Marks in any manner that would indicate You are using such QGIV and Qgiv Marks other than as a licensee of QGIV; nor (iv) assist any third party do any of the same.

9.9 Confidential Information.

Each Party agrees to hold all information communicated to it by the other Party, whether written or oral or in any media whatsoever (respectively, the "Confidential Information" of each Party), in strict confidence, not to disclose, distribute or disseminate the other Party's Confidential

Information or information derived there from in any way to any third party and not to use the disclosing Party's Confidential Information for the receiving Party's own benefit or the benefit of others, or for any purpose except in connection with the purposes of this Agreement. Each Party agrees to use its best efforts to protect the other Party's Confidential Information and in any event, to take precautions at least as great as those taken to protect the receiving Party's own information of a similar nature. The Parties agree that this Agreement is considered Confidential Information. Upon a disclosing Party's request, the receiving Party will return all materials, in any medium, that contain, embody, reflect or reference all or any part of the disclosing Party's Confidential Information. Each Party acknowledges that breach of this provision may result in irreparable harm to the other Party, for which money damages may be an insufficient remedy, and therefore each Party will be entitled to seek injunctive relief to enforce the provisions of this section."

10 Representations and Warranties.

10.1 Mutual Warranties.

Each Party represents and warrants to the other that (a) it has all necessary right, power and ability to execute this Agreement and to perform its obligations therein; (b) no authorization or approval from any third party is required in connection with such Party's execution, delivery or performance of this Agreement, (c) this Agreement constitutes a legal, valid and binding obligation, enforceable against it in accordance with its terms, (d) the Party's obligations under this Agreement do not violate any law or breach any other agreement to which such Party is bound; and (e) it has all right, title or interest, or valid license to use, its respective Marks, and that its grant of rights associated therewith do not violate any intellectual property or other proprietary rights of any third party.

10.2 QGIV Warranty.

10.2.1 WARRANTY.

DURING THE EFFECTIVE TERM OF THIS AGREEMENT, QGIV REPRESENTS AND WARRANTS THAT THE QGIV SERVICES WILL CONFORM IN ALL MATERIAL RESPECTS TO THE APPLICABLE DOCUMENTATION MADE AVAILABLE TO YOU BY QGIV. YOU MAY NOT RELY UPON ANY REPRESENTATION OR WARRANTY REGARDING THE QGIV SERVICES BY ANY THIRD PARTY IN CONTRAVENTION OF THE FOREGOING STATEMENTS. THE SERVICES ARE PROVIDED ON AN "AS IS", "AS AVAILABLE" BASIS. QGIV DOES NOT REPRESENT OR WARRANT THAT THE QGIV SERVICES WILL BE AVAILABLE, ACCESSIBLE, UNINTERRUPTED, TIMELY, SECURE, ACCURATE, COMPLETE, OR ENTIRELY ERROR-FREE. YOU EXPRESSLY ACKNOWLEDGE THAT THE QGIV SERVICES ARE COMPUTER NETWORK-BASED SERVICES, WHICH MAY BE SUBJECT TO OUTAGES, INTERRUPTIONS, ATTACKS BY THIRD PARTIES AND DELAY OCCURRENCES. IN SUCH AN EVENT AND SUBJECT TO THE TERMS HEREOF, QGIV SHALL USE COMMERCIALY REASONABLE EFFORTS TO REMEDY MATERIAL INTERRUPTIONS AND WILL PROVIDE ADJUSTMENTS, REPAIRS AND REPLACEMENTS, WITHIN ITS CAPACITY, THAT ARE CONFIDENTIAL AND NECESSARY TO ENABLE THE QGIV SERVICES TO PERFORM THEIR INTENDED FUNCTIONS IN A REASONABLE MANNER. YOU ACKNOWLEDGE THAT QGIV DOES NOT WARRANT THAT SUCH EFFORTS WILL BE SUCCESSFUL. IF QGIV'S EFFORTS ARE NOT SUCCESSFUL, YOU MAY TERMINATE THIS AGREEMENT IN ACCORDANCE WITH SECTION 8.1. THE FOREGOING SHALL CONSTITUTE YOUR SOLE REMEDY, AND QGIV'S SOLE LIABILITY, IN THE EVENT OF INTERRUPTION, OUTAGE OR OTHER DELAY OCCURRENCES IN THE QGIV SERVICES. QGIV DOES NOT

WARRANT THE SERVICES OF ANY THIRD PARTY, INCLUDING WITHOUT LIMITATION, THE QGIV REFERRED PROCESSOR, BANK OR ANY THIRD-PARTY PROCESSOR.

10.2.2 DISCLAIMER.

EXCEPT AS EXPRESSLY SET FORTH IN SECTION 10.2.1, QGIV SPECIFICALLY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES, AND CONDITIONS WHETHER EXPRESS OR IMPLIED, ARISING BY STATUTE, OPERATION OF LAW, USAGE OF TRADE, COURSE OF DEALING, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO, WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR TITLE WITH RESPECT TO THE QGIV SERVICES, OR OTHER SERVICES OR GOODS PROVIDED UNDER THIS AGREEMENT. YOU UNDERSTAND AND AGREE THAT QGIV SHALL BEAR NO RISK WITH RESPECT TO YOUR SALE OF PRODUCTS OR SERVICES, INCLUDING, WITHOUT LIMITATION, ANY RISK ASSOCIATED WITH CREDIT CARD FRAUD OR CHARGEBACKS.

10.3 Your Warranties.

You represent and warrant to QGIV that:

- 10.3.1 All representations and statements made by You in this Agreement, or in any other document relating hereto by You or on Your behalf, are true, accurate and complete in all material respects. You hereby authorize QGIV to investigate and confirm the information submitted by You herein. For this purpose, QGIV may utilize credit bureau reporting agencies and/or its own agents.
- 10.3.2 You are engaged in a lawful business that includes the sale of products and/or services, and are duly licensed to conduct such business under the laws of all jurisdictions in which You conduct business; and
- 10.3.3 You will comply with all laws, policies, guidelines, regulations, ordinances or rules applicable to You, Your business or the Transactions, including, without limitation: (i) the Credit Card Association rules and regulations; (ii) the Gramm Leach Bliley Act; (iii) any regulatory body or agency having jurisdiction over the subject matter hereof; (iv) QGIV's Acceptable Use Policy and Privacy Policy; (v) the CAN-SPAM Act; and (vi) the then current policies, procedures, and guidelines of QGIV governing the Qgiv Services.

10.4 Third Party Programs.

You acknowledge that the Qgiv Services are designed for use with certain third-Party programs, including, without limitation, certain Internet browsers and software programs developed and owned by third parties. You will look solely to the developers and manufacturers of such programs with regard to warranty, maintenance or other support regarding the same. QGIV makes no warranty, express or implied, with regard to any such third-Party software.

11 LIMITATIONS OF LIABILITY AND DISCLAIMERS.

11.1 LIMITATIONS.

UNDER NO CIRCUMSTANCES: (I) WILL QGIV OR ANY OF ITS PARENTS, AFFILIATES OR VENDORS (OR ANY OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS OF THE PARTIES, OR ITS PARENTS, AFFILIATES OR VENDORS) BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES (HOWEVER ARISING), INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST REVENUE, LOST PROFITS, ANTICIPATED PROFITS, LOST BUSINESS OR INJURY TO BUSINESS REPUTATION, COST OF PROCUREMENT OF SUBSTITUTE SERVICES, UNDER ANY THEORY OF LIABILITY OR CAUSE OF ACTION WHETHER IN TORT (INCLUDING NEGLIGENCE), CONTRACT OR OTHERWISE, REGARDLESS OF WHETHER IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; OR (II) WILL QGIV'S TOTAL LIABILITY TO YOU, WHETHER ARISING IN TORT (INCLUDING NEGLIGENCE), CONTRACT OR OTHERWISE, UNDER THIS AGREEMENT OR WITH REGARD TO ANY QGIV PRODUCTS OR SERVICES, EXCEED THE AGGREGATE COMPENSATION QGIV RECEIVED FOR PROVIDING THE QGIV SERVICES TO YOU DURING THE THIRTY DAYS PRECEDING THE DATE ON WHICH THE CLAIM AROSE OR \$1,000, WHICHEVER IS LESS.

11.2 DISCLAIMER.

YOU EXPRESSLY AGREE THAT QGIV SHALL NOT BE LIABLE FOR ANY LOSS (HOWEVER ARISING, INCLUDING NEGLIGENCE), ARISING FROM OR RELATED TO: (I) YOUR FAILURE TO PROPERLY ACTIVATE, INTEGRATE OR SECURE YOUR MERCHANT ACCOUNT; (II) FRAUDULENT TRANSACTIONS PROCESSED THROUGH YOUR PAYMENT PORTAL ACCOUNT; (III) DISRUPTION OF QGIV SERVICES, SYSTEMS, SERVER OR WEB SITE BY ANY MEANS, INCLUDING WITHOUT LIMITATION, DDOS ATTACKS, SOFTWARE VIRUSES, TROJAN HORSES, WORMS, TIME BOMBS, OR ANY OTHER TECHNOLOGY; (IV) ACTIONS OR INACTIONS BY ANY THIRD PARTY, INCLUDING WITHOUT LIMITATION, A MERCHANT SERVICE PROVIDER, PAYMENT PROCESSOR OR BANK; OR (V) UNAUTHORIZED ACCESS TO (A) DATA, CUSTOMER DATA (INCLUDING CREDIT CARD NUMBERS AND OTHER PERSONALLY IDENTIFIABLE INFORMATION), TRANSACTION DATA OR PERSONAL INFORMATION BELONGING TO QGIV, YOU OR ANY THIRD PARTY AND (B) THE QGIV SERVICES, OR ANY SYSTEM OR PROGRAM ASSOCIATED THEREWITH; OR (VI) THE LIMITATION OF THE FUNCTIONING OF ANY SOFTWARE, HARDWARE, EQUIPMENT OR SERVICE;

12 Indemnification.

12.1

12.1.1 Indemnification by You.

You shall defend, indemnify, and hold harmless QGIV and its affiliates, parents, and/or subsidiaries, and any of their officers, directors, agents and employees, from and against any and all third-party claims, actions, proceedings, and suits and all related liabilities, damages, settlements, penalties, fines, costs or expenses (including reasonable attorneys' fees and other litigation expenses), arising out of or relating to: (a) any breach or alleged breach by You of any representation, warranty, or obligation of You set forth in this Agreement; (b) any damage or loss caused by negligence, fraud, dishonesty or willful misconduct by You or any of your employees, agents or customers; (c) the reliability, accuracy, or legitimacy of payment data or purchase orders submitted by You to QGIV; (d) payment card transactions submitted by You to QGIV and rejected by QGIV or an issuing bank; (e) any alleged infringement of a patent, copyright, trademark or other intellectual property right resulting from a Merchant Fault; (f) any alleged or actual violation by You of any applicable laws, regulations or rules of (i) the Credit Card Associations; (ii) the Gramm Leach Bliley Act; (iii) or any regulatory body or agency having jurisdiction over the subject matter

hereof; or (g) any violation of QGIV's Acceptable Use Policy or Privacy Policy. In the event You cause fines and/or penalties to be charged to QGIV by the Credit Card Associations or any other entity, you agree to immediately reimburse QGIV for said fines or penalties.

12.1.2 Indemnification by QGIV.

QGIV shall defend, indemnify and hold harmless You and Your affiliates, parents, and/or subsidiaries, and any of their officers, directors, agents and employees, from and against any third-party claims, actions, proceedings, and suits and all related liabilities, damages, settlements, penalties, fines, costs or expenses (including reasonable attorneys' fees and other litigation expenses) arising out of or relating to any breach or alleged breach by QGIV of any material representation, warranty, or obligation of QGIV set forth in this Agreement, or any damage or loss caused by negligence, fraud, dishonesty or willful misconduct by QGIV or any of its employees or agents.

12.2 Indemnification Procedure.

The obligations of You and QGIV, as applicable ("Indemnitor") under this Section 12 to defend, indemnify and hold harmless Qgiv and You, respectively and as applicable ("Indemnitee") shall be subject to the following: (a) Indemnitee shall provide Indemnitor with prompt notice of the claim giving rise to such obligation; provided, however, that any failure or delay in giving such notice shall only relieve Indemnitor of its obligations under this Section 12 to the extent it reasonably demonstrates that its defense or settlement of the claim or suit was adversely affected thereby; (b) Indemnitor shall have control of the defense and of all negotiations for settlement of such claim or suit; and (c) Indemnitee shall cooperate with Indemnitor in the defense or settlement of any such claim or suit, provided that Indemnitee shall be reimbursed for all reasonable out-of-pocket expenses incurred in providing any cooperation requested by Indemnitor. Subject to clause (b) above, Indemnitee may participate in the defense of any such claim or suit at its own expense. Indemnitor shall not, without the consent of the Indemnitee, enter into any settlement that reasonably can be expected to require a material affirmative obligation of, result in any ongoing material liability to or materially prejudice Indemnitee in any way.

13 General Provisions.

13.1 Publicity.

The Parties may work together to issue publicity and general marketing communications concerning their relationship and other mutually agreed-upon matters, provided, however, that neither Party will have any obligation to do so. In addition, neither Party will issue such publicity and general marketing communications concerning this relationship or the Qgiv Services without the prior written consent of the other Party (not to be unreasonably withheld or delayed).

13.2 Non-exclusivity.

Each Party acknowledges and agrees that the rights granted to the other Party in this Agreement are non-exclusive, and that, without limiting the generality of the foregoing, nothing in this Agreement shall be deemed or construed to prohibit either Party from participating in similar business arrangements as those described herein.

13.3 Relationship of the Parties.

The Parties are independent contractors and nothing in this Agreement shall make them joint venturers, partners, employees, agents, or other representatives of the other Party. Neither Party shall make any representation that suggests otherwise. You further recognize that if you contracted for the Qgiv Services with a QGIV Referred Processor, such provider is an authorized reseller of the Qgiv Services only and is not a joint venturer, partner, or agent of QGIV.

13.4 Notices.

All notices to You shall be given electronically, sent to the electronic mail address provided by or for You during registration for the Qgiv Services and/or posted in the Announcement section of Your portal account. Service termination notices to QGIV shall be sent to Qgiv, Inc., 207 Bartow Road, Lakeland, FL 33801 or to (863) 583-8458 (fax), Attention: Service Termination. Such written notices will be deemed given upon personal delivery, upon confirmation of receipt if sent by fax, or three (3) days after the date of mailing if sent by certified or registered mail, postage prepaid. Electronic mail notices shall be deemed given the next business day following the date delivered or upon the date posted in the Announcement section of Your portal account, as applicable.

13.5 Amendment; Modifications.

No amendment, modification, or change to any provision of this Agreement, nor consent to any departure by either Party therefrom, will in any event be effective unless the same will be in writing and accepted by the other Party, and then such consent will be effective only in the specific instance and for the specific purpose for which given. Notwithstanding the foregoing or anything to the contrary contained in this Agreement, QGIV may amend this Agreement at any time upon written or electronic notice to You of not less than ten (10) days prior to the effective date of such amendment; provided that the addition or change of service fees, will become effective upon at least thirty (30) days' notice. If You do not agree to such amendments, your sole remedy is to immediately terminate this Agreement upon written notice to QGIV.

13.6 Severability; Headings.

If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The Parties agree to replace any invalid provision with a valid provision, which most closely approximates the intent and economic effect of the invalid provision. Headings are used for convenience of reference only and in no way define, limit, construe or describe the scope or extent of any section, or in any way affect this Agreement.

13.7 Governing Law; Jurisdiction.

This Agreement and performance under it will be interpreted, construed, and enforced in all respects in accordance with the laws of the State of Florida, without reference or giving effect to its conflicts of law principles. You hereby irrevocably consent to the personal jurisdiction of and venue in the state and federal courts located in Polk County, and the middle district of Florida with respect to any action, claim or proceeding arising out of or related to this Agreement and agree not to commence or prosecute any such action, claim or proceeding other than in such courts, except as otherwise provided in Section 13.12 below.

13.8 Waiver.

The failure of any Party to insist on or enforce strict performance of any provision of this Agreement or to exercise any right or remedy under this Agreement or applicable law will not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such provision, right or remedy in that or any other instance; rather, the same will be and remain in full force and effect. Waiver by either Party of a breach of any provision contained herein must be in writing, and no such waiver will be construed as a waiver of any other and/or succeeding breach of such provision or a waiver of the provision itself.

13.9 Assignment.

You will not have the right or the power to assign any of Your rights or delegate the performance of any of Your obligations under this Agreement without the prior written consent of QGIV, including in the case of a merger. Qgiv will have the right to assign this Agreement to its subsidiaries, Affiliates or to any other person and be released from liability to You upon notice of such assignment to You, provided the assignee is financially responsible and capable of performing under the Agreement and expressly assumes Qgiv's obligations. You will notify Qgiv in advance in the event of any sale of Your business or change in control or general management.

13.10 Successors and Assignees.

This Agreement is binding upon the respective, permitted successors in interest, assignees, executors, administrators, and heirs of the Parties.

13.11 Force Majeure.

Neither Party will be liable for any losses arising out of the delay or interruption of its performance of obligations under this Agreement due to any acts of God, acts of civil or military authorities, civil disturbances, wars, strikes or other labor disputes, fires, transportation contingencies, interruptions in telecommunications, utility, Internet services or network provider services, acts or omissions of a third party, infiltration or disruption of the Qgiv Services by a third party by any means, including without limitation, DDoS attacks, software viruses, Trojan horses, worms, time bombs or any other software program or technology designed to disrupt or delay the Qgiv Services, or other catastrophes or any other occurrences which are beyond such Parties' reasonable control (each a "Force Majeure Event"), provided that the Party delayed will provide the other Party notice of any such delay or interruption as soon as reasonably practicable, will use commercially reasonable efforts to minimize any delays or interruptions resulting from the Force Majeure Event and in no event will any failure to pay any monetary sum due under this Agreement be excused for any Force Majeure Event.

13.12 Litigation of Disputes.

Neither Party will institute a proceeding in any court or administrative agency to resolve a dispute between the Parties before that Party has sought to resolve the dispute through direct negotiation with the other Party. If the dispute is not resolved after three weeks of direct negotiation, the parties will attempt to resolve the dispute through mediation. If the parties do not promptly agree upon a mediator, either Party may request the then chief judge of the Tenth Judicial Circuit of Florida to appoint a Circuit Civil Mediator certified by the Supreme Court of Florida. If the mediator is unable to facilitate a

settlement of the dispute within a reasonable period of time, as determined by the mediator, the mediator shall issue a written statement to the Parties to that effect and the aggrieved Party may then seek relief through the courts or administratively. Nothing in this section precludes the Parties from agreeing to submit the dispute for resolution by arbitration under conditions and procedures to which they agree in advance.

13.13 Entire Agreement.

This Agreement together with all of QGIV's policies referenced herein sets forth the entire understanding and agreement of the Parties and supersedes any and all prior or contemporaneous oral or written agreements or understandings between the Parties, as to the subject matter of this Agreement. You acknowledge that this Agreement reflects an informed, voluntary allocation between QGIV and You of all risks (both known and unknown) associated with the Qgiv Services. In the event of a conflict between the Acceptable Use Policy and this Agreement, the latter shall govern.

13.14 Gender and Number. Time.

As used herein and wherever necessary or appropriate and without distinction, the masculine gender shall include the feminine and the neuter, the singular shall include the plural, and vice-versa. Time, and timely performance, is of the essence.

13.15 Pass Through of Fines and Penalties.

You shall be fully compliant with Credit Card Association rules and regulations as amended from time to time, by the Credit Card Associations. In the event Your systems are breached and cause fines and/or penalties to be charged to Qgiv by the Credit Card Associations, You agree to immediately reimburse Qgiv for said fines or penalties. You also agree to immediately reimburse Qgiv for Credit Card Association fines or penalties caused by You for any reason.

13.16 Qgiv Sponsored Merchants.

Qgiv has the ability to setup certain organizations with a Sponsored Merchant Account as a Sponsored Merchant to take Transactions on behalf of the organization. To the extent that You/the Organization are a Qgiv Sponsored Merchant, You/the Organization agree to the following terms and conditions with respect to the use of Qgiv's Sponsored Merchant service:

Qgiv operates as a payment facilitator and uses Vantiv as its merchant processor and acquirer in order to provide you with a Sponsored Merchant Account. Vantiv can be contacted using the contact information on their website (www.vantiv.com) or through support@vantiv.com.

Qgiv's processor will credit Your bank account for any Transactions You receive within 48 business hours of settlement of Your Transactions. Qgiv will charge fees to You as outlined in Section 6 of this Agreement for using its Sponsored Merchant service and will also charge You fees when cardholders dispute Transactions. Said fees will be debited from a Your bank account at the time they are encountered by Qgiv and You agree to pay any and all such fees.

13.16.1 Prohibited Activities.

To accept payments through Qgiv's Sponsored Merchant Account You confirm, acknowledge, and agree that You will not accept payments in connection with any of the following activities, items or services:

- 13.16.1.1 Any illegal act
- 13.16.1.2 Adult content websites
- 13.16.1.3 Airline
- 13.16.1.4 Collection Agency – merchant may not accept a card as payment for a dishonored check or for an item deemed uncollectible by another merchant.
- 13.16.1.5 Cruise Line
- 13.16.1.6 Credit Counseling
- 13.16.1.7 Credit protection or ID protection services
- 13.16.1.8 Debt Elimination or Reduction Services
- 13.16.1.9 Distressed Property Sales and Marketing.
- 13.16.1.10 Drugs, alcohol, or drug paraphernalia, or items that may represent these uses
- 13.16.1.11 Gambling Establishments MCC 7995
- 13.16.1.12 No card present Tobacco sales
- 13.16.1.13 No card present Pharmaceuticals
- 13.16.1.14 Multi-level marketing programs
- 13.16.1.15 Rebate or upsell programs
- 13.16.1.16 Timeshare resale's and related marketing
- 13.16.1.17 Any merchant selling goods or services that represent a violation of any law
- 13.16.1.18 Any merchant operating outside the United States
- 13.16.1.19 Sub-Merchant submitting sales for payment that resulted from another commercial entity providing goods or services to the cardholder
- 13.16.1.20 A merchant may not accept a card at a scrip-dispensing terminal
- 13.16.1.21 Buyer clubs/membership clubs
- 13.16.1.22 MCC 5966 – Outbound telemarketing
- 13.16.1.23 MCC 5967 – Inbound telemarketing (videotext services)

13.16.1.24 MCC 5968 – Direct Marketing: Continuity or
Subscription services

If Qgiv determines that You have received funds resulting from fraud or a restricted/prohibited activity listed in this Agreement, those funds may be frozen and/or seized from Your bank account.

In addition, if Qgiv reasonably suspects that Your Sponsored Merchant Account has been used for an unauthorized, illegal, or criminal purpose, You give Qgiv express authorization to share information about You, Your Sponsored Merchant Account, Your access to the Qgiv Services, and any of Your Transactions with law enforcement agencies or authorities, including without limitation, upon request of or by law enforcement agencies or authorities.

13.16.2 Qgiv's Sponsored Merchant Account.

Qgiv's Sponsored Merchant service allows You to accept payments, including card-based payments. Qgiv is not a bank, a money transmitter, or a money services business ("MSB") and Qgiv does not offer banking or MSB services as defined by the United States Department of Treasury.

As a merchant payment processor, Qgiv processes payments Sponsored Merchants receive from their customers or donors. This means that Qgiv collects, analyzes, and relays information generated in connection with such payments.

In order to serve in this role, Qgiv has entered into agreements with payment card networks, other processors and banks. These third parties require that some of Qgiv's users enter into an agreement with Qgiv's payment processor of record. If You are such a user, Qgiv may provide You with a separate agreement during registration or at some other time. If You do not complete said separate agreement, Qgiv may suspend or terminate Your Sponsored Merchant Account.

13.16.3 Underwriting & Risk.

Qgiv may share some or all of the information You provide with Qgiv's processor and other partners. At any time, Qgiv, its processor or its other partners may conclude that You will not be permitted to use Qgiv.

By accepting the terms of this Agreement and by being a Qgiv Sponsored Merchant, You authorize Qgiv to request identity verifying information about the Organization, You, Your business, and/or Your customers, including a consumer report that contains Your name and address. Qgiv may periodically obtain additional reports to determine whether You continue to meet the requirements of this Agreement.

You agree that Qgiv is permitted to contact and share information about You and your application (including whether You are approved or declined), and Your Qgiv Sponsored Merchant Account with banks and other financial institutions. This includes sharing information (a) about Your transactions for regulatory or compliance purposes, (b) for use in connection with the management and maintenance of the service, (c) to create and update their customer records about You and to assist them in better serving You, and (d) to conduct Qgiv's risk management process.

In addition, You agree that Qgiv may ask for additional information at any time, and may decline or reverse Transactions at any time based on the risk any such transactions pose to You, Your customers and/or to Qgiv.

Qgiv reserves the right to limit or restrict Transaction size or volume at any time. If You would like to increase your limits, please contact Qgiv's Customer Support. Upon receiving such a request, Qgiv will conduct a review of your Sponsored Merchant Account and decide whether to lift or remove these limits. Qgiv will consider a variety of factors in making such a decision and will make this determination in its sole and absolute discretion.

13.16.4 Your Liability for Chargebacks.

The amount of a Transaction may be reversed or charged back to your Qgiv Sponsored Merchant Account (a "Chargeback"). For example, but without limitation, a Chargeback may arise if the Transaction (a) is disputed by a donor, (b) is reversed for any reason by the network, Qgiv's processor, or a purchaser's or Qgiv's financial institution, (c) was not authorized or Qgiv has any reason to believe that the Transaction was not authorized, or (d) is allegedly unlawful, suspicious, or in violation of the terms of this Agreement. You are responsible for all Chargebacks, whether or not the Chargeback complies with network rules. In addition, Qgiv will charge a \$15 Chargeback fee for all such Chargebacks.

13.16.5 Qgiv's Collection Rights for Chargebacks.

For any Transaction that results in a Chargeback, Qgiv may withhold the Chargeback amount in a reserve. Qgiv may deduct the amount of any Chargeback and any associated fees, fines, or penalties assessed by the Association (hereinafter defined) or Qgiv's processor from Your bank account, any proceeds due to You, Your bank account, or other payment instrument registered with Qgiv. "Association" shall mean and refer to the network of credit card and debit card issuing and acquiring banks that process credit and debit cards for a specific brand (i.e., the four major brands in the United States are Visa, MasterCard, American Express and Discover).

If You have pending Chargebacks, Qgiv may delay payouts from your Qgiv Sponsored Merchant Account.

Further, if Qgiv reasonably believes that a Chargeback is likely with respect to any Transaction, Qgiv may withhold the amount of the potential Chargeback from payments otherwise due to You under this Agreement until such time that: (a) a Chargeback is assessed due to a customer's complaint, in which case Qgiv will retain the funds; (b) the period of time under applicable law or regulation by which the customer may dispute that the Transaction has expired; or (c) Qgiv determines that a Chargeback on the Transaction will not occur.

If Qgiv is unable to recover funds related to a Chargeback for which You are liable, You will pay Qgiv the full amount of the Chargeback immediately upon demand. You agree to pay all costs and expenses, including without limitation, attorneys' fees and costs and any other legal expenses, incurred by or on behalf of Qgiv in connection with the collection of all Qgiv Sponsored Merchant Account deficit balances unpaid by You.

If Qgiv determines that You are incurring an excessive amount of Chargebacks, Qgiv may establish controls or conditions governing your Qgiv Sponsored Merchant Account, including without limitation, by (a) establishing new processing fees, (b) creating a reserve in an amount reasonably determined by

Qgiv to cover anticipated Chargebacks and related fees, (c) delaying payouts, and (d) terminating or suspending the Sponsored Merchant service.

You agree to assist Qgiv when requested, at Your expense, to investigate any of Your transactions processed through the Sponsored Merchant service. To that end, You permit Qgiv to share information about a Chargeback with the purchaser, the purchaser's financial institution, and Your financial institution in order to investigate and/or mediate a Chargeback. Qgiv will request necessary information from You to contest the Chargeback and You shall timely provide any such requested information. If the Chargeback is contested successfully, Qgiv will release the reserved funds to You. If a Chargeback dispute is not resolved in Your favor by the Association or issuing bank or You choose not to contest the Chargeback, Qgiv may recover the Chargeback amount and any associated fees as described in this Agreement. You acknowledge and agree that Your failure to assist Qgiv in a timely manner when investigating a transaction, including providing necessary documentation within seven (7) days of Qgiv's request, may result in an irreversible Chargeback. Qgiv reserves the right, upon notice to You, to charge a fee for mediating and/or investigating Chargeback disputes.

13.16.6 Qgiv's Set-off Rights.

To the extent permitted by law, Qgiv may set off against the balances or any amounts due to You for any obligation You owe Qgiv under this Agreement, including without limitation any Chargebacks. All fees are deducted first from the transferred or collected funds and thereafter deducted from Your bank account.

Qgiv may charge or debit a payment instrument registered in Your Qgiv Sponsored Merchant Account. Your failure to fully pay amounts that You owe Qgiv on demand shall be a breach of this Agreement. You will be liable for Qgiv's costs associated with collection in addition to the amount owed, including without limitation, attorneys' fees, costs and expenses, collection agency fees, and any applicable interest.

13.17 Definitions.

"Affiliate" - means a Person that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a specified Person.

"Credit Card Association" - for the purposes of this Agreement means Visa U.S.A., Inc., Visa International, Inc., MasterCard International, Inc., and any other credit or debit card issuing company.

"Domain" – for the purposes of this Agreement, means the Web site operated by or for QGIV under the URL .

"Fee Schedule" – a list of fees and charges to be paid by You to QGIV. The Fee Schedule must be accepted and approved by You before you obtain access to the Qgiv Services.

"Organization Portal" – means the user interface available to Organization.

"QGIV Referred Processors & Gateways" - for purposes of this Agreement, a QGIV Referred Processor or Gateway shall mean any third party whom QGIV may refer for the processing and settlement of credit card or ACH transactions.

"Processor" - for purposes of this Agreement, a Processor shall mean a credit card processor that accepts Transactions from QGIV and processes Transactions for You.

"Trademark(s)" – means all common law or registered trademark, service mark, trade name and trade dress rights and similar or related rights arising under any of the laws of the United States or any other country or jurisdiction, whether now existing or hereafter adopted or acquired.

"Transaction(s)" - for purposes of this Agreement, Transaction means any credit card authorization, credit, ticket only, batch settlement, decline transaction or other related transaction, completed, or submitted under Your account to QGIV.



**Engineering Department
CITY OF GOSHEN**

204 East Jefferson Street, Suite 1 • Goshen, IN 46528-3405

Phone (574) 534-2201 • Fax (574) 533-8626 • TDD (574) 534-3185
engineering@goshencity.com • www.goshenindiana.org

MEMORANDUM

TO: Goshen Board of Public Works & Safety

FROM: Goshen Engineering

RE: **COMMUNITY CROSSINGS MATCHING GRANT 2024-1 FINANCIAL
RESCISSION LETTER (JN: 2021-0023)**

DATE: August 1, 2024

The City of Goshen was awarded \$1,500,000.00 through the Community Crossings Matching Grant Fund (CCMGF) 2024-1. The City of Goshen must rescind the awarded funds as a result of design status and utility relocation needs from the Indiana Avenue portion of the proposed project.

Requested Motion: Move to approve and authorize the Mayor to sign the Financial Rescission Letter to be submitted to INDOT.

**APPROVED:
BOARD OF PUBLIC WORKS & SAFETY
CITY OF GOSHEN, INDIANA**

Gina Leichty, Mayor

Barb Swartley, Member

Mary Nichols, Member

Orv Myers, Member

Michael Landis, Member



GINA M. LEICHTY

Mayor of **Goshen, Indiana**

City Hall • 202 South Fifth Street, Suite 1 • Goshen, IN 46528-3714

mayor@goshencity.com • goshenindiana.org

(574) 533-9322

August 1, 2024

Kathy Eaton-McKalip
Director of Local Programs
100 N. Senate Ave.
Indianapolis, IN 46204

**RE: COMMUNITY CROSSINGS MATCHING GRANT FUND 2024-1 FINANCIAL RESCISSION
LETTER CITY OF GOSHEN (JN: 2021-0023)**

Dear Mrs. McKalip,

This letter confirms the City of Goshen's financial rescission for our Community Crossings Matching Grant Fund 2024-1 application #13259, DES Number 2400228. This project consisted of complete roadway reconstruction on Indiana Avenue including full depth pavement replacement, curb and gutter, and ADA curb ramps. The project also consisted of milling and paving to restore asphalt surfaces on Wilden Avenue, Keystone Drive, Ashburn Drive, Berkshire Drive, High Park Avenue, Mayflower Place, and Kercher Road, including curb and gutter repairs and ADA curb ramps. Lastly, the project also consisted of a combination of full-depth pavement replacement with milling and paving on Johnston Street and Silverwood Lane including curb and gutter repairs and ADA curb ramps. The City of Goshen must rescind the awarded funds as a result of design status and utility relocation needs for the Indiana Avenue portion of the proposed project. The total amount rescinded will be the total amount awarded of \$1,500,000.00.

Sincerely,

Gina M. Leichty
Mayor of the City of Goshen

Cc: Daniel Heflin, Local Program Director

F:\Projects\2024\2024-0002_ 2024 Paving Projects\1. Asphalt Paving Package\Community Crossing Matching Grant Fund\CCMG 2024-1 Financial Rescission Letter.docx



Richard Aguirre, City Clerk-Treasurer
CITY OF GOSHEN

202 South Fifth Street, Suite 2 • Goshen, IN 46528-3714

Phone (574) 533-8625 • Fax (574) 533-9740

richardaguirre@goshencity.com • www.goshenindiana.org

To: City of Goshen Board of Public Works & Safety
From: Clerk-Treasurer Richard R. Aguirre
Date: Aug. 1, 2024
Subject: Approval of City of Goshen Time & Attendance agreements

The Clerk-Treasurer's Office is requesting the Board's approval for agreements to provide time and attendance software and support for City of Goshen employees. Our goal is to move all City employees to computer- and app-based time-keeping systems provided by Right Stuff Software Corp. and ADP, through a service agreement with Baker Tilly.

By way of background, in February 2021, Clerk-Treasurer Adam Scharf secured the Board's approval for an agreement with Right Stuff to move the City away from more than two dozen different manual methods to record and track employee time and pay. Until that time, most City employees used paper time sheets and punch cards that required manual data entry into ADP online. So, preparing the City payroll was a massive and complicated task with data that was subject to misinterpretation and sometimes errors.

Since then, the City shifted the Fire, Police and Parks and Recreation Departments to Right Stuff. And while that has saved staff time and improved accuracy, there have been some challenges importing data into ADP and questions about whether this was the best solution for all City employees. A time and attendance system by ADP could be a better fit.

Still, the City was obligated to honor contract obligations with Right Stuff and its software has proven to be ideal for our Fire and Police departments. So, to minimize disruptions, the Clerk-Treasurer negotiated an agreement for Fire, Police and Parks and Recreation to continue using Right Stuff for three years at a reduced cost. And the rest of the City's employees will begin using ADP, whose service is provided by Baker Tilly. The attached documents provide the terms of the agreements.

In summary, under these agreements, the Clerk-Treasurer's Office would:

- Renew its Right Stuff contract, retroactive to July 1, 2024, for three years under the previous terms and conditions for \$2,575 per month. This agreement includes an upgrade in Police Department software and 40 hours of support per month.
- Renew its agreement with Baker Tilly for ADP Workforce Technology Solutions support and add ADP's Workforce Manager Time & Attendance software and support for one-time set-up costs of \$11,000 and \$1,700 in monthly fees, for three years.

In three years, it would be our expectation that we would transition to a single provider.

Requested motion:

Authorize the Clerk-Treasurer to execute the agreements with Right Stuff Software Corp. and Baker Tilly and ADP for City employee time and attendance software and support.

RIGHT STUFF SOFTWARE CORPORATION
SOFTWARE LICENSE AGREEMENT

END USER

This SOFTWARE LICENSE AGREEMENT (“Agreement”) is made by and between Right Stuff Software Corporation (“Right Stuff”) whose mailing address is 700 Stonehenge Parkway Unit A, Dublin, Ohio 43017, and City of Goshen, Indiana, whose mailing address is 202 S. 5th Street, Goshen, IN 46528 (the "Licensee").

FOR AND IN CONSIDERATION OF the mutual promises, covenants, and obligations contained herein, the parties hereby agree as follows:

1. LICENSE.

- (A) In accordance with the terms herein, Right Stuff grants to Licensee, and Licensee accepts from Right Stuff, a perpetual nonexclusive and nontransferable license (“Software License”) to use the current object code version of Right Stuff’s Software. Licensee may install the Software specified in the description of the Software attached as Exhibit A (“Software”).
- (B) Licensee's use of the Software is restricted so that Licensee may not:
 - (1) Sublicense, sell, lease, or rent the Software;
 - (2) Decompile, disassemble, reverse engineer the Software;
 - (3) Create a derivative work of the Software;
 - (4) Use the software by more than the number of concurrent users that have been licensed; or
 - (5) Reveal benchmark tests.
- (C) Right Stuff reserves the right, without prior approval from or notice to the Licensee, to make changes to the Software and Related Materials and to substitute Software and Related Materials reflecting those changes provided that the Software and Related Materials delivered substantially conform to the specifications in place as of the effective date of this Agreement.

2. OTHER LICENSES.

Except as provided in this Agreement, no license under any patents, copyrights, trademarks, trade secrets or any other intellectual property rights, express or implied, are granted by Right Stuff to Licensee under this Agreement.

3. ACCESS TO SOFTWARE.

- (A) Licensee will not allow any third party to have access to the Software, documentation and product collateral ("Related Materials") without Right Stuff's prior written consent. Licensee will not have any rights to grant any sublicense, subfranchise or lease or otherwise

transfer any of its rights to the Software and Related Materials under this Agreement without the prior written consent of Right Stuff.

- (B) Unless herein otherwise stated, the Software and all Right Stuff applications and data used within Right Stuff applications shall be maintained behind the Licensee's firewall and secured according to Licensee's information security program.

4. TERM OF AGREEMENT.

- (A) The initial term of this Agreement is for a period of thirty-six (36) months ("Initial Term") which commences on July 1, 2024 ("Go Live Date"). Upon the expiration of the Initial Term, this Agreement will automatically renew for successive one (1) year terms, under the same terms and conditions set forth herein, unless within ninety (90) days of the expiration of the then current Renewal Term, Licensee has provided to Right Stuff written notice of Licensee's intent not to renew. For each renewal period, Right Stuff's fees may be subject to an annual increase not to exceed three percent (3%) per year calculated starting on the Go Live Date. Such annual increase, if any, shall be communicated by Right Stuff to Licensee on or before July 1 of the year prior to the Renewal Term which is subject to the annual increase. If this Agreement is not renewed, upon the expiration of the then current Renewal Term, the Licensee shall return the Software and all copies thereof to Right Stuff.
- (B) The Go Live Date shall be the first date the Licensee begins using the software in their production environment. This date will be communicated in an email from Right Stuff to the Licensee.

5. COPIES.

The license(s) granted herein include(s) the right to copy the Software to use the Software as specified in Exhibit A and pursuant to this Software License and for archival and back-up only. In order to protect Right Stuff's copyrights in the Software, Licensee agrees to reproduce and incorporate Right Stuff's copyright notice in any copy, modifications or partial copy.

6. TRANSFERS.

Licensee may physically transfer the Software from (as applicable):

- (1) One (1) standalone computer or network node to another standalone computer or network node; or
- (2) One (1) server to another server, provided the Software is used on only one (1) computer, network node or server(s) (web and database) at a time; or
- (3) The same number of standalone computers, network nodes or servers to the same number of other standalone network nodes or servers.

7. PRICE AND PAYMENT.

Licensee shall make payment to Right Stuff for the Software License pursuant to the fees and payment terms set forth in Exhibit A.

8. SOFTWARE OWNERSHIP.

- (A) Right Stuff represents that it has all rights required to license the Software and all portions thereof and to grant Licensee the Software License.
- (B) Risk of loss or damage to Software licensed by Licensee under this Agreement will vest in Licensee when the Software have been received by Licensee, or its representative, provided that such loss or damage is not caused by Right Stuff, its employees or agents.

9. OTHER SERVICES.

Right Stuff may provide Licensee with consulting services, software maintenance, and technical support not provided herein through separate written agreements.

10. ADDITIONAL INTELLECTUAL PROPERTY RIGHTS.

The parties agree and acknowledge that the Software and related services to be provided under this Agreement by Right Stuff may result in the development of proprietary and secret information, materials, concepts, applications, technologies, systems, solutions, techniques, methods, processes, adaptations and ideas ("Propriety Information"). The parties agree that such Propriety Information shall, in the absence of an agreement to the contrary, belong to Right Stuff and Licensee shall have a nonexclusive license to use such. Licensee hereby agrees that the Software and all materials incidental thereto developed by Right Stuff under this Agreement shall be the sole and exclusive property of Right Stuff, and that Right Stuff shall own all of the rights, title and interest in such Software including, but not limited to any copyrights, patents, trademarks and trade secrets relating to the Software. Where applicable, Licensee hereby agrees to cooperate with Right Stuff in securing or registering any such rights.

11. ASSIGNMENT.

Licensee may not assign its rights or obligations under this Agreement without the prior written consent of Right Stuff. Right Stuff may not assign or transfer, without the prior written consent of the Licensee, its rights, duties or obligations under this Agreement to any person or entity, in whole or in part; provided, however, that Right Stuff may assign its rights, duties and obligations under this Agreement to a parent company or subsidiary or a purchaser of all or substantially all of its assets.

12. WARRANTY.

- (A) RIGHT STUFF WARRANTS THAT SOFTWARE WILL CONFORM TO RIGHT STUFF'S PROPOSAL WHEN INSTALLED AND WILL BE FREE OF DEFECTS WHICH SUBSTANTIALLY AFFECT SYSTEM PERFORMANCE FOR A PERIOD OF NINETY (90) DAYS AFTER THE GO LIVE DATE.

- (B) IN THE EVENT OF AN ALLEGED DEFECT, THE LICENSEE MUST NOTIFY RIGHT STUFF IN WRITING, WITHIN NINETY (90) DAYS OF DELIVERY OF THE SOFTWARE TO THE LICENSEE (NOT INCLUDING DELIVERY OF ANY SUBSEQUENT MODIFICATIONS TO THE SOFTWARE), OF ITS CLAIM OF ANY SUCH DEFECT. IF THE SOFTWARE IS FOUND DEFECTIVE BY RIGHT STUFF, RIGHT STUFF WILL, AT ITS OPTION, CHOOSE TO CORRECT OR WORK AROUND ERRORS TO REPLACE DEFECTIVE MEDIA OR REPLACE THE SOFTWARE WITH FUNCTIONALLY EQUIVALENT SOFTWARE. IN THE EVENT THAT, WITHIN A REASONABLE PERIOD OF TIME AFTER NOTIFICATION, SUCH REPAIRED, REPLACED, OR SUBSTITUTE SOFTWARE CONTINUES NOT TO PERFORM ACCORDING TO CURRENT PUBLISHED SPECIFICATIONS, LICENSEE MAY, AT ITS OPTION, TERMINATE THE AGREEMENT.
- (C) THE ABOVE IS A LIMITED WARRANTY AND IT IS THE ONLY WARRANTY MADE BY RIGHT STUFF. RIGHT STUFF MAKES AND LICENSEE RECEIVES NO WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. RIGHT STUFF SHALL HAVE NO LIABILITY WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT FOR CONSEQUENTIAL, EXEMPLARY, OR INCIDENTAL DAMAGES EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE STATED EXPRESS WARRANTY IS IN LIEU OF ALL LIABILITIES OR OBLIGATIONS OF RIGHT STUFF FOR DAMAGES ARISING OUT OF, OR IN CONNECTION WITH THE DELIVERY, USE, OR PERFORMANCE OF THE SOFTWARE.
- (D) IF ANY MODIFICATIONS ARE MADE TO THE SOFTWARE BY LICENSEE DURING THE WARRANTY PERIOD, THIS WARRANTY SHALL IMMEDIATELY BE TERMINATED. CORRECTION FOR DIFFICULTIES OR DEFECTS TRACEABLE TO LICENSEE'S ERRORS OR SYSTEMS CHANGES SHALL BE BILLED AT RIGHT STUFF'S STANDARD TIME AND MATERIAL CHARGES (\$150 PER HOUR).
- (E) RIGHT STUFF DOES NOT WARRANT THAT THE OPERATION OF THE SOFTWARE OR THE OPERATION OF THE SOFTWARE AND RELATED MATERIALS WILL BE UNINTERRUPTED OR ERROR FREE.
- (F) LICENSEE IS SOLELY RESPONSIBLE FOR ANY POLICY, PROCEDURE, PRACTICE, OR OTHER "LOCAL" MATTER LICENSEE DIRECTS OR REQUESTS RIGHT STUFF TO IMPLEMENT AS A SOFTWARE OPTION. LICENSEE ACCEPTS RESPONSIBILITY FOR ANY SOFTWARE OPTIONS THAT ARE IMPLEMENTED AT ITS SOLE REQUEST OR DIRECTION IF SUCH SOFTWARE OPTION VIOLATES LOCAL, STATE AND/OR FEDERAL LAWS. AS ADDITIONAL CONSIDERATION FOR THIS LICENSE, LICENSEE WILL CAUSE RIGHT STUFF TO BE INCLUDED AS AN ADDITIONAL COVERED PARTY FOR INJURY ARISING OUT OF A POLICY, PROCEDURE, PRACTICE OR OTHER "LOCAL" MATTER LICENSEE DIRECTS OR REQUESTS RIGHT STUFF TO IMPLEMENT AS A SOFTWARE OPTION TO THE STANDARD PRODUCT, IF SUCH POLICY,

PROCEDURE, PRACTICE, OR OTHER LOCAL MATTER, VIOLATES AN APPLICABLE LAW OR REGULATION. RIGHT STUFF'S COVERAGE AS AN ADDITIONAL COVERED PARTY SHALL END WHEN THIS LICENSE TERMINATES.

13. SYSTEM MAINTENANCE.

Licensee will from time to time require maintenance and support regarding the use of the Software. Right Stuff and Licensee agree as follows:

- (A) Right Stuff will promptly notify Licensee of any material defects or malfunctions in the Software or Related Materials that it learns from any source.
- (B) Right Stuff will, from time to time, supply Licensee with copies of the Software and Related Materials revised to reflect significant updates and enhancements to the Software made by Right Stuff, if any, during the period of this Agreement. Such enhancements may include, without limitation, modifications to the Software that increase its speed, efficiency, and/or ease of operation. Right Stuff will supply copies of any of these updates and/or enhancements without additional charge.
- (C) Within a reasonable time after being given written notice thereof, Right Stuff will correct inherent material errors in the Software that are not caused by the Licensee's misuse, improper use, alteration, or damage to the Software.

14. INDEMNITY.

- (A) Right Stuff, at its own expense, will defend any action brought against Licensee and indemnify Licensee for any damages awarded against Licensee in any action to the extent that it is based on a claim that the Software or any software system used within the scope of this Agreement infringes any U.S. patents, copyrights, license or other property right, provided that Right Stuff is immediately notified in writing of such claim. Right Stuff shall have the right to control the defense of all such claims, lawsuits and other proceedings. In no event shall Licensee settle any such claim, lawsuit or proceeding without Right Stuff's prior written approval.
- (B) If, as a result of any claim of infringement against any patent, copyright, license or other property right, Right Stuff is enjoined from using the Software, or if Right Stuff believes that the Software is likely to become the subject of a claim of infringement, Right Stuff at its option and expense may procure the right for Licensee to continue to use the Software, or replace or modify the Software so as to make it non-infringing. If neither of these two options is reasonably practicable, Right Stuff may discontinue the Software License granted herein upon thirty (30) day written notice to the Licensee and shall refund to Licensee the unamortized portion of the monthly license fees hereunder that have been paid. Amortization of license fees in the initial year of the contract shall commence on the Go Live Date under this Agreement and amortization of license fees for subsequent years shall commence on the

first date of that calendar year. The foregoing states the entire liability of Right Stuff with respect to infringement of any copyrights or patents by the Software or any parts thereof.

15. PROPRIETARY RIGHTS; LICENSE GRANT.

Licensee acknowledges and agrees that the Software contains proprietary and confidential information that is protected by applicable intellectual property and other laws. Licensee further acknowledges and agrees that content contained in information presented to Licensee through the Software is protected by copyrights, trademarks, service marks, patents or other proprietary rights and laws. Except as expressly authorized by Right Stuff, Licensee agrees not to duplicate, modify, reproduce, rent, lease, loan, sell, give, sublicense, assign, distribute, otherwise transfer, create derivative works based on, reverse engineer, reverse assemble, decompile or otherwise attempt to discover any source code for the Software, in whole or in part, or to allow or assist any others to do so. Right Stuff grants Licensee a personal, nontransferable, nonsublicensable and nonexclusive right and license to use the object code of its Software for the sole purpose of accessing and using the Software. Licensee agrees not to access the Software by any means other than through the interface that is provided by Right Stuff for use in accessing the Software.

16. CONFIDENTIALITY, SCOPE OF AGREEMENT, AND OWNERSHIP.

The provisions of this Section survive any termination or expiration of this Agreement.

(A) Definitions.

- (1) “*Licensee Information*” means the following types of information of Licensee and its Affiliates obtained or accessed by Right Stuff from or on behalf of Licensee or its affiliates in connection with this Agreement or any discussions between the parties regarding new services or products to be added to this Agreement: (a) trade secrets and proprietary information; (b) customer lists, business plans, information security plans, business continuity plans, and proprietary software programs; (c) any personally identifiable information, defined as information that can be identified to a particular person without unreasonable effort, such as the names and social security numbers of Licensee’s individual customers (“Licensee PII”); and (d) any other information received from or on behalf of Licensee or its Affiliates that Right Stuff could reasonably be expected to know is confidential or exempted from disclosure under Indiana’s Access to Public Records Act.
- (2) “*Right Stuff Information*” means the following types of information of Right Stuff and its affiliates obtained or accessed by Licensee from or on behalf of Right Stuff or its affiliates in connection with this Agreement or any discussions between the parties regarding new services or products to be added to this Agreement: (a) trade secrets and proprietary information (including that of any Right Stuff Licensee, supplier, or licensor); (b) Licensee lists, information security plans, business continuity plans, all information and documentation regarding the hosting environment (“Deliverables”), all software products, including software modifications and documentation, databases, training aids, and all data, code, techniques, algorithms, models, methods, processes, logic, architecture, and designs embodied or incorporated therein; and (c) any personally identifiable information, defined as information that can be identified to a

particular person without unreasonable effort, such as the names and social security numbers of Right Stuff employees; and (d) any other information and data received from or on behalf of Right Stuff or its affiliates that Licensee could reasonably be expected to know is confidential or exempted from disclosure under Indiana's Access to Public Records Act.

- (3) "*Information*" means, collectively, Licensee Information and Right Stuff Information. No obligation of confidentiality applies to any Information that: (a) the receiving entity ("Recipient") already possesses without obligation of confidentiality; (b) develops independently without reference to Information of the disclosing entity ("Discloser"); (c) rightfully receives without obligation of confidentiality from a third party; or (d) is or becomes publicly available without Recipient's breach of this Agreement.

(B) Obligations.

- (1) Recipient agrees to hold as confidential all Information it receives from the Discloser. All Information shall remain the property of Discloser or its suppliers and licensors. Recipient will use the same care and discretion to avoid disclosure of Information as it uses with its own similar information that it does not wish disclosed, but in no event less than a reasonable standard of care and no less than is required by law. Recipient may only use Information for the lawful purposes contemplated by this Agreement, including in the case of Right Stuff use of Licensee Information for fulfilling its obligations under this Agreement, performing, improving and enhancing the Deliverables, and developing data analytics models to produce analytics-based offerings. Licensee agrees that prior to providing Right Stuff access to any Licensee PII, Licensee shall ensure that any necessary consent has been obtained that is required by law or regulation for Right Stuff to access the information and to use it pursuant to the terms set forth in this Agreement. Right Stuff specifically agrees not to use or disclose any "non-public personal information" about Licensee's customers in any manner prohibited by Title V of the Gramm-Leach-Bliley Act or the regulations issued thereunder ("GLBA"), as applicable to Right Stuff.
- (2) Recipient may disclose Information to its employees and employees of permitted subcontractors and affiliates who have a need to know, its attorneys and accountants as necessary in the ordinary course of its business, or any other party with Discloser's prior written consent. Before disclosure to any of the above parties, Recipient will have a written agreement with (or in the case of its attorneys or accountants a professional obligation of confidentiality from) such party sufficient to require that party to treat Information in accordance with the requirements of this Agreement, and Recipient will remain responsible for any breach of this section by any of the above parties.
- (3) Recipient may disclose Information to the extent required by law or legal process, provided that: (a) Recipient gives Discloser prompt notice, if legally permissible, so that Discloser may seek a protective order; (b) Recipient reasonably cooperates with Discloser (at Discloser's expense) in seeking such protective order; and (c) all Information shall remain subject to the terms of this Agreement in the event of such disclosure. At Recipient's option, Information will be returned to Discloser or destroyed (except as may be contained in backup files created in the ordinary course of business) at the termination or expiration of this Agreement or any applicable Exhibit

and, upon Discloser's request, Recipient will certify to Discloser in writing that it has complied with the requirements of this sentence.

- (4) Recipient acknowledges that any breach of this section may cause irreparable harm to Discloser for which monetary damages alone may be insufficient, and Recipient therefore acknowledges that Discloser shall have the right to seek injunctive or other equitable relief against such breach or threatened breach, in addition to all other remedies available to it at law or otherwise.

(C) Scope of Agreement.

- (1) Licensee may only use the Deliverables to process the transactions contemplated by this Agreement.
- (2) Licensee's use of the Deliverables in the course of Licensee's business is restricted to only those uses expressly stated in this Agreement and the attached Exhibits. Licensee acknowledges that the Deliverables were designed by Right Stuff in accordance with Licensee's specifications, and that any use of the Deliverables beyond what is specified in this Agreement and the attached Exhibits is prohibited. **USE OF THE DELIVERABLES BEYOND WHAT IS SPECIFIED IN THIS AGREEMENT AND THE ATTACHED EXHIBITS WILL VOID ANY EXPRESS OR IMPLIED WARRANTIES MADE BY RIGHT STUFF.** Without limiting any other obligation by Licensee or remedy available to Right Stuff under this Agreement or its Exhibits, Right Stuff shall have the right to require Licensee to enter into a new and separate agreement for any use of the Deliverables that is beyond what is specified in such Exhibits.
- (3) Notwithstanding any other provision of this Agreement, Section 16(C)(2) shall not apply if Licensee receives a public record request pursuant to Indiana's Access to Public Records Act and Right Stuff fails to seek a protective order to prevent the release of the Deliverables, or if a court of competent jurisdiction finds that the Licensee is legally required to release the requested Deliverable under Indiana law,

- (D) Ownership. With the exception of Licensee Information, all information, reports, studies, object and source code (including without limitation the Application, Deliverables, and Related Materials ("Products")) and all modifications, enhancements, additions, upgrades, or other works based thereon or related thereto), flow charts, diagrams, specifications, and other tangible or intangible material of any nature whatsoever produced by Right Stuff or jointly with Licensee or by any of Right Stuff's or Licensee's employees or agents, through or as a result of or related to any of the Deliverables provided hereunder, or development of any data analytics models hereunder, and all patents, copyrights, and other proprietary rights related to each of the foregoing, shall be the sole and exclusive property of Right Stuff or its affiliates, to the extent that such assignment is allowable under Indiana law and the material or document is not deemed a public record under Indiana law. Licensee hereby irrevocably assigns and transfers to Right Stuff all rights, title, and interest in any such works referenced in the foregoing sentence, including without limitation copyrights, patent rights, trade secrets, industrial property rights, and moral rights, and shall execute all documents reasonably requested by Right Stuff to perfect such rights, to the extent that such assignment and transfer is allowable under Indiana law and the material or document is not deemed a public record under Indiana law. Licensee shall be entitled to use all such work

product in accordance with the applicable terms and conditions of this Agreement.

- (E) **Restrictions.** Without limiting any other obligation set forth in this section, Licensee shall not use, transfer, distribute, interface, integrate, or dispose of any information or content contained in Deliverables in any manner that competes with the business of Right Stuff. Except as expressly authorized in any applicable Exhibit, Licensee shall not reproduce, republish or offer any part of the Deliverables (or compilations based on any part of the Deliverables) for sale or distribution in any form, over or through any medium.

Licensee acknowledges and understands that any violation of this Section would put Right Stuff's valuable and vital intellectual property at risk and severely compromise Right Stuff's ongoing business concerns. Right Stuff and Licensee agree that any violation of this Section constitutes a material breach of this Agreement, and that damages suffered by Right Stuff as a result of this breach will be substantial and difficult to estimate with certainty. Right Stuff acknowledges and understands that as a political subdivision of Indiana, Licensee is subject to Indiana's Access to Public Records Act and the Licensee's compliance with its legal obligations thereunder shall not be deemed a material breach of this Agreement.

17. TERMINATION.

- (A) Licensee shall have the right to immediately terminate this Agreement and license(s) granted herein in the event Right Stuff neglects or fails to perform or observe any of its obligations under this Agreement and such condition is not remedied within sixty (60) days after Right Stuff's receipt of written notice from Licensee to Right Stuff setting forth Right Stuff's alleged breach. Such notice may be delivered by email with delivery confirmation.
- (B) In the event of termination by reason of Right Stuff's failure to comply with any part of this agreement, or upon any act which shall give rise to Licensee's right to terminate, Licensee shall have the right, at any time, to terminate the Software License(s). Within ten (10) days after termination of the Software License(s), Licensee shall return the Software and documentation and all copies wherever located, to Right Stuff or, upon request by Right Stuff, shall destroy the Software and all copies, and certify in writing that they have been destroyed. In the event that Licensee terminates this Agreement for cause pursuant to this section, Right Stuff shall refund to Licensee the unamortized portion of the monthly license fees hereunder that have been paid. Amortization of license fees in the initial year of the contract shall commence on the Go Live Date under this Agreement and amortization of license fees for subsequent years shall commence on the first date of that calendar year.

18. LIMITATION OF LIABILITY.

- (A) **No Special, Indirect, Incidental, Punitive or Consequential Damages.** LICENSEE AGREES THE MAXIMUM LIABILITY ASSUMED BY RIGHT STUFF UNDER THIS AGREEMENT, REGARDLESS OF THE CLAIM OR FORM OF ACTION OR SUIT, WHETHER IN CONTRACT, NEGLIGENCE, OR TORT, WILL BE LIMITED TO CORRECTION OR REPLACEMENT COSTS. RIGHT STUFF WILL NOT BE LIABLE

FOR ANY: (1) SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, ARISING FROM OR RELATED TO A BREACH OF THIS AGREEMENT OR ANY ORDER OR THE OPERATION OR USE OF THE SOFTWARE, SOFTWARE PRODUCTS AND SERVICES INCLUDING SUCH DAMAGES, WITHOUT LIMITATION, AS DAMAGES ARISING FROM LOSS OF DATA OR PROGRAMMING, LOSS OF REVENUE OR PROFITS, FAILURE TO REALIZE SAVINGS OR OTHER BENEFITS, DAMAGE TO EQUIPMENT, EVEN IF RIGHT STUFF HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; (2) DAMAGES (REGARDLESS OF THEIR NATURE) FOR ANY DELAY OR FAILURE BY RIGHT STUFF TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT DUE TO ANY CAUSE BEYOND RIGHT STUFF'S REASONABLE CONTROL; OR (3) CLAIMS MADE A SUBJECT OF A LEGAL PROCEEDING AGAINST RIGHT STUFF MORE THAN TWO (2) YEARS AFTER ANY SUCH CAUSE OF ACTION FIRST AROSE.

(B) Limitation of Liability.

- (1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, RIGHT STUFF'S LIABILITIES UNDER THIS AGREEMENT ON ANY CLAIMS BY LICENSEE (OTHER THAN A CLAIM RESULTING FROM RIGHT STUFF'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, FOR WHICH THERE SHALL BE NO CAP ON LIMITATIONS ON DAMAGES CLAIMED BY THE LICENSEE), WHETHER UNDER CONTRACT LAW, TORT LAW, WARRANTY OR OTHERWISE WILL BE LIMITED TO DIRECT DAMAGES NOT TO EXCEED THE AMOUNTS ACTUALLY RECEIVED BY RIGHT STUFF AND PAID BY LICENSEE FOR RIGHTS TO USE THE SOFTWARE.
- (2) EACH PARTY WILL BE RESPONSIBLE FOR ITS OWN ACTS AND OMISSIONS AND WILL BE RESPONSIBLE FOR ANY AND ALL DAMAGES, COSTS, AND EXPENSES THAT ARISE OUT OF THAT PARTY'S OWN NEGLIGENCE, TORTIOUS ACTS, OR OTHER CONDUCT OR ARE DUE TO THE NEGLIGENCE, TORTIOUS ACTS, OR OTHER CONDUCT OF THAT PARTY'S RESPECTIVE AGENTS, OFFICERS, OR EMPLOYEES.

- (C) Alterations by Licensee. Right Stuff will not be responsible in any regard for any Software which is altered by Licensee and Licensee assumes any and all risks and liabilities arising from such alteration.

19. NOTICE.

Any notice required or permitted by this Agreement shall be given in writing and delivered by personal service, or by email, or by certified mail, return receipt requested, properly addressed as follows:

Licensee: City of Goshen, Indiana
202 S. Fifth St. Suite 2
Goshen, IN 46528
Attn: Clerk-Treasurer

Right Stuff: Right Stuff Software Corporation
700 Stonehenge Parkway Unit A
Dublin, OH 43017
Attn: President

20. GENERAL.

- (A) Interpretation. Each party acknowledges that it has read this Agreement, it understands it, and agrees to be bound by its terms, and further agrees that this is the complete and exclusive statement of the Agreement between the parties, which supersedes and merges all prior proposals, understandings and all other agreements, oral and written, between the parties relating to this Agreement. This Agreement may not be modified or altered except by written instrument duly executed by both parties.
- (B) Force Majeure. Dates or times by which Right Stuff is required to make performance under this license shall be postponed automatically to the extent that Right Stuff is prevented from meeting them by causes beyond its reasonable control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services.
- (C) Applicable Law. This Agreement and all rights, obligations and remedies of the parties hereunder shall be governed by the laws of the State of Indiana.
- (D) Severability. If any provision of this Agreement is declared to be invalid by a court of competent jurisdiction, said provision shall be deemed to be omitted from this Agreement and the remaining provisions shall remain in full force and effect.
- (E) Assignment. The Licensee may not assign or sublicense, without the prior written consent of Right Stuff, its rights, duties or obligations under this Agreement to any person or entity, in whole or in part. Right Stuff may not assign or transfer, without the prior written consent of the Licensee, its rights, duties or obligations under this Agreement to any person or entity, in whole or in part; provided, however, that Right Stuff may assign its rights, duties and obligations under this Agreement to a parent company or subsidiary or a purchaser of all or substantially all of its assets.
- (F) Jurisdiction and Venue. The parties agree that any disputes that arise between them that may be subject to suits and claims which may only be brought in the state and federal courts located in Elkhart County, Indiana.

- (G) Waiver of Breach. No waiver of breach or failure to exercise any options, right or privilege or failure to enforce at any time any provision or any portion of any provision under the terms of this Agreement or any order on any occasion or occasions will be construed to be a waiver of the same or any other option, right, privilege, or right to enforce such provision on any other occasion. No delay or failure of either party in exercising any rights under this Agreement and no partial or single exercise of any rights under this Agreement will be deemed to constitute a waiver of such rights or any other rights under this Agreement.
- (H) Compliance with Laws. Right Stuff and Licensee each will comply with the provisions of all applicable federal, state, county and local laws, ordinances, regulations and codes including, but not limited to, Right Stuff's and Licensee's obligations as employers with regard to the health, safety and payment of its employees, and identification and procurement of required permits, certificates, approvals and inspections of Right Stuff's and Licensee's performance of this Agreement.
- (I) Right Stuff and Licensee are independent contractors and neither shall act as the other's agent, or be deemed an agent or employee of the other, nor shall this Agreement be interpreted as creating a partnership or joint venture or otherwise.
- (J) Licensee shall not, without Right Stuff's prior written consent, directly or indirectly, solicit for employment or hire any Restricted Employee, as defined herein, while such person is employed by Right Stuff and for the twelve (12) month period starting on the earlier of: (1) termination of such Restricted Employee's employment with Right Stuff; or (2) termination or expiration of this Agreement. For the purposes of this provision, "Restricted Employee" means any former or current employee of Right Stuff that Licensee became aware of or came into contact with during Right Stuff's performance of its obligations under this Agreement.
- (K) Licensee and Right Stuff shall have the right to make general references about each other and the type of Deliverables being provided hereunder to third parties, such as auditors, regulators, financial analysts, and prospective customers and Licensees, provided that in so doing Licensee and Right Stuff do not breach any other sections of this Agreement. Right Stuff may issue a press release, subject to Licensee's prior approval, regarding this Agreement, including its renewal and the addition of Deliverables, and upon Right Stuff's reasonable request, Licensee may provide a favorable quotation, for inclusion in any such press release. Except as authorized herein, Licensee will not use the name, trademark, logo or other identifying marks of Right Stuff or any of its affiliates in any sales, marketing, or publicity activities, materials, or website display without the prior written consent of Right Stuff.
- (L) The section headings contained in this Agreement are inserted only as a matter of convenience and reference and in no way define, limit or describe the scope of intent of this Agreement and do not in any way affect its provisions.
- (M) This Agreement inures to the benefit of and is binding upon the parties to this Agreement and their successors.

(N) The Parties agree to execute any and all documents necessary to carry out the terms and conditions of this Agreement and the contemplated relationship between the Parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their legal representatives.

RIGHT STUFF:

LICENSEE:

Right Stuff Software Corporation

City of Goshen, Indiana

Name Richard S. Lubanovic Jr.,
(Print): _____

Name _____
(Print): _____

Signature: _____

Signature: _____

Title: President

Title: _____

Date _____

Date _____

EXHIBIT A

1. SOFTWARE

Software means the program outlined in Right Stuff's proposal in object code and Related Materials.

The number of users permitted to use the Software under this license is 165 full-time and 120 part-time users.

2. PAYMENT TERMS

The licensing fee for the product is based upon the number of employees using the system, the complexity of the installation and the custom features selected. Pricing for the system is as follows:

Licensing and Support – Police, Fire and Parks & Rec \$2,575 per month

The initial contract is a thirty-six (36) months term.

Licensing includes technical support and product maintenance. Licensing includes business hour email and phone support. This support includes system setup changes that can occur with periodic assignment changes and general personnel setup alterations. In our experience, it is very rare for a Licensee to require more than 40 hours of support time in a month. However, should excessive support time be required, additional billings will apply. Once the Licensee has signed off on the initial functionality of the software, for time spent on any requested changes plus the total of all technical support incidents exceeding 40 hours in a month, a fee of \$150 per excess hour will be charged to cover this effort. A notification email will be sent to the Licensee if this limit is to be exceeded.

Licensing also includes year-end activities, which can include holiday generation and leave bank adjustments. This fee also entitles the City of Goshen to obtain software updates to the Precinct Manager product as they become available. Also, if the employee contract rules change, Right Stuff will alter the configuration as needed and make any minor software modifications, if necessary, free of charge for changes that require less than 40 hours to implement. If the changes require more than 40 hours to implement, any hours exceeding 40 will be billed at a rate of \$150 per hour. Any work requiring additional billings will be agreed upon prior to commencing.



City of Goshen

Workforce Manager Time & Attendance

Updated Pricing Estimate as of 07/12/2024

PRICING SUMMARY

140



Total
Employees
(-60)

\$11,000



One-Time
Set Up
Costs
(no change)

\$1,700



Monthly
Fees
(\$20,400/yr)
(-\$12K)



PRICING DETAIL

SERVICE	PER MONTH	PER YEAR
Hourly Employees (105)	\$750	\$9,000
Salaried Employees (30)	\$137	\$1,644
Accruals	\$90	\$1,080
Analytics	\$150	\$1,800
InTouch DX Bar Code Clock Subscription	\$505	\$6,060
InTouch DX QuickPunch Plus Option Subscription	\$68	\$816
TOTAL INVESTMENT	\$1,700	\$20,400

SET UP / IMPLEMENTATION DESCRIPTION	ONE-TIME FEES
ADP Workforce Manager	\$8,000
Accruals	\$1,800
Analytics	\$1,200
TOTAL ONE-TIME FEES	\$11,000





Gillian Florentine, SPHR
Director, HR+Payroll Advantage

P: +1 (570) 200 0400
E: gillian.florentine@bakertilly.com



Jason Arce
Manager, Payroll

P: +1 (512) 982 3390
E: jason.arce@bakertilly.com



Always Designing
for People™

Kyle Holsinger
WFM DM

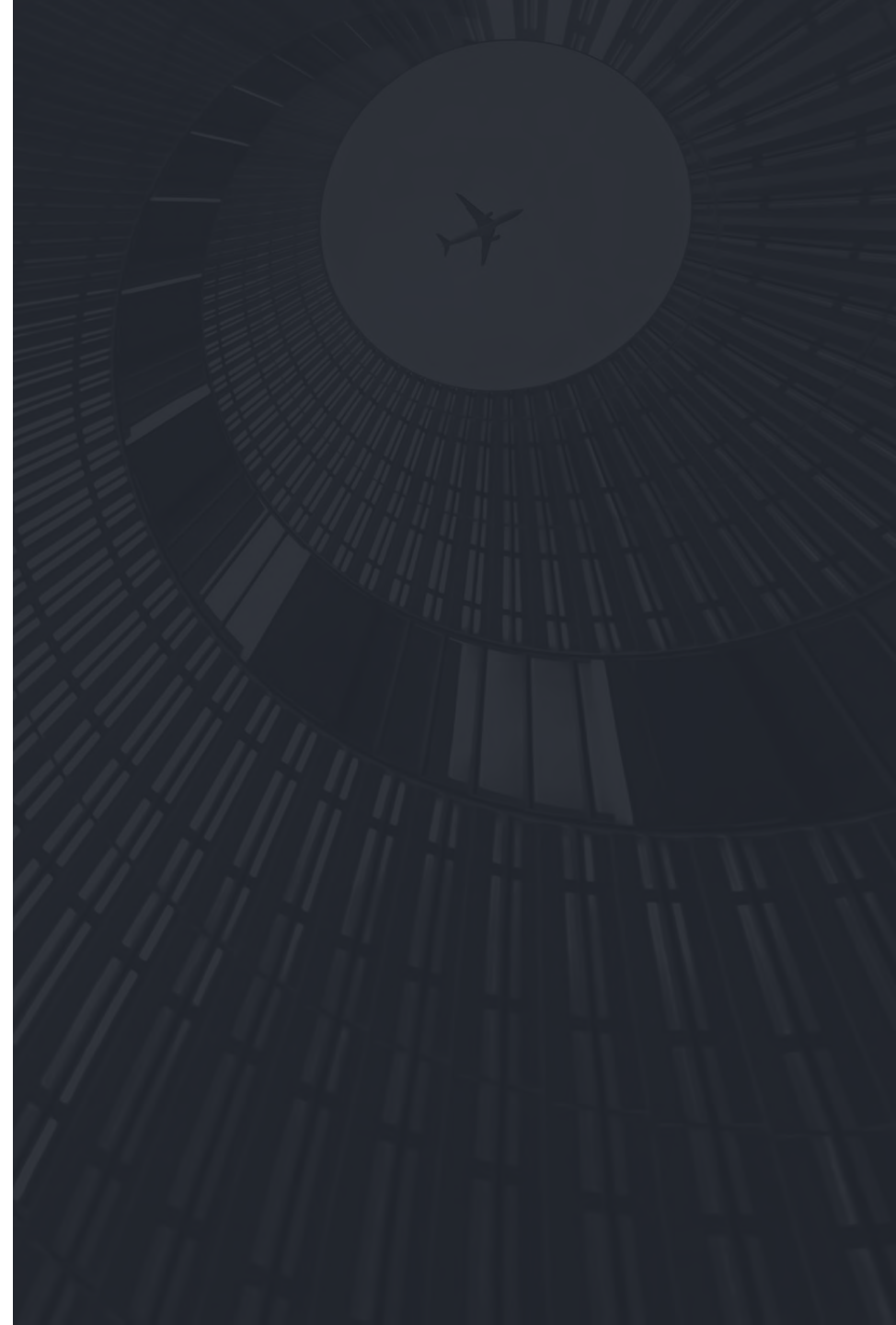
P: +1 (765) 623 2283
E: kyle.holsinger@adp.com



Always Designing
for People™

Lisa Geyer
ADP Major Accounts

P: +1 (314) 749 5594
E: lisa.geyer@adp.com



City of Goshen

Start November 1, 2022



Table Of Contents

Introduction

Service Summary

Payment Schedule

Payment Authority

General Terms and Conditions

Agreement Summary

Audit Trail



Introduction

Hello Richard,

I've prepared a renewed engagement letter effective November for the next year. There are no changes to fees for the upcoming year.

If you have any questions, please reach out to Noah Pleshek at noah.pleshek@bakertilly.com or 920-739-3319

This engagement is for City.

Noah Pleshek

Service Summary

Company Code 5Y3 - City

Baker Tilly Workforce Technology Solutions - HR Plus Bundle

- Exclusive access to Baker Tilly's dedicated ADP software and services support team via direct phone line and email.
- Compliance consulting services, if requested, relating to federal and state payroll filings (W-2, 941, etc.). Services available to be provided up to 2 times per calendar year.
- Assistance as requested with tax notice submission to ADP, resolution tracking, and follow up through resolution.
- Consulting relating to annual employee updates for wages, benefits, deductions, etc.. (guidance with updating employee records)
- Ongoing support including assistance with:
 - General earnings/deduction code maintenance and setup
 - Garnishment/Levy/Child Support setup
 - Mediation between ADP support and you to help resolve issues or answer questions
- Escalation of support issues at ADP to resolve if we deem it necessary to resolve through non-standard channels.
- General payroll inquiries that do not require significant time (10 minutes or less) or specialized knowledge or skills to answer.
- This service includes ADP software and technology fees related to your Payroll Essentials, HR Management, Onboarding, and Document Cloud modules for up to 300 active employees and 1 state and local jurisdictions.

Baker Tilly Workforce Technology Solutions - Benefits Administration w/ ACA Reporting

- **Requires HR Plus bundle or higher tier**
- This service includes ADP software and technology fees related to ADP's Benefits Administration module, including ACA reporting for up to 300 active employees

Company Code 6YJ - City

Baker Tilly Workforce Technology Solutions - HR Plus Bundle

- Exclusive access to Baker Tilly's dedicated ADP software and services support team via direct phone line and email.
- Compliance consulting services, if requested, relating to federal and state payroll filings (W-2, 941, etc.). Services available to be provided up to 2 times per calendar year.
- Assistance as requested with tax notice submission to ADP, resolution tracking, and follow up through resolution.
- Consulting relating to annual employee updates for wages, benefits, deductions, etc.. (guidance with updating employee records)
- Ongoing support including assistance with:
 - General earnings/deduction code maintenance and setup
 - Garnishment/Levy/Child Support setup

- Mediation between ADP support and you to help resolve issues or answer questions
- Escalation of support issues at ADP to resolve if we deem it necessary to resolve through non-standard channels.
- General payroll inquiries that do not require significant time (10 minutes or less) or specialized knowledge or skills to answer.
- This service includes ADP software and technology fees related to your Payroll Essentials, HR Management, Onboarding, and Document Cloud modules for up to 35 active employees and 1 state and local jurisdictions.

Baker Tilly Workforce Technology Solutions - Benefits Administration w/ ACA Reporting

- **Requires HR Plus bundle or higher tier**
- This service includes ADP software and technology fees related to ADP's Benefits Administration module, including ACA reporting for up to 35 active employees

Payment Schedule

----- Company Code 5Y3 - City -----

\$3,015.00 every month

Baker Tilly Workforce Technology Solutions - HR Plus Bundle

Baker Tilly Workforce Technology Solutions - Benefits Administration w/ ACA Reporting

Billed every month from 1st January, 2023 Services billed until change required

----- Company Code 6YJ - City -----

\$350.00 every month

Baker Tilly Workforce Technology Solutions - HR Plus Bundle

Baker Tilly Workforce Technology Solutions - Benefits Administration w/ ACA Reporting

Billed every month from 1st January, 2023 Services billed until change required

Payment Authority

Contact Name	Richard R. Aguirre
Account Name	Richard Aguirre
Routing Number	071212128
Account Number	xxxxxx8907

Payment services are provided to Baker Tilly US by Ignition via the Stripe platform. Please contact Baker Tilly US at tonia.starzer@bakertilly.com for any queries.

By providing your bank account details and confirming this payment, you agree to this ACH debit request and authorize Stripe to debit your account through the Automated Clearing House (ACH) System on behalf of Practice Ignition Limited for any amounts separately communicated to you. You certify that you are either an account holder or an authorized signatory on the account listed above. You understand that this authorization will remain in full force and effect until you notify your bank that you wish to revoke this authorization.

General Terms and Conditions

December 16, 2022

Richard R. Aguirre
City of Goshen
202 South Fifth Street, Suite 2
Goshen, IN, 46528-3714
USA

Dear Richard R. Aguirre,

ENGAGEMENT LETTER – Baker Tilly US and City of Goshen

This Statement of Work and the standard business terms attached hereto (collectively, the "Engagement Agreement") confirms the services City of Goshen, its successor or additional business entities ("the Company" or "you") has asked Baker Tilly US, LLP ("Baker Tilly", we", us" or "our") to perform and the terms under which we have agreed to provide the services.

Please read this Engagement Agreement carefully, because it outlines expectations and responsibilities for both Baker Tilly and the Company. The intention of this Engagement Agreement is to confirm your agreement with what is included with our services as well as the limitations of the services you have asked us to perform. If you have any questions regarding this letter please call to discuss prior to signing it.

Services To Be Provided

You have requested that we will assist you in the initial coordination of ADP's processing of your payroll and ADP's providing of certain other human resource ("HR") related services as outlined below. These services will be provided to you by ADP via ADP's Workforce Now cloud-based software. Following the initial coordination of the services to be provided by ADP we will provide you with ongoing coordination and assistance as follows:

- Access to dedicated ADP software and services support team via direct phone line and email
- Compliance consulting services, if requested, relating to federal and state payroll filings (W-2, 941, etc.). Services available to be provided up to 2 times per calendar year.
- Assistance as requested with tax notice submission to ADP, resolution tracking, and follow up through resolution.
- Consulting relating annual rate increases/decreases for wages, benefits, deductions, etc.. (guidance with updating employee records)
- Ongoing support including assistance with:
 - General earnings/deduction code maintenance and setup
 - Garnishment/Levy/Child Support setup
 - Mediation between ADP support and you to help resolve issues or answer questions
 - Escalation of support issues at ADP to resolve if we deem it necessary to resolve through non-standard channels.
 - General payroll inquiries that do not require significant time (10 minutes or less) or specialized knowledge or skills to answer.
- Implementation and pre-engagement support
 - Assistance with system and service selection
 - Coordination of product demonstrations and other telephone/video conferences
 - Assistance in gathering required information for implementation
 - Ongoing support and coordination throughout the implementation process (can be up to 6 months long)

- Organization and coordination of implementation meetings between client and ADP implementation team. Providing expectations to both sides for results and timeline and assistance with delegation of responsibilities throughout implementation.

The objective of our engagement is to provide you with the tools and support to process your payroll and other human resource ("HR") related functions. Additional services and tools may be available to you outside of this engagement. If additional needs are identified by us or you, a separate Statement of Work will be necessary to facilitate us providing those additional services to you.

Our Responsibilities and Limitations

We will not perform management functions or make management decisions and are not responsible for the ongoing performance, training and development of Company associates or management. Baker Tilly, in its sole professional judgment, reserves the right to refuse to take any action that could be construed as making management decisions or performing management functions and will notify the Company of such refusal.

We will not perform any activities that are management's responsibility, including, but not limited to the following:

- determining or changing journal entries, any account codings or classifications of transactions, or any other accounting records without first obtaining your approval
- authorizing, approving, executing or consummating transactions or otherwise exercising authority on your behalf
- preparing source documents, in electronic or other form, that evidence the occurrence of a transaction making changes to source documents without your approval
- accepting responsibility to authorize or execute payment of your funds, electronically or otherwise
- releasing payroll information to ADP or any other entity designated by you without your prior review, approval and authorization
- accepting responsibility to sign or cosign your checks
- maintaining your bank account or otherwise having custody of your assets or funds
- making credit or banking decisions on your behalf
- approving vendor invoices for payment
- designing, implementing, maintaining or performing ongoing evaluations of your internal control

Our services do not include independent contractor classifications, labor regulation compliance or Employee Retirement Income Security Act compliance.

We are not being engaged to prepare, process, or compile your payroll and employee records. We are not required to, and will not, verify the accuracy or completeness of the information you will provide to us or to ADP for the engagement or otherwise gather evidence for the purpose of expressing an opinion or a conclusion.

In addition to ADP, we may, from time to time, and depending on the circumstances, use other third-party service providers in assisting with the coordination of the services to be provided to you by ADP, and in providing that assistance, may share confidential information about you with these service providers, but are committed to maintaining the confidentiality and security of your information.

Our engagement cannot be relied upon to disclose errors, fraud, or other illegal acts that may exist and, because of the limited nature of our work, detection is highly unlikely. However, we will inform the appropriate level of management of any material errors, and of any evidence that fraud may have occurred. In addition, we will report to you any evidence or information that comes to our attention during the performance of our services regarding illegal acts that may have occurred, unless they are clearly inconsequential. We have no responsibility to identify and communicate deficiencies in your internal control as part of this engagement. However, at your request, we can develop a separate engagement to identify potential deficiencies or material weaknesses in your internal control as it relates to the processing of your payroll.

Management's Responsibilities, Representations, and Warranties

In connection with the payroll related services to be provided, management agrees to:

- Assume all management responsibilities, including making all management decisions and performing all management functions.
- Oversee the services, by designating an individual, preferably within senior management, who possesses suitable skill, knowledge, and/or experience.
- Evaluate the adequacy and results of the services performed.
- Accept responsibility for the results of the services.

You are responsible for the accuracy of the payroll and all other information that you provide to ADP. It is your responsibility to review and approve all payroll reports and other payroll related information prepared by ADP, including any payment or direct deposit amounts. ADP's processing of your payroll and ADP's providing of HR related services as outlined above is subject to the terms and conditions agreed upon by you and ADP. You agree that Baker Tilly has no responsibility or liability whatsoever for ADP's performance in processing your payroll and ADP's performance in providing the applicable HR related services as outlined above and waive any claims against Baker Tilly related to ADP's performance of its obligations under the terms and conditions that you and ADP agreed upon.

In connection with the payroll related services to be provided, You represent and warrant to us that:

- You have full power and authority to provide any information necessary to utilize the Services.
- All information provided to us and/or ADP in order to utilize the Services is true and accurate, including all information submitted to ADP for registration and billing.
- You grant to us permission to process the information you provide to us, and to share the same with ADP as may be necessary to provide the Services as stated in the prior section of this engagement letter.
- You are only using ADP money movement services to disburse payroll related payments in compliance with applicable anti-money laundering laws, rules and regulations.

Under Rule 1.700.040 of the AICPA Code of Professional Conduct, we are required to obtain your specific consent before disclosing your confidential information to ADP, a third party service provider. By signing this engagement letter you specifically consent to our disclosure of your confidential information to ADP to the extent necessary to perform the Services. Such information may include, but is not limited to, employee information and documentation, corporate ID verification documents, historical payroll tax returns, state and federal power of attorney forms, payroll funding information and bank account details.

Record Retention

By signing this Engagement Agreement you confirm that you agree that Baker Tilly is not liable for record retention. You at all times assume responsibility for the decision to maintain hard copies of your original documents.

All work paper and miscellaneous report copies that we are not required to retain are shredded at the conclusion of the Services. At the end of seven years files may be destroyed.

In the unlikely event that we do obtain any hard copy documents from you, all original paper documents provided by you will be returned to you promptly as our services are complete. We do not keep copies of all documents. It is your responsibility to safeguard your documents in case of future need. We may occasionally keep some copies we deem necessary to our Services.

Ownership of Workpapers

The documentation related to this engagement, including any workpapers, is the property of Baker Tilly and constitutes confidential information. We may have a responsibility to retain the documentation for a period of time sufficient to satisfy any applicable legal or regulatory record retention requirements. If we are required by law, regulation, or professional standards to make certain documentation available to Regulators, the Company hereby authorizes us to do so.

Engagement Fees

Invoices for the services provided will be rendered at the beginning of each month as work progresses and are payable on presentation in accordance with the attached billing schedule. A charge of 1.5% per month shall be imposed on accounts not paid within thirty (30) days of receipt of our statement for services provided. In accordance with our firm policies, work may be suspended if your account becomes thirty (30) days or more overdue and will not be resumed until your account is paid in full. If we elect to terminate our services for nonpayment, our engagement will be deemed to have been completed upon written notice of termination, even if we have not completed our payroll related services. You will be obligated to compensate us for all time expended and to reimburse us for all out-of-pocket expenditures through the date of termination.

Our fees, as summarized in the Payment Schedule provided, are based upon the current payroll [and HR] laws and regulations that have been issued and are effective as of the date of this letter. Should additional laws and regulations be issued subsequent to, or become effective for the periods covered by this engagement, our fees may be adjusted accordingly.

Transition Services

One-time fees to transition your records onto the ADP software outlined in the Service Summary and Payment Schedule sections will be due upon signing this Statement of Work. No transition work will commence until payment is received. Additional fees may be charged if the balances provided at the time of transition are not already reconciled to source documents or cannot otherwise be easily verified for their completeness and accuracy. We will bring these items to your attention when discovered and discuss necessary procedures and fees.

Monthly Services

Our monthly fee for payroll services is based on our understanding of your needs and structure as outlined in detail in the Services to be Provided section as well as the Service Summary section of this Statement of Work. The Company will be billed in accordance with the outlined recurring fees detailed in the Payment Schedule provided each month for these services. Invoices will be issued at the beginning of each month for services to be performed that month and are due upon receipt. These fees are comprised of a combination of software, support, and technology fees paid to ADP on your behalf and general support services provided by Baker Tilly staff. Of the fees above, based on your current number of employees and tax jurisdictions (detailed in the Service Summary), it is estimated that 65% will relate to fees to be paid to ADP by Baker Tilly on your behalf. The remainder of your fees relate to services to be provided by us as outlined in the "Services to be Provided" section of this Statement of Work. Baker Tilly will promptly pay all ADP fees associated with this Statement of Work. Should the Client engage with ADP for additional services, a new statement of work may be required to ensure ADP fees are addressed. Fees are subject to an annual review and also may be increased at any time due to changes in scope of services, technology, and labor costs.

- ADP software bundles and tools to be provided to you by ADP under the terms of your separate agreement with ADP are outlined in the Service Summary section of this Statement of Work.

The Company is responsible for any other out-of-pocket fees and expenses required in the course of providing our services other than the ADP services described above. We will obtain your approval prior to incurring significant out-of-pocket expenses. In addition, you may incur additional expenses with ADP for state/city applied for fees, wire transfer initiations, NSF charges, check/ACH reversals, check/payment reissuances, and early cashing of ADP TotalPay checks. These additional expenses will be paid to ADP by Baker Tilly and will be billed back to you as they are assessed.

Special projects may be also be required from time to time. Individual projects expected to be more than \$1,000 to complete will be explained and quoted prior to the commencement of work in a Scope Change Request.

During transition and thereafter, a successful working relationship requires a significant commitment on our part, as well as yours. You are responsible for providing information in a timely manner and by agreed upon due dates including responses to questions, calls for decisions, and devoting the resources necessary to achieve the objectives of the services. If the information you provide is not submitted in a timely manner or is incomplete or unusable, we reserve the right to charge additional fees and expenses for services required to correct the problem and/or update your accounting records upon receipt of past-due information. If this occurs, we will contact you to discuss the matter and the anticipated delay in performing our services.

Suspension or Termination of Services

We reserve the right to suspend or terminate our services, with 60 days prior notice in the event of nonpayment or other material default on your part that has not be cured within 10 days of written notice being provided to you of such default..

If our provision of services to you ends for any reason, you will have the option to continue any ADP services at your expense and will be subject to general ADP retail terms and pricing. You understand that if you do not assume responsibility for these services that they may be cancelled. Additional fees may apply if you request copies (digital or hard copy) of records from ADP.

If the provision of services is suspended or terminated as provided herein, you agree that we will not be responsible for your failure to meet government and other deadlines, for any penalties or interest that may be assessed against you resulting from your failure to meet such deadlines, and for any other damages, including consequential damages.

Acknowledgement

The following signatures acknowledge the agreement to conduct the project as defined within this Statement of Work and in Baker Tilly's Standard Business Terms attached to this Statement of Work and incorporated herein. If you are in agreement with this letter, please sign the letter below as well as the last page of the Standard Business Terms. If you have any questions regarding this Engagement Agreement, please contact Noah Pleshek at noah.pleshek@bakertilly.com.

Yours sincerely,

Baker Tilly US

Acknowledgment of Terms of Engagement

By signing below, I confirm I have the authority to contract on behalf of City of Goshen I hereby agree to the terms of engagement dated November 1, 2022 as set out above in this letter of engagement.

I, Richard R. Aguirre, of City of Goshen confirm that I understand and agree to the terms of engagement.

Signed: *Richard R. Aguirre*

Print Name: Richard R. Aguirre

Date: December 30, 2022

EXHIBIT A
Baker Tilly US, LLP
Standard Business Terms
Rev. June 2021

These Standard Business Terms (Terms) govern the services provided by Baker Tilly US, LLP (Baker Tilly, we, us or our) set forth in the Statement of Work to which these Terms are attached (the Services). These Terms, together with the Statement of Work to which they are attached, constitute the entire understanding and agreement between the client identified on such Statement of Work (the Client) and Baker Tilly with respect to the Services described in the Statement of Work (collectively, the Statement of Work and these Terms are referred to as the Agreement) and supersede and incorporate all prior or contemporaneous representations, understandings or agreements, and may not be modified or amended except by an agreement in writing signed between the parties hereto. This Agreement's provisions shall not be deemed modified or amended by the conduct of the parties. If there is a conflict between these Terms and the terms of any Statement of Work, these Terms shall govern.

Section 1. Confidentiality. – With respect to this Agreement and any information supplied in connection with this Agreement and designated by the disclosing party (the Disclosing Party) as "Confidential Information" either by marking it as "confidential" prior to disclosure to the receiving party (the Recipient) or, if such information is disclosed orally or by inspection, then by indicating to the Recipient that the information is confidential at the time of disclosure and confirming in writing to the Recipient, the confidential nature of the information within ten (10) business days of such disclosure, the Recipient agrees to: (i) protect the Confidential Information in the same manner in which it protects its confidential information of like importance, but in no case using less than reasonable care; (ii) use the Confidential Information only to perform its obligations under this Agreement; and (iii) reproduce Confidential Information only as required to perform its obligations under this Agreement. This section shall not apply to information which is (A) publicly known, (B) already known to the recipient; (C) disclosed to a third party without restriction; (D) independently developed; or (E) disclosed pursuant to legal requirement or order, or as is required by regulations or professional standards governing the Services performed. Subject to the foregoing, Baker Tilly may disclose Client's Confidential Information to its subcontractors and subsidiaries.

Section 2. Deliverables – (a) Materials specifically prepared by Baker Tilly for Client as a deliverable under a Statement of Work (each a Deliverable) may, when fully paid for by Client, be used, copied, distributed internally, and modified by Client but solely for its internal business purposes. Client shall not, without Baker Tilly's prior written consent, disclose to a third party, publicly quote or make reference to the Deliverables. Baker Tilly shall retain all right, title and interest in and to: (i) the Deliverables, including but not limited to, all patent, copyright, trademark and other intellectual property rights therein; and (ii) all methodologies, processes, techniques, ideas, concepts, trade secrets and know-how embodied in the Deliverables or that Baker Tilly may develop or supply in connection with this Agreement (the Baker Tilly Knowledge). Subject to the confidentiality restrictions contained in Section 1, Baker Tilly may use the Deliverables and the Baker Tilly Knowledge for any purpose.

(b) The documentation for this engagement, including the workpapers, is not part of the Deliverables, is the property of Baker Tilly and constitutes confidential information. We may have a responsibility to retain the documentation for a period of time sufficient to satisfy any applicable legal or regulatory requirements for records retention. Baker Tilly does not retain any original client records; so we will return such records to you at the completion of the Services rendered under this engagement. When such records are returned to you, it is the Company's responsibility to retain and protect its accounting and other business records for future use, including potential review by any government or other regulatory agencies. By your signature below, you acknowledge and agree that, upon the expiration of the documentation retention period, Baker Tilly shall be free to destroy our workpapers related to this engagement. If we are required by law, regulation or professional standards to make certain documentation available to Regulators, Client hereby authorizes us to do so.

(c) Baker Tilly and the Company acknowledge that, at the time of the execution of this Engagement Letter, federal, state and local governments, both domestic and foreign, have restricted travel and/or the movement of their citizens due to the ongoing and evolving situation around COVID-19. In addition, like many organizations and companies in the United States and around the globe, Baker Tilly has restricted its employees from travel and onsite work, whether at a client facility or Baker Tilly facility, to protect the health of both Baker Tilly and its clients' employees. Accordingly, to the extent that any of the Services described in this Engagement Letter requires or relies on personnel to travel and/or perform work onsite, then Baker Tilly and the Company acknowledge and agree that when the performance of such work depends on physical access to Client's facilities, then such work may be supplanted with alternative procedures, or may be delayed, significantly or indefinitely and/or suspended at Baker Tilly's discretion. Baker Tilly and the Company agree to provide the other with prompt written notice in the event any of the onsite Services described herein, such as inventory observations and other procedures, will need to be supplanted, rescheduled and/or suspended. Baker Tilly and the Company also acknowledge and agree that any delays or workarounds due to the situation surrounding COVID-19 may increase the cost of the Services described herein. Baker Tilly will obtain the Company's prior written approval for any increase in the cost of Baker Tilly Services that may result from the situation surrounding COVID-19.

Section 3. Acceptance – Client shall accept Deliverables which (i) substantially conform to the specifications in the Statement of Work or (ii) where applicable, successfully complete the mutually agreed to acceptance test plan described in the Statement of Work. Client will promptly give Baker Tilly written notification of any nonconformance of the Deliverables with such requirements (Nonconformance) within thirty (30) days following delivery of such Deliverables, and Baker Tilly shall have a reasonable period of time, based on the severity and complexity of the Nonconformance, to correct the Nonconformance so that the Deliverables substantially conform to the specifications. If Client uses the Deliverable before acceptance, fails to promptly notify Baker Tilly of any Nonconformance within such 30-day period, or delays the beginning of acceptance testing more than five (5) business days past the agreed upon date for the start of such acceptance testing as specified or otherwise determined under the Statement of Work, then the Deliverable shall be deemed irrevocably accepted by the Client.

Section 4. Standards of Performance – Baker Tilly shall perform its Services in conformity with the terms expressly set forth in this Agreement. Accordingly, our Services shall be evaluated on our substantial conformance with such terms and standards. Any claim of nonconformance (and applicability of such standards) must be clearly and convincingly shown. Client acknowledges that the Services will involve the participation and cooperation of management and others of Client. Unless required by professional standards or Client and Baker Tilly otherwise agree in writing, Baker Tilly shall have no responsibility to update any of its work after its completion.

Section 5. Warranty – (a) Each party represents and warrants to the other that it has full power and authority to enter into and perform this Agreement and any Statement of Work entered into pursuant hereto and the person signing this Agreement or such Statement of Work on behalf of each party hereto has been properly authorized and empowered to enter into this Agreement. (b) Client warrants that it has the legal right and authority, and will continue to have the legal right and authority during the term of this Agreement, to operate, configure, provide, place, install, upgrade, add, maintain and repair (and authorize Baker Tilly to do any of the foregoing to the extent the same are included in the Services) the hardware, software and data that comprises any of Client's information technology system upon which or related to which Baker Tilly provides Services under this Agreement. (c) Baker Tilly warrants that any Services that it provides to Client under this Agreement and any Statement of Work will be performed in accordance with generally accepted industry standards of care and competence. Client's sole and exclusive remedy for a breach of Baker Tilly's warranty will be for Baker Tilly, in its sole discretion, to either: (i) use its reasonable commercial efforts to re-perform or correct the Services, or (ii) refund the fee Client paid for the Services that are in breach of Baker Tilly's warranty. Client must make a claim for breach of warranty in writing within thirty (30) days of the date that the Services that do not comply with Baker Tilly's warranty are performed. This warranty is voided in the event that Client makes alterations to the Services provided by Baker Tilly or to the environment in which the Services are used (including the physical, network and systems environments) that are not authorized in writing by Baker Tilly. If Client does not notify Baker Tilly of a breach of Baker Tilly's warranty during that 30-day period, Client will be deemed to have irrevocably accepted the Services. (d) Baker Tilly does not warrant any third-party product (each, a Product). All Products are provided to Client by Baker Tilly "AS IS." Baker Tilly will, to the extent it is allowed to by its vendors, pass through any warranties and indemnifications provided by the manufacturer of the Product. Client, recognizing that Baker Tilly is not the manufacturer of any Product, expressly waives any claim that Client may have against Baker Tilly based upon any product liability or infringement or alleged infringement of any patent, copyright, trade secret or other intellectual property right (each a Claim) with respect to any Product and also waives any right to indemnification from Baker Tilly against any such Claim made against Client by another. Client acknowledges that no employee of Baker Tilly or any other party is authorized to make any representation or warranty on behalf of Baker Tilly that is not in this Agreement. (e) This section 5 is Baker Tilly's only warranty concerning the Services and any deliverable, and is made expressly in lieu of all other warranties and representations, express or implied, including any implied warranties of merchantability, ACCURACY, TITLE, noninfringement or fitness for a particular purpose, or otherwise.

Section 6. Limitation on Damages and Indemnification – (a) The liability (including attorney's fees and all other costs) of Baker Tilly and its present or former partners, principals, agents or employees related to any claim for damages relating to the Services performed under this Agreement shall not exceed the fees paid to Baker Tilly for the portion of the work to which the claim relates, except to the extent finally determined to have resulted from the willful misconduct or fraudulent behavior of Baker Tilly relating to such Services. This limitation of liability is intended to apply to the full extent allowed by law, regardless of the grounds or nature of any claim asserted, including the negligence of either party. Additionally, in no event shall either party be liable for any lost profits, lost business opportunity, lost data, consequential, special, incidental, exemplary or punitive damages, delays, interruptions or viruses arising out of or related to this Agreement even if the other party has been advised of the possibility of such damages. (b) As Baker Tilly is performing the Services solely for the benefit of Client, Client will indemnify Baker Tilly, its subsidiaries and their present or former partners, principals, employees, officers and agents against all costs, fees, expenses, damages and liabilities (including attorneys' fees and all defense costs) associated with any third-party claim, relating to or arising as a result of the Services, Client's use of the Deliverables, or this Agreement. (c) In the event Baker Tilly is requested by the Client; or required by government regulation, subpoena or other legal process to produce our engagement working papers or its personnel as witnesses with respect to its Services rendered for the Client, so long as Baker Tilly is not a party to the proceeding in which the information is sought, Client will reimburse Baker Tilly for its professional time and expenses, as well as the fees and legal expenses, incurred in responding to such a request. (d) Because of the importance of the information that Client provides to Baker Tilly with respect to Baker Tilly's ability to perform the Services, Client hereby releases Baker Tilly and its present and former partners, principals, agents and employees from any liability, damages, fees, expenses and costs, including attorney's fees, relating to the Services, that arise from or relate to any information, including representations by management, provided by Client, its personnel or agents, that is not complete, accurate or current, whether or not management knew or should have known that such information was not complete, accurate or current. (e) Each party recognizes and agrees that the warranty disclaimers and liability and remedy limitations in this Agreement are material bargained for bases of this Agreement and that they have been taken into account and reflected in determining the consideration to be given by each party under this Agreement and in the decision by each party to enter into this Agreement. (f) The terms of this Section 6 shall apply regardless of the nature of any claim asserted (including, but not limited to, contract, tort or any form of negligence, whether of Client, Baker Tilly or others), but these Terms shall not apply to the extent finally determined to be contrary to the applicable law or regulation. These Terms shall also continue to apply after any termination of this Agreement. (g) Client accepts and acknowledges that any legal proceedings arising from or in conjunction with the Services provided under this Agreement must be commenced within twelve (12) months after the performance of the Services for which the action is brought, without consideration as to the time of discovery of any claim or any other statutes of limitations or repose.

Section 7. Personnel – During the term of this Agreement, and for a period of six (6) months following the expiration or termination thereof, neither party will actively solicit the employment of the personnel of the other party involved directly with providing Services hereunder. Both parties acknowledge that the fee for hiring personnel from the other party, during the project term and within six months following completion, will be a fee equal to the hired person's annual salary at the time of the violation so as to reimburse the party for the costs of hiring and training a replacement.

Section 8. Data Privacy and Security – (a) To the extent the Services require Baker Tilly receive personal data or personal information from Client, Baker Tilly may process any personal data or personal information, as those terms are defined in applicable privacy laws, in accordance with the requirements of the applicable privacy law relevant to the processing in providing Services hereunder. Applicable privacy laws may include any local, state, federal or international laws, standards, guidelines, policies or regulations governing the collection, use, disclosure, sharing or other processing of personal data or personal information with which Baker Tilly or its Clients must comply. Such privacy laws may include (i) the EU General Data Protection Regulation 2016/679 (GDPR); (ii) the California Consumer Privacy Act of 2018 (CCPA); and/or (iii) other laws regulating marketing communications, requiring security breach notification, imposing minimum security requirements, requiring the secure disposal of records, and other similar requirements applicable to the processing of personal data or personal information. Baker Tilly is acting as a Service Provider/Data Processor in relation to Client personal data and personal information, as those terms are defined respectively under the CCPA/GDPR. Client is responsible for notifying Baker Tilly of any data privacy laws the data provided to Baker Tilly is subject to and Client represents and warrants it has all necessary authority (including any legally required consent from data subjects) to transfer such information and authorize Baker Tilly to process such information in connection with the Services described herein. Client agrees that Baker Tilly has the right to generate aggregated/de-identified data from the accounting and financial data provided by Client to be used for Baker Tilly business purposes and with the outputs owned by Baker Tilly. For clarity, Baker Tilly will only disclose aggregated/de-identified data in a form that does not identify Client, Client employees, or any other individual or business entity and that is stripped of all persistent identifiers. Client is not responsible for Baker Tilly's use of aggregated/de-identified data. (b) Baker Tilly has established information security related operational requirements that support the achievement of our information security commitments, relevant information security related laws and regulations, and other information security related system requirements. Such requirements are communicated in Baker Tilly's policies and procedures, system design documentation, and contracts with customers. Information security policies have been implemented that define our approach to how systems and data are protected. Client is responsible for providing timely written notification to Baker Tilly of any additions, changes or removals of access for Client personnel to Baker Tilly provided systems or applications. If Client becomes aware of any known or suspected information security or privacy related incidents or breaches related to this agreement, Client should timely notify Baker Tilly via email at dataprotectionofficer@bakertilly.com.

Section 9. Termination – (a) This Agreement may be terminated at any time by either party upon written notice to the other. However, upon termination of this Agreement, this Agreement will continue to remain in effect with respect to any Statement(s) of Work already issued at the time of such termination, until such Statements of Work are themselves either terminated or the performance thereunder is completed. (b) This Agreement and all Statements of Work may be terminated by either party effective immediately and without notice, upon: (i) the dissolution, termination of existence, liquidation or insolvency of the other party, (ii) the appointment of a custodian or receiver for the other party, (iii) the institution by or against the other party of any proceeding under the United States Bankruptcy Code or any other foreign, federal or state bankruptcy, receivership, insolvency or other similar law affecting the rights of creditors generally, or (iv) the making by the other party of any assignment for the benefit of creditors. (c) Client shall pay Baker Tilly for all Services rendered and expenses incurred as of the date of termination, and shall reimburse Baker Tilly for all reasonable costs associated with any termination. In the event that collection procedures are required, the Company agrees to be responsible for all expenses of collection including related attorneys' fees. (d) Any rights and duties of the parties that by their nature extend beyond the expiration or termination of this Agreement, including but not limited to, limitation of liability, confidentiality, ownership of work product, and survival of obligations, any accrued rights to payment and remedies for breach of this Agreement shall survive the expiration or termination of this Agreement or any Statement of Work.

Section 10. Dispute Resolution – (a) Except for disputes related to confidentiality or intellectual property rights, all disputes and controversies between the parties hereto of every kind and nature arising out of or in connection with this Agreement as to the existence, construction, validity, interpretation or meaning, performance, nonperformance, enforcement, operation, breach, continuation or termination of this Agreement shall be resolved as set forth in this Section using the following procedure: In the unlikely event that differences concerning the Services or fees should arise that are not resolved by mutual agreement, both parties agree to attempt in good faith to settle the dispute by engaging in mediation administered by the American Arbitration Association under its mediation rules for professional accounting and related services disputes before resorting to litigation or any other dispute-resolution procedure. Each party shall bear their own expenses from mediation and the fees and expenses of the mediator shall be shared equally by the parties. If the dispute is not resolved by mediation, then the parties agree that the dispute or claim shall be settled by binding arbitration. The arbitration proceeding shall take place in the city in which the Baker Tilly office providing the relevant Services is located, unless the parties mutually agree to a different location. The proceeding shall be governed by the provisions of the Federal Arbitration Act (FAA) and will proceed in accordance with the then current Arbitration Rules for Professional Accounting and Related Disputes of the AAA, except that no prehearing discovery shall be permitted unless specifically authorized by the arbitrator. The arbitrator will be selected from Judicate West, AAA, JAMS, the Center for Public Resources, or any other internationally or nationally-recognized organization mutually agreed upon by the parties. Potential arbitrator names will be exchanged within 15 days of the parties' agreement to settle the dispute or claim by binding arbitration, and arbitration will thereafter proceed expeditiously. Any issue concerning the extent to which any dispute is subject to arbitration, or concerning the applicability, interpretation or enforceability of any of these procedures, shall be governed by the FAA and resolved by the arbitrators. The arbitration will be conducted before a single arbitrator, experienced in accounting and auditing matters. The arbitrator shall have no authority to award nonmonetary or equitable relief and will not have the right to award punitive damages or statutory awards. Furthermore, in no event shall the arbitrator have power to make an award that would be inconsistent with the Engagement Letter or any amount that could not be made or imposed by a court deciding the matter in the same jurisdiction. The award of the arbitration shall be in writing and shall be accompanied by a well reasoned opinion. The award issued by the arbitrator may be confirmed in a judgment by any federal or state court of competent jurisdiction. Discovery shall be permitted in arbitration only to the extent, if any, expressly authorized by the arbitrator(s) upon a showing of substantial need. Each party shall be responsible for their own costs associated with the arbitration, except that the costs of the arbitrator shall be equally divided by the parties. Both parties agree and acknowledge that they are each giving up the right to have any dispute heard in a court of law before a judge and a jury, as well as any appeal. The arbitration proceeding and all information disclosed during the arbitration shall be maintained as confidential, except as may be required for disclosure to professional or regulatory bodies or in a related confidential arbitration. The arbitrator(s) shall apply the limitations period that would be applied by a court deciding the matter in the same jurisdiction, including the contractual limitations set forth in this Engagement Letter, and shall have no power to decide the dispute in any manner not consistent with such limitations period. The arbitrator(s) shall be empowered to interpret the applicable statutes of limitations. (b) Because a breach of any the provisions of this Agreement concerning confidentiality or intellectual property rights will irreparably harm the nonbreaching party, Client and Baker Tilly agree that if a party breaches any of its obligations thereunder, the nonbreaching party shall, without limiting its other rights or remedies, be entitled to seek equitable relief (including, but not limited to, injunctive relief) to enforce its rights thereunder, including without limitation protection of its proprietary rights. The parties agree that the parties need not invoke the mediation procedures set forth in this section in order to seek injunctive or declaratory relief.

Section 11. Force Majeure – In the event that either party is prevented from performing, or is unable to perform, any of its obligations under this Agreement due to any act of God, fire, casualty, flood, war, strike, lock out, failure of public utilities, injunction or any act, exercise, assertion or requirement of any governmental authority, epidemic, destruction of production facilities, insurrection, inability to obtain labor, materials, equipment, transportation or energy sufficient to meet needs, or any other cause beyond the reasonable control of the party invoking this provision (Force Majeure Event), and if such party shall have used reasonable efforts to avoid such occurrence and minimize its duration and has given prompt written notice to the other party, then the affected party's failure to perform shall be excused and the period of performance shall be deemed extended to reflect such delay as agreed upon by the parties.

Section 12. Taxes – Baker Tilly's fees are exclusive of any federal, national, regional, state, provincial or local taxes, including any VAT or other withholdings, imposed on this transaction, the fees, or on Client's use of the Services or possession of the Deliverable (individually or collectively, the Taxes), all of which shall be paid by Client without deduction from any fees owed by Client to Baker Tilly. In the event Client fails to pay any Taxes when due, Client shall defend, indemnify, and hold harmless Baker Tilly, its officers, agents, employees and consultants from and against any and all fines, penalties, damages, costs (including, but not limited to, claims, liabilities or losses arising from or related to such failure by Client) and will pay any and all damages, as well as all costs, including, but not limited to, mediation and arbitration fees and expenses as well as attorneys' fees, associated with Client's breach of this Section 12.

Section 13. Notices – Any notice or communication required or permitted under this Agreement or any Statement of Work shall be in writing and shall be deemed received (i) on the date personally delivered; or (ii) the date of confirmed receipt if sent by Federal Express, DHL, UPS or any other reputable carrier service, to applicable party (sending it to the attention of the title of the person signing this Agreement) at the address specified on the signature page of this Agreement or such other address as either party may from time to time designate to the other using this procedure.

Section 14. Miscellaneous – (a) This Agreement and any Statement(s) of Work constitute the entire agreement between Baker Tilly and Client with respect to the subject matter hereof and supersede all prior agreements, promises, understandings and negotiations, whether written or oral, regarding the subject matter hereof. No terms in any Client purchase order that are different from, or additional to, the terms of this Agreement will be accorded any legal effect and are specifically hereby objected to by Baker Tilly. This Agreement and any Statement of Work cannot be amended unless in writing and signed by duly authorized representatives of each party. Headings in this Agreement are included for convenience only and are not to be used to construe or interpret this Agreement. (b) In the event that any provision of this Agreement or any Statement of Work is held by a court of competent jurisdiction to be unenforceable because it is invalid or in conflict with any law of any relevant jurisdiction, the validity of the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement or such Statement of Work did not contain the particular provisions held to be unenforceable. The unenforceable provisions shall be replaced by mutually acceptable provisions which, being valid, legal and enforceable, come closest to the intention of the parties underlying the invalid or unenforceable provision. If the Services should become subject to the independence rules of the U.S. Securities and Exchange Commission with respect to Client, such that any provision of this Agreement would impair Baker Tilly's independence under its rules, such provision(s) shall be of no effect. (c) Neither this Agreement, any Statement of Work, any claims nor any rights or licenses granted hereunder may be assigned, delegated or subcontracted by Client without the written consent of Baker Tilly. Either party may assign and transfer this Agreement and any Statement of Work to any successor that acquires all or substantially all of the business or assets of such party by way of merger, consolidation, other business reorganization, or the sale of interests or assets, provided that the party notifies the other party in writing of such assignment and the successor agrees in writing to be bound by the terms and conditions of this Agreement. (d) The validity, construction and enforcement of this Agreement shall be determined in accordance with the laws of the State of Illinois, without reference to its conflicts of laws principles, and any action (whether by arbitration or in court) arising under this Agreement shall be brought exclusively in the State of Illinois. Both parties consent to the personal jurisdiction of the state and federal courts located in Illinois. (e) The parties hereto are independent contractors. Nothing herein shall be deemed to constitute either party as the representative, agent, partner or joint venture of the other. Baker Tilly shall have no authority to bind Client to any third-party agreement. Though the Services may include Baker Tilly's advice and recommendations, all decisions regarding the implementation of such advice or recommendations shall be the responsibility of, and made by, Client. (f) The failure of either party at any time to enforce any of the provisions of this Agreement or a Statement of Work will in no way be construed as a waiver of such provisions and will not affect the right of party thereafter to enforce each and every provision thereof in accordance with its terms. (g) Client acknowledges that: (i) Baker Tilly and Client may correspond or convey documentation via Internet e-mail unless Client expressly requests otherwise, (ii) neither party has control over the performance, reliability, availability or security of Internet e-mail, and (iii) Baker Tilly shall not be liable for any loss, damage, expense, harm or inconvenience resulting from the loss, delay, interception, corruption or alteration of any Internet e-mail. (h) Except to the extent expressly provided to the contrary, no third-party beneficiaries are intended under this Agreement. (i) The Services performed under this Agreement do not include the provision of legal advice and Baker Tilly makes no representations regarding questions of legal interpretation. Client should consult with its attorneys with respect to any legal matters or items that require legal interpretation under federal, state or other type of law or regulation. (j) Baker Tilly US, LLP is an independent member of Baker Tilly International. Baker Tilly International Limited is an English company. Baker Tilly International provides no professional services to clients. Each member firm is a separate and independent legal entity and each describes itself as such. Baker Tilly US, LLP is not Baker Tilly International's agent and does not have the authority to bind Baker Tilly International or act on Baker Tilly International's behalf. None of Baker Tilly International, Baker Tilly US, LLP, nor any of the other member firms of Baker Tilly International has any liability for each other's acts or omissions. The name Baker Tilly and its associated logo is used under license from Baker Tilly International Limited.

Agreement Summary

Sender	Baker Tilly US
Recipient	City of Goshen
Effective Start Date	November 1, 2022
Payment Authority	Captured
Payment Method	Direct Debit
Document ID	prop_mngzwtz3hrqaeibegda
Status	Accepted
Accepted At	Friday, December 30, 2022 12:29 PM

Signatory Richard R. Aguirre

Signed *Richard R. Aguirre*

Time Friday, December 30, 2022 12:29 PM

IP Address 30.10.12.124

Audit Trail

- ⊕ Proposal created by Noah Pleshek (24.164.250.41) 17th October, 2022
- Proposal moved to awaiting acceptance by Noah Pleshek (24.164.250.41) 17th October, 2022
- Proposal sent to primary signatory: Richard R. Aguirre (richardaguirre@goshencity.com) 17th October, 2022
- Proposal sent to Richard R. Aguirre - richardaguirre@goshencity.com 17th October, 2022
- Proposal email viewed by Richard R. Aguirre - richardaguirre@goshencity.com (104.28.110.107) 17th October, 2022
- Proposal reminder sent to Richard R. Aguirre - richardaguirre@goshencity.com 24th October, 2022
- Proposal revoked by Noah Pleshek (24.164.250.41) 24th October, 2022
- Proposal email viewed by Richard R. Aguirre - richardaguirre@goshencity.com (172.225.30.36) 24th October, 2022
- Proposal moved to awaiting acceptance by Noah Pleshek (30.10.13.164) 16th December, 2022
- Proposal sent to Richard R. Aguirre - richardaguirre@goshencity.com 16th December, 2022
- Proposal sent to primary signatory: Richard R. Aguirre (richardaguirre@goshencity.com) 16th December, 2022
- Proposal email viewed by Richard R. Aguirre - richardaguirre@goshencity.com (104.28.110.90) 16th December, 2022
- Proposal reminder sent to Richard R. Aguirre - richardaguirre@goshencity.com 23rd December, 2022
- Proposal email viewed by Richard R. Aguirre - richardaguirre@goshencity.com (172.225.31.48) 23rd December, 2022
- Proposal reminder sent to Richard R. Aguirre - richardaguirre@goshencity.com 30th December, 2022
- Proposal viewed by primary signatory: Richard R. Aguirre (30.10.12.124) 30th December, 2022
- Signed by Richard R. Aguirre (30.10.12.124, United States) 30th December, 2022
- ✔ Proposal automatically accepted as all Signatories have signed 30th December, 2022