



This proposal is valid for 30 days.



## Donor Management Software Proposal for Venues Parks and Arts Foundation

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**DATE PRESENTED** - January 25, 2019

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## What Makes Bloomerang Tick

### Core Purpose

To Improve Donor Retention in the Nonprofit World

### Strategic Vision

To be the world's best developer and deliverer of tools and perspectives that generate value for nonprofit donor relationships.

### Fun Facts



### Our Values

- **Philanthropy** Adore the charity world
- **Simplicity** Make technology easy
- **Honesty** Be transparent and fair
- **Community** Every relationship matters






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**Read about the success of other nonprofits!**

“If this system doesn’t cause nonprofit organizations to really focus on their donor retention, I don’t know what will. I love the way **the information you need and want on a daily basis is front and center every time** you open Bloomerang. It’s there, looking at you, reminding you to take action. I’ve used many database systems over the years but this one is head and shoulders above the rest.”



**Lori L. Jacobwith**  
ArtsLab

Case Study	Testimonials	Reviews
<p>Equestrian Aid Foundation <b>increased their donor retention rate 15% while saving \$1,000 per year</b></p> <p><a href="#">See How</a></p> 	<p><b>Our fundraising software produces results</b></p> <p><a href="#">Watch Now</a></p> 	<p><b>What do other customers have to say about Bloomerang?</b></p> <p><a href="#">Find Out</a></p> 

“They were very personable people to talk to. You didn’t mind getting a phone call from them. It’s clear that Bloomerang employees have nonprofit experience. They’re not just using the buzz words that a lot of donor database companies use. **They actually know what they’re talking about and how to use the database to your advantage.**”



**Claire Bailey**  
Young Actors Theatre

**Dig deeper into customers’ experiences!**



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## Automated Data Stewardship

### Keeping your database clean and up-to-date



Are you dreading your next NCOA update?

Or feeling guilty that you haven't done one in a while?

Do you worry that you might be sending direct mail to deceased donors, while annoying their surviving relatives?

Want to send birthday cards out to your most rabid supporters but don't know when?

Thanks to our partnership with TrueGivers, **every Bloomerang customer** will receive nightly updates and enhancements to their data - **at no additional cost!**

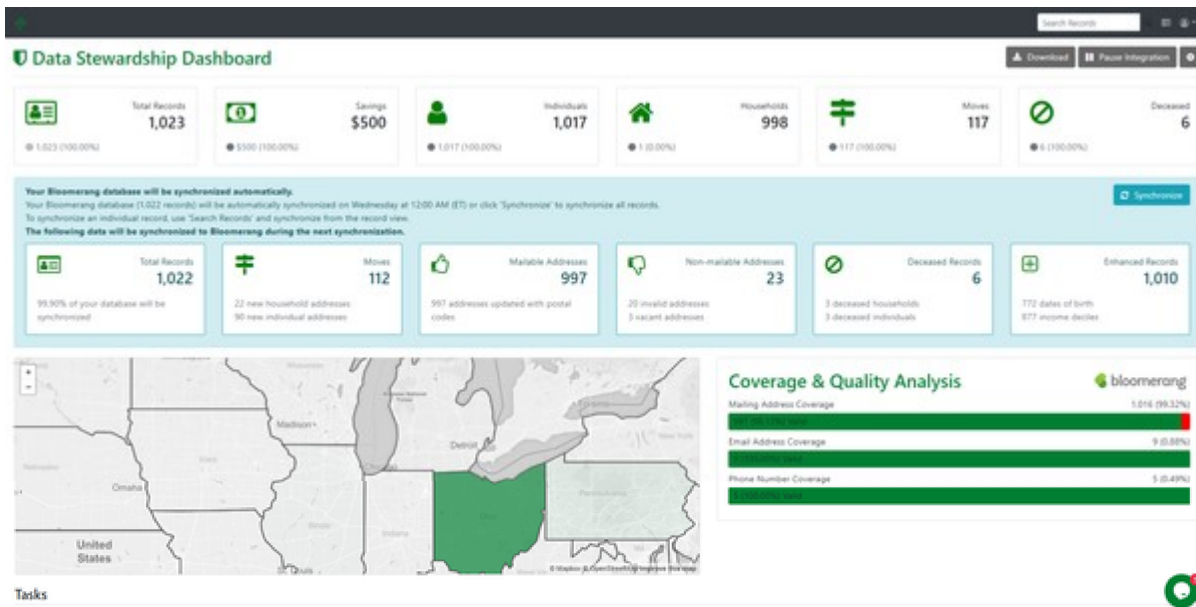
It's true: every single night, we'll automatically search for the most up-to-date data about your constituents. No more worrying about doing an annual or quarterly data service. No more manual data entry or importing.

With Bloomerang:

- All of your names and addresses will be:
  - Updated from the US Postal Service's change of address database.
  - Formatted to US Postal Service's standards
  - Marked as a Home, Business, or Vacant address.
- Any individual who passed away will be marked Deceased and you will be given a link to their obituary
- We'll update their birthdates, net worth, religion, ethnicity, and more!

We'll automatically generate tasks to reach out to people who have moved, or send condolences to constituents who are connected with anyone who has been found to have passed away.

You'll also receive access to an interactive dashboard, giving you a visual representation of who your donors are and where they live:



You can learn more about our integration with TrueGivers here: <https://truegivers.com/bloomerang-about/>

## World-Class Fundraising Education

**Got an employee who is new to fundraising and wanting some help?**

**Ready to start your first campaign but not sure where to start?**

**We've got your back.**

Bloomerang has made the support, development and education of fundraisers the focus of its service to the community.

That's why we are proud supporter of the **Fundraising Standard**, a 40 hour program of online learning designed to give participants a thorough introduction to the process of fundraising and get them started on their first fundraising campaign.

The class is led by **Dr. Adrian Sargeant**, the Director of the Institute for Sustainable Philanthropy and the world's leading fundraising educator and researcher. Dr. Sargeant was the first Hartsook Chair in Fundraising at the Lilly Family School of Philanthropy at Indiana University and has been the recipient of numerous awards and honors for his service to the profession including being named to the prestigious Nonprofit Times Power and Influence list in 2010. Dr. Sargeant is joined by Emma Bryant and Harriet Day who are both credentialed fundraising educators with experience of fundraising in multiple countries.

**Bloomerang customers who sign up during the first quarter of 2019 will be able to put one employee through the program at absolutely no cost.**

The course is structured as indicated below and there will be a short self-test of knowledge in the form of a quiz at the end of each week. At the end of the 8 weeks there will also be a multiple choice test of your knowledge and if you gain 50% or more you will be deemed to have achieved the Fundraising Standard and receive a Certificate to that effect.





## Proposed Solution Overview

Based on the conversations between us and Venues Parks and Arts Foundation, we believe that Bloomerang is the ideal choice for your first dedicated donor management provider for the following reasons:

- Manage donors, volunteers and other supporters from one centralized hub, and generate meaningful and comprehensive reports on their activity.
- Monitor your donor retention rate: the most critical fundraising metric that leads to organizational sustainability and revenue growth.
- Track the engagement level of every constituent to easily see who your top supporters are and who may be in danger of lapsing.
- Create an unlimited amount of online forms for donations, event registrations, and email sign-ups for your website.
- Design and print direct mail pieces like solicitations and gift acknowledgements in batches for quick fulfillment.
- Build and deploy emails using our built-in email marketing tool, and get rich analytics on their performance. Constituent interactions with those emails will be recorded on their timeline.
- Allow for unlimited custom field categories for tracking constituent demographics or interests.
- Monitor Twitter for mentions of your brand name and special event hashtags for increased constituent engagement.

## Proposed Cost Justification

As a software as a service provider, it is essential that our solution is not only helpful and easy to use, but economically beneficial to you. Investing in Bloomerang will be a strong financial move for your organization because:



### Increased retention rates increase funding



- Increasing your donor retention by 3% will lead to an extra **\$1,200** in fundraising dollars in the first year alone (3% of 400 donors at an average gift of \$100, providing you with 12 donors you wouldn't otherwise have).



### Right message to the right person secures major gifts



- Sending segmented communications using Bloomerang's intuitive filtering of data, including the engagement level and DonorSearch integration, will allow Venues Parks and Arts Foundation to bring in an additional **\$4,000** in major gifts (one new major gift per quarter in the first year).



### Giving forms on *your* site mean more money



- Using Bloomerang for online donation forms could increase online giving by **\$53** per donation. (Online giving average for "offsite" page is \$95 and integrated online giving page average is \$148). If you can average 2 online donations per month, that works out to **\$1,272** per year!

**...resulting in \$6,472 total cost justification in the first year!**

## Pricing Overview for Venues Parks and Arts Foundation

Your record size of under 500 puts Venues Parks and Arts Foundation into the \$228 per year price bracket with UNLIMITED users, online giving integration, and up to 2,500 emails a month. Your phone support is \$420 annually. Based on our conversation, we are converting and implementing your data for \$600 from the two data tables you provide.

Service	Description	Monthly	Annual
Database	0-500 Records (includes email and online chat support)	\$19.00	\$228.00
Support	Personal Support (unlimited telephone support + 1 hour of one-on-one training per year)	\$35.00	\$420.00
DonorSearch	ProspectView Online Research Tool (Prospect and Wealth Screening)	\$14.85	\$178.20
<b>Total Recurring Fees</b>			\$826.20
		<b>Quantity</b>	<b>One Time Fees</b>
Conversion	Basic Conversion		\$600.00
Bloomerang Academy	Unlimited access to live and on-demand classes		\$0.00
Setup Consulting	Hours of individualized setup consulting (to be used within first 90 days of service)	2 Hours	\$350.00
<b>Total First Year Investment:</b>			<b>\$1,776.20</b>
<i>Total Cost Justification:</i>			<i>+\$6,472.00</i>
<i>Total Dollars Returned to Budget:</i>			<i>+\$4,895.80</i>

1. Recurring fees are billed annually and require completed ACH or Credit Card authorization (**any deviation requires a surcharge**).
2. Custom data conversion costs are billed 50% at start of conversion with balance due fourteen (14) days after initial test data is provided for review or 90 days from contract signing, whichever comes first. Basic conversions are billed 100% upfront.

## Basic Conversion Quote for Venues Parks and Arts Foundation

No one *really* gets excited for a data conversion, but know that we're going to work closely together to make sure that you and your entire team are equipped with the knowledge and resources to set you up for mind-blowing Bloomerang success.

Your Basic Conversion includes *light* data analysis with a Conversion Project Manager, 30 minutes of customized training on your live database and training on best practices for Bloomerang data management utilization, but most of the legwork will be done by you and your team.

Your conversion will include the following:

Item	Cost
<p><b>Basic Conversion Details</b></p> <ul style="list-style-type: none"> <li>• One table of constituent data               <ul style="list-style-type: none"> <li>• Constituent data allows for two addresses, three phone numbers, and three email addresses per constituent.</li> </ul> </li> <li>• One table of donation data               <ul style="list-style-type: none"> <li>• Donation data allows for standard Donation information only – it does not include Pledges, Recurring Donation, Tribute, or Soft Credit information.</li> </ul> </li> <li>• Up to 25 custom fields</li> <li>• Data must be provided to Bloomerang in supplied templates. All data extracted from current solution is the sole responsibility of the organization.</li> </ul>	<p>\$600</p>

1. The price quoted here encompasses conversion of only the outlined data; requests to remove or add additional data sets will result in a new conversion quote.
2. This Basic conversion quote is based on conversion from two tables of data. A table is one sheet in a workbook or one .csv file. Data can only be converted as it is presented, so clean & consistent data is required for an effective Bloomerang database. Bloomerang reserves the right to adjust your conversion pricing as needed if your data does not conform to these assumptions.
3. In cases where required data is not provided, Bloomerang will supply a reasonable value for missing information.
4. Except where expressly requested by the Bloomerang conversion team, your final data set may not contain additional types of data. If additional types of data are added or the types of a data in the existing templates are changed, additional fees may apply.
5. If data does not contain a unique account identifier, Bloomerang may not be able to match up all transactions to the correct constituent. In cases where this results in duplicate constituent accounts or entries that cannot be matched to



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constituent accounts, your organization will be responsible for merging the duplicate records or entering the unmatched entries manually after the conversion has been completed.

## Additional Services

**We offer these services as database enhancements.**

**DonorSearch** - Want to be sure you're asking for the right amount when it comes to major gifts? Want to know that you're not overlooking promising prospects you already know? Yeah, DonorSearch is awesome.

**Deceased Suppression** - It's not a fun thing to talk about, but it can be pretty embarrassing to not know this stuff when you're sending out communications.

**Email Appends** - Need emails? We can help. Have too many that don't come with names or addresses? We can help with that, too.

**Phone Appends** - Track down phone numbers. Or use phone numbers to find names and addresses. It's pretty cool.

Let me know if you want detailed pricing on any of these helpful services.



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## Accepting this proposal

To accept this proposal, please download this proposal and payment authorization form. Sign both, then scan and email or fax them to Bloomerang.

### Venues Parks and Arts Foundation

By: \_\_\_\_\_

*Venues Parks and Arts Foundation Signature*

\_\_\_\_\_  
*Printed*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Date*

### Billing Questions?

Bloomerang, Inc. • Attn:Controller • Phone 317 296 8100 • Email [billing@bloomerang.co](mailto:billing@bloomerang.co)



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## Accepting this proposal 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 as defined here: [Bloomerang.co/tac](http://Bloomerang.co/tac).

### Payment

Upon electronically signing this proposal, you will also need to provide Bloomerang with a payment authorization form. Please complete, scan and email or fax this form back to us.

### Billing Questions?

Bloomerang, Inc. • Attn: Controller • Phone 317 296 8100 • Email [billing@bloomerang.co](mailto:billing@bloomerang.co)





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## Credit Card Payment Authorization for Venues Parks and Arts Foundation

By providing credit card 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.

**Name**(as it appears on the Card) \_\_\_\_\_

**Type of Card**    VISA    MASTERCARD    DISCOVER    AMERICAN EXPRESS

**Last 4 digits of CC #**                      XXXX - XXXX - XXXX - \_\_\_\_\_

**Expiration Date**                              \_\_\_\_/\_\_\_\_

**Security Code**                                \_\_\_\_\_

3 digits from Back of card.  
For AmEx, 4 digits from Front of card.

**Credit Card Billing Address:**              Street \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_ Z.I.P \_\_\_\_\_

Telephone (     ) \_\_\_\_\_ - \_\_\_\_\_

**Cardholder Signature**                      \_\_\_\_\_

\_\_\_\_\_  
*printed*

Date \_\_\_\_/\_\_\_\_/\_\_\_\_



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## ACH Payment Authorization for Venues Parks and Arts Foundation

I (we) hereby authorize Bloomerang, LLC, hereinafter called COMPANY, to initiate debit entries to my (our) [ ] Checking Account / [ ] Savings Account (select one) indicated below at the depository financial institution named below, hereinafter called DEPOSITORY, and to debit the same to such account. I (we) acknowledge that the origination of ACH transactions to my (our) account must comply with the provisions of U.S. law. This authorization is to remain in full force and effect until COMPANY has received written notification from me of its termination in such time and in such manner as to afford COMPANY and DEPOSITORY a reasonable opportunity to act on it.

**Name** \_\_\_\_\_  
*printed*

**Signature** \_\_\_\_\_

**Date** \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Please enter the following as it appears on check or attach copy of voided check:

**Bank Name** \_\_\_\_\_

**Account Name** \_\_\_\_\_  
 (if different from Organization Name)

**Address** Street \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_ Z.I.P \_\_\_\_\_

**9-Digit Routing #** \_\_\_\_\_

**Last 4 Digits of Account #** \_\_\_\_\_

Payment confirmation will be sent to the invoice recipient.

## Bloomerang Subscription Agreement

This **AGREEMENT** governs Your acquisition and use of Our Services. This Agreement was last updated on December 12, 2016.

You can find the most current version here: <http://bloomerang.co/tac>.

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 a 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 effectively immediately. The most current version of this Agreement can be found at [www.bloomerang.co/tac](http://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 and, in the case of a custom conversion, begins either:

(i) Fourteen (14) days after Your data is loaded to Bloomerang for your review or

(ii) 90 days from the date of this Agreement

whichever comes first.

If a custom conversion is not purchased, the initial term begins one (1) day after 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. If You exceed the upper limit of records in Your pricing range, We will bill You at either the rate of one dollar (\$1.00) per twenty-five (25) records or the appropriate pricing level, whichever is less. Additional fees may apply for excessive use

(e.g. email 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.** The start of the Database Service period coincides with the start date of this Agreement's Term as defined in Section 5 and Bloomerang will begin processing your ACH or Credit Card within one (1) day of that date.

**7.4.2 Conversion Services.** For a custom conversion, 50% of all conversion fees will be processed at the time of Your initial order and the remaining 50% will be processed with the payment for the first years' Recurring Fees. For a Basic conversion, all conversion fees will be processed at the time of the initial order.

**7.4.3 Telephone Consulting Services.** Telephone Consulting Services (also referred to as Implementation) included in the Proposal will be processed 100% upfront. Any Telephone Consulting Service not used in the first ninety (90) days will convert from private sessions to public sessions held throughout each month.

**7.4.4 API Telephone Consulting & Services.** Consulting services, and other assistance provided to You, relating to the API will be processed at Our current rate for API-related work. Any of these Services included in the Proposal will be processed 100% upfront. Any such service not used in the first ninety (90) days will convert from private sessions to public sessions held throughout each month.

**7.5 Additional Terms.** We reserve the right to change the Recurring Fees and to institute new fees or charges 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, 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 30 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 thirty (30) 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 access or modify Your Data except to prevent or address service or technical problems or, with Your permission, in connection with customer support matters. We shall not disclose Your Data except as required by law.

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 **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.

10.2 **Email Service.** The "Email Service" consists of sending from or receipt of any electronic message (Email) through the Database Service.

10.2.1 **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

**10.3 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.

**10.3.1 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.

**10.3.2 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.

**10.4 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.



10.5 **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.

10.6 **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).

10.7 **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.

10.8 **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.

10.9 **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.

10.10 **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 Internet Explorer. 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.