

This Order Form, together with the Standard Terms and Conditions attached hereto and incorporated herein by reference, shall constitute a binding legal agreement (this "Agreement"), between GolfNow, LLC and GolfNow G1, LLC (collectively "GolfNow") and City of South Bend ("Partner") (individually, a "Party" and collectively, the "Parties"), and is made and entered into as of the Effective Date set forth below, and shall govern GolfNow's provision of software, marketing, and/or technology services for Partner's golf courses listed below.

<b>GolfNow:</b>  GolfNow, LLC 7580 Golf Channel Drive Orlando, FL 32819	<b>Partner (Legal Entity Name):</b>	City of South Bend
	<b>Partner's Mailing Address:</b>	4200 Miami St South Bend, IN 46614 USA
	<b>Partner's Golf Course List:</b>	Erskine Park Golf Club

<b>Prepared By:</b>	Aaron Kicklighter	<b>Partner's Contact Name:</b>	Tony Stearns
<b>Phone:</b>	(407) 988-5212	<b>Partner's Contact Phone:</b>	n/a
<b>Email:</b>	aaron.kicklighter@golfchannel.com	<b>Partner's Email:</b>	tstearns@southbendin.gov

**TERM AND RENEWALS:** The Term of this Agreement shall be effective as of the last date of the last signature written below (the "Effective Date") and shall expire One (1) Year thereafter and shall be non-cancellable, except as provided herein.

**PRODUCT(S) & SERVICE(S)**

<b>Product</b>			
Golf Course: Erskine Park Golf Club	Plus	Brand	

**TOTAL PAYMENT(S)**

**Cash Payment**

<u>Amount</u>	<u>Paid Each</u>
\$7,500.00	Year


<b>GOLFNOW BOOKING ENGINE</b>	<b>ACKNOWLEDGED</b>
Partner shall be required to use the GolfNow booking engine for the Product(s) and/or Service(s) outlined above.	Yes
<b>ONLINE MARKETING</b>	<b>ACKNOWLEDGED</b>
Does Partner agree to grant GolfNow permission to purchase keywords in search engine marketing that include Partner's name, or any other trade name, trademark or other intellectual property belonging to Partner?	Yes
<b>MILITARY TEE TIMES</b>	<b>ACKNOWLEDGED</b>
Does Partner agree to grant GolfNow permission to add Partner inventory to MilitaryTeeTimes.com at a fifteen percent (15%) discount relative to all inventory released and posted on golfnow.com?	Yes



"GOTTA PLAY" TECHNOLOGY	ACKNOWLEDGED
<p>Does Partner agree to grant GolfNow permission to use GolfNow's "Gotta Play" Technology with the Trade Times provided under this agreement?</p> <p>By selecting "Yes", Partner agrees to the following terms:</p> <ul style="list-style-type: none"> <li>GolfNow's "Gotta Play" Technology will populate pre-paid Trade Time(s) at a mutually agreed upon discount rate when any tee time is selected by a user. Partner and GolfNow shall also mutually agree upon the time window from which a "Gotta Play" round can be sold.</li> <li>All rounds made available on GolfNow.com (including Partner rounds and Trade Times) within the agreed upon time window will be subject to the "Gotta Play" discount. Total "Gotta Play" rounds sold in a given day may not exceed the agreed upon payment as defined in this Agreement. All rounds purchased with the "Gotta Play" discount shall be due exclusively to GolfNow for its own benefit.</li> <li>Any rate/offer that is made available by Partner within the mutually agreed upon "Gotta Play" time window may be sold as a "Gotta Play" round with the mutually agreed upon discount rate. By way of example, if Partner adds a "meal and range balls included" offer to a round during the agreed upon time window, this package will be subject to the "Gotta Play" rate discount, all sales shall be due exclusively to GolfNow, and Partner will honor, in full, all aspects of the package.</li> <li>For the avoidance of doubt, Partner acknowledges and agrees that "Gotta Play" rounds (including rounds with additional offerings) will be paid in full online to GolfNow for its own benefit with Zero Dollars (\$0) due at Partner's golf course.</li> <li>"Gotta Play" rounds will also be available on Partner's website.</li> </ul>	<p>No</p>

**AGREED TO AND ACCEPTED**

Partner Signature: \_\_\_\_\_ Printed Name: \_\_\_\_\_ Date: \_\_\_\_\_


GolfNow Signature:  Printed Name: Jeremiah Heirlin Date: 3/26/19

Board of Park Commissioners



Mark Neal, President

Consuela Hopkins, Vice President



Aimee Buccellator, Member



Dan Farrell, Member

Attest: \_\_\_\_\_

Eva Ennis, Clerk



## Standard Terms and Conditions

"GolfNow" shall mean GolfNow, LLC and GolfNow G1, LLC collectively. Partner shall mean the legal entity listed as "Partner" on the included Order Form. The Parties acknowledge and agree that except as otherwise provided herein, the Standard Terms and Conditions and any applicable Addendum shall be updated and amended from time to time by GolfNow in its sole discretion. Partner's use of the Services and Software hereunder shall be subject at all times to the then current Standard Terms and Conditions and/or applicable Addendum. Should the Standard Terms and Conditions and/or applicable Addendum be amended, GolfNow shall provide Partner with at least sixty (60) days' prior written notice of such change and Partner shall have the option to terminate this Agreement within thirty (30) days of receipt of such notice.

1. **GolfNow Services.** GolfNow shall provide GolfNow's Tee Time Marketing and Technology Services (the "Services") for the purpose of marketing, promoting and selling Partner tee times and/or enhancing Partner's technology. GolfNow shall provide access to Partner tee times to any of its branded websites, partner or affiliated websites, or any other distribution channel. GolfNow shall apply the latest version of the GolfNow Services to the marketing and administration of Partner tee times. GolfNow shall notify Partner in advance in writing of any GolfNow Services updates, and will provide appropriate training and/or materials to Partner concerning all updates. Partner shall provide GolfNow with access to all of the internal and external systems (including third party systems licensed to Partner) necessary for GolfNow to provide the Services. Partner shall honor all tee times reserved through GolfNow's distribution channels and shall treat all golfers originating from GolfNow with proper courtesy and respect. Partner shall make every effort to maintain its inventory in the most up-to-date manner possible, with proper communication to GolfNow regarding changes in availability, Partner conditions, etc. The Parties shall work cooperatively to minimize double-bookings, cancellations and the like.

2. **GolfNow Software.** To the extent that GolfNow provides Partner with any software under this Agreement, GolfNow grants Partner a limited, non-exclusive, non-transferable license to utilize the software as set forth on the included Order Form (the "Software"). Partner may use the Software for the purpose of managing and marketing Partner's golf course properties and shall not sell, sublicense, lend, or otherwise transfer the Software to others. Neither Partner, nor any third party working with or on behalf of Partner, may reverse engineer, decompile, disassemble, or customize the Software including but not limited to, creating any software interface with the Software for the purpose of selling or marketing tee times through the Internet or any Internet site, without the express knowledge and written agreement of

Partner exceed the Data Limit, Partner shall be responsible for any additional charges incurred as a result.

4. **Fees and Pricing.** Partner's payment to GolfNow shall be the "Total Payment" amount set forth on the Order Form attached hereto. Partner shall have the option of selecting one of the 'Flexible Payment Options' outlined within Exhibit A. If Partner elects to charge an online fee for rounds booked on its website, GolfNow shall retain One Dollar and Twenty-Four Cents per round (\$1.24/round), and remit the remainder to Partner. If applicable, Partner shall have the right to approve the price and amount of all non-Trade Time inventory offered in the GolfNow network. GolfNow shall receive tee times and rates equal to or better than those offered by Partner to any third party distribution service.

5. **Term and Termination.** The initial term of this Agreement, along with any applicable Renewal Term, shall be for the period of time as set forth on the attached Order Form (the "Term"). Either Party may immediately terminate this Agreement in the event that the other Party materially breaches this Agreement and fails to cure such breach within thirty (30) days' written notice of such breach. Upon termination of this Agreement, Partner shall delete and return all Software (including all copies), and sign a statement certifying same.

6. **Support and Training.** GolfNow shall provide Partner appropriate levels of training (including access to remote training and on-line resources). Additional in-person training may be provided for an additional fee. Telephone and email support shall be provided to Partner during normal business hours through GolfNow's published phone numbers and email addresses.

7. **Data Security.** Industry standards have been set by the Payment Card Industry Data Security Standards ("PCI Standards") for protection of customer information. GolfNow and Partner both represent and warrant that they will comply with PCI Standards during the entire Term of this Agreement and thereafter with respect to customer data accumulated during the Term, and further agree to adhere to all other applicable standards, laws, rules, and regulations for protection of customer data to which they have access during the entire Term of this Agreement. GolfNow agrees that it will use systems, tools and security and take commercially reasonable steps to ensure Partner customer data hosted by GolfNow is not accessed, redistributed, duplicated, or modified. GolfNow shall be free to provide certain required levels of access to contracted third party vendors that may need access to such data in order to provide services.

8. **Privacy Policies and Terms of Use.** Partner will at all times during the Term: (a) maintain a privacy policy and terms of use that are consistent with applicable laws and industry best



practices (as determined by reference to the practices of other consumer-oriented websites and the promulgations of applicable industry standards bodies); (b) make such policy and terms of use easily accessible to end users; and (c) comply with such policy and terms of use. GolfNow will maintain a separate privacy policy and terms of use on all modules and booking engines that are hosted on Partner's website(s) that pertain solely to the collection and processing of any customer data through these modules and/or booking engines, but not to any other component or function of Partner's website(s).

9. Limited Warranties and Remedies. Both Parties represent and warrant that: (a) they have the authority to enter into this Agreement and that their signatories are duly authorized and empowered to sign this Agreement on their behalf; and (b) they will comply with all applicable laws, ordinances, statutes, regulations and rules, and that they have the power to settle fully and completely all claims, causes of action, demands, charges and liabilities arising out of or relating to this Agreement. Partner represents and warrants to GolfNow that any intellectual property provided to GolfNow by Partner (including without limitation, any photographs, drawings, or works of art) do not violate the rights of any third party. Partner agrees to indemnify GolfNow for any alleged or actual breach of this warranty. GolfNow will provide the Services and the Software in a professional and workmanlike manner and free from any unreasonable defects, and GolfNow will use all reasonable means to fix any defect in the Software or Services that may arise. GolfNow will provide Partner with training on how to use the Software and Services and provide support as needed by Partner. GolfNow shall notify Partner in advance of any Software or Service updates and will provide appropriate training and/or materials to Partner concerning all updates. Partner and its authorized users shall use the Software and Services only in accordance with this Agreement. Aside from these warranties, THE GOLFNOW SOFTWARE AND SERVICES ARE PROVIDED WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE. With respect to malfunctioning Software, GolfNow's entire liability and Partner's exclusive remedy shall be the repair/replacement of the Software.

10. Limitation of Liability. EXCEPT FOR THIRD PARTY LIABILITIES, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY DAMAGES BASED ON LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION OR LOSS OF DATA), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATIONS SHALL

## Standard Terms and Conditions

survey results, general usage data), as well as all customer data obtained independently by GolfNow (e.g., through an end-user booking a tee time at golfnow.com or other affiliated websites) shall be GolfNow's sole property, but may be shared with Partner should the Parties agree and obtain end-user consent for such an arrangement. Partner acknowledges and agrees that GolfNow's sharing of personally identifiable customer information shall at all times be governed by the terms of GolfNow's then current privacy policy and terms of use. The following shall remain the sole and exclusive property of GolfNow: (a) the GolfNow Software and Services (including any of GolfNow's enhancements or upgrades thereto), and all other software and materials developed, conceived, originated, prepared, generated or furnished by GolfNow under this Agreement; and (b) all copyrights, trademarks, patents, trade secrets and any other intellectual property and proprietary rights in and to the foregoing.

12. Dispute Resolution. This Agreement shall be governed, interpreted and construed under the laws of the United States and the State of Indiana without regard to any conflict of law principles. The Parties shall act in good faith and use commercially reasonable efforts to promptly resolve any claim, dispute, controversy or disagreement (each a "Dispute") between the Parties under or related to this Agreement. Any Dispute arising out of this Agreement which cannot be resolved by the Parties shall be resolved in the state or federal courts of St. Joseph County, Indiana, and the prevailing Party shall be entitled to an award of reasonable attorneys' fees and costs.

13. Traffic Assignment. In the event that GolfNow is providing the GolfNow Website for Partner, Partner hereby assigns such traffic numbers to GolfNow for comScore traffic reporting or other applicable reporting services. Partner agrees to execute any and all documentation necessary to effectuate such traffic assignment to GolfNow.

14. Binding Nature; Assignment. This Agreement shall be binding upon GolfNow and Partner, and their respective successors and assigns; provided, however, that neither Party shall assign this Agreement or any of its rights or obligations hereunder, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, without Partner's consent, GolfNow may assign all or part of its rights and obligations under this Agreement to: (i) any of its divisions, affiliates or subsidiaries; (ii) its parent company; or (iii) any of its parent company's divisions, affiliates, or subsidiaries. A sale of substantially all of the stock or assets of a Party, or the reorganization or merger of a Party, shall not constitute an assignment of this Agreement. Any assignment or transfer in violation of this Section shall be





## Standard Terms and Conditions

employees, representatives, agents and advisors to comply with the provisions of this Section 15.

### 16. Trade Time Definitions.

(i) Trade Time with Rolling Terms: A single 'Trade Time' is defined as four (4) individual 9-hole or 18-hole rounds (as applicable) (with or without cart), with player rule one to four (1-4), made available for sale by GolfNow for its own benefit. Each Trade Time shall be made available for sale beginning on the first day of the month and will be made available on subsequent days throughout the month until a maximum of thirty-one (31) Trade Times (or 124 individual 9-hole or 18-hole trade rounds) have been sold each month. The tee times of the individual 9-hole or 18-hole rounds (as applicable) provided as Trade Times shall be posted within the time period set forth on the attached Order Form. GolfNow shall have the ability to sell Trade Times at a price that is at the discretion of GolfNow (except where mutually agreed upon). Trade Times shall be available for purchase on Partner's website, [golfnow.com](http://golfnow.com) and GolfNow's network of partner websites.

(ii) Trade Time with Non-Rolling Terms: Trade Times: A single 'Trade Time' is defined as four (4) individual 9-hole or 18-hole rounds (as applicable) (with or without cart), with player rule one to four (1-4), made available for sale by GolfNow for its own benefit. The tee times of the individual 9-hole or 18-hole rounds (as applicable) provided as Trade Times shall be posted within the time period set forth on the attached Order Form. GolfNow shall have the ability to sell Trade Times at a price that is at the discretion of GolfNow (except where mutually agreed upon). Trade Times shall be available for purchase on Partner's website, [golfnow.com](http://golfnow.com) and GolfNow's network of partner websites.

17. Trade Over-Sell. In the event that GolfNow inadvertently oversells trade rounds due to a technology or interface error, GolfNow shall block future trade rounds to make up for such oversell. If the oversold rounds are valued at more than One Thousand Dollars (\$1,000), GolfNow agrees to issue a refund check to Partner. For the avoidance of doubt, if the oversold rounds are valued at less than One Thousand Dollars (\$1,000), GolfNow shall reimburse Partner via future blocked trade rounds.

18. Miscellaneous. This Agreement shall constitute the entire understanding of the Parties with respect to the subject matter hereof and supersedes any and all prior understandings and agreements, written or oral, relating thereto – between Partner and GolfNow. The Parties acknowledge and represent that they have carefully read and fully understand all of the terms and conditions set forth in this Agreement. The Parties further acknowledge and represent that they enter into this Agreement freely, knowingly and without coercion and based on their own

may be executed in one or more counterparts, with electronic exchange of signatures (e.g., pdf and DocuSign) sufficient to bind the Parties. Notices of either Party as required herein shall be sent to the addresses provided in the attached Order Form.



Partner agrees to indemnify and hold GolfNow and its parent company, and its and their respective officers, directors, employees and agents harmless from and against all claims, suits, liabilities, costs and expenses, including reasonable attorneys' fees and expenses, related to: (i) any breach of this Agreement by Partner; and (ii) GolfNow's execution of the Services in accordance with the terms of this Agreement. Should GolfNow waive the Installation Fee for Partner, and if this Agreement is terminated by Partner prior to the expiration of the Initial Term, then Partner shall pay to GolfNow an early termination fee of Two Thousand Dollars (\$2,000.00), prorated based on the number of months remaining in the Initial Term. GolfNow may collect this early termination fee via Trade Times.

Please initial each box below that is applicable to your service plan:

<p><b>For GolfNow Plus Service, GolfNow Plus LITE, and GolfNow Plus Brand:</b></p> <p>Partner acknowledges and agrees that the GolfNow Plus Team will help to manage and monitor its online brand reputation and Partner further agrees that this will require Partner to provide the GolfNow Plus Team with access to Partner's platforms such as Facebook, Google+, Yahoo and Twitter.</p>	
<p><b>For GolfNow Plus Service, GolfNow Plus Brand, and GolfNow Plus Inventory:</b></p> <p>Partner acknowledges and agrees to the GolfNow Plus early termination policy as detailed above. Partner further agrees that any amount due from early termination may be collected via Trade Times until the total early termination fee has been collected.</p>	
<p><b>For GolfNow Plus Service, GolfNow Plus Brand, GolfNow Plus Inventory, and GolfNow Toolkit:</b></p> <p>Partner acknowledges that it intends to use the GolfNow Plus Website.</p>	

**AGREED TO AND ACCEPTED:**

Partner Signature: \_\_\_\_\_ Printed Name: \_\_\_\_\_ Date: \_\_\_\_\_

Board of Park Commissioners

  
\_\_\_\_\_  
Mark Neal, President

Consuela Hopkins, Vice President

  
\_\_\_\_\_  
Aimee Buccellator, Member

  
\_\_\_\_\_  
Dan Farrell, Member

Attest: \_\_\_\_\_  
Eva Ennis, Clerk

