

## FUNDRAISING SERVICES AGREEMENT

This Fundraising Services Agreement (the "**Agreement**") is entered into as of \_\_\_\_\_, (the "**Effective Date**") by and between Boomerang Giving, a Washington non-profit organization, with an address of 12249 Arrow Point Loop, Bainbridge Island, WA 98110 ("**Boomerang Giving**") and \_\_\_\_\_, a not-for-profit entity organized under the laws of \_\_\_\_\_, with an address of \_\_\_\_\_, (the "**Non-Profit Organization**"). Boomerang Giving and the Non-Profit Organization are individually and collectively referred to herein as "Party" and "Parties." The Parties agree as follows:

### RECITALS

A. Boomerang Giving is a not-for-profit organization granted tax exempted status as an organization described in Section 501(c)(3) of the Internal Revenue Code, which owns and operates a mobile application ("**App**") designed to facilitate local fundraising efforts that engage senior citizens ("**Donors**") in the United States.

B. Boomerang Giving conducts a program whereby Donors may make charitable contributions through the App to participating non-profit organizations that have entered into contractual relationships with Boomerang Giving.

C. The Non-Profit Organization has been established to \_\_\_\_\_  
\_\_\_\_\_  
(the "**Charitable Purpose**").

D. The Non-Profit Organization has been granted tax exempt status as an organization described in Section 501(c)(3) of the Internal Revenue Code and is currently registered to solicit charitable contributions, where required, in all states within the U.S. and its territories (the "**Territory**").

E. Boomerang Giving and the Non-Profit Organization desire to set forth the terms under which Boomerang Giving will provide the App and services to assist the collection of donated funds on behalf of the Non-Profit Organization (the "**Fundraising Program**").

### AGREEMENT

#### 1. FUNDRAISING SERVICES

1.1 Scope. During the Term (as defined in Section 3.1), Boomerang Giving will perform for the Non-Profit Organization the following services (the "**Services**"):

(a) Boomerang Giving will provide an opportunity for potential Donors to donate funds as charitable contributions ("**Donations**") to the Non-Profit Organization through the App in the Territory, as agreed upon by the parties from time to time. The App will be made available only within the Territory. No employees, agents or other persons of Boomerang Giving will solicit contributions in connection with the App. Boomerang Giving will not plan, advise, or consult for the Non-Profit Organization regarding the solicitation of contributions.

(b) Boomerang Giving will present the Non-Profit Organization's mission statement, logo, campaign details, running total of participants and goal (collectively, "**Campaign Details**") on the display screen of the App during the Term as such Campaign Details are provided by the Non-Profit Organization. Such Campaign Details will be provided to Boomerang Giving by the Non-Profit Organization in a format acceptable to Boomerang Giving and will be subject to Boomerang Giving's reasonable approval.

(c) Boomerang Giving's third-party payment processor will remit all Donations made to the Non-Profit Organization through the App. Payment processing services for the Non-Profit Organization on the Boomerang Giving App are provided by a third-party payment processor, Stripe, and are subject to the [Stripe Connected Account Agreement](#), which includes the [Stripe Terms of Service](#) (collectively, the “*Stripe Services Agreement*”). By agreeing to this Agreement or continuing to operate as a Non-Profit Organization on Boomerang Giving’s App, you agree to be bound by the Stripe Services Agreement, as the same may be modified by Stripe from time to time. As a condition of Boomerang Giving enabling payment processing services through Stripe, you agree to provide Boomerang Giving accurate and complete information about you and your organization, and you authorize Boomerang Giving to share it and transaction information related to your use of the payment processing services provided by Stripe.

(d) Stripe will provide electronic receipts to all persons who make donations to the Non-Profit Organization (“*Receipts*”). Stripe will also send electronic notices of donations Stripe receives on the Non-Profit Organization's behalf to the Non-Profit Organization. The Non-Profit Organization will not look to Boomerang Giving for Receipts or notices of donations.

(e) Boomerang Giving, through Stripe, may deduct and withhold from any subsequent transfers of Proceeds any funds previously transferred to the Non-Profit Organization due to donor misdonations or other errors.

1.2 Deep Links to the App. The Non-Profit Organization will use commercially reasonable efforts to promote visibility and use of the App for the Fundraising Program. Subject to Section 4.2 of this Agreement, Boomerang Giving agrees that the Non-Profit may provide deep links to the App in the fundraising communications the Non-Profit Organization sends to its members and potential donors during the Term.

1.3 Web Site Links. Boomerang Giving and the Non-Profit Organization agree to allow the other party to cross-link to their respective web sites, as mutually agreed upon from time to time. The parties understand and agree that the provision and placement of any links to each other’s site is at the sole discretion of each of the parties. If any links are placed, (a) such links will allow users of one of the party’s site to access the other party’s site and may only be used to transport a user from Boomerang Giving’s web site directly to the designated home page of the Non-Profit Organization, and conversely, from the Non-Profit Organization’s web site directly to the designated home page of Boomerang Giving’s web site at [www.boomeranggiving.org](http://www.boomeranggiving.org); (b) neither party may mirror the other party’s home page or any other subsequent pages on the other party’s site; (c) neither party may present the content of the other party’s pages within another page of the linking party’s web site and/or otherwise present the content of the other party’s web site as its own content; and (d) either party may remove the links to the other party’s site, if any, at any time, for any reason, subject to 24 hours’ notice to the other party.

1.4 Use of Funds. The Non-Profit Organization agrees that it will only use the App to raise funds to support its tax-exempt purposes. Any use of the App that does not comply with this subparagraph will result in immediate dis-enrollment of the Non-Profit Organization from the Fundraising Program and termination of this Agreement with or without notice.

1.5 Additional Terms. Boomerang Giving and the Non-Profit Organization hereby agree to comply with the additional terms listed in Exhibit B, as applicable, which are hereby incorporated by reference.

## **2. TRANSFER OF PROCEEDS AND PROCESSING FEES**

2.1 Set-up and License Fees. The Non-Profit Organization agrees to pay the fees for App set-up (“Set-Up Fee”) and App use (“License Fee”) as described in Exhibit C.

2.2 Compiled Donation Reports. As promptly as practicable after the conclusion of each calendar month, or at such other intervals as may be required by applicable law, Non-Profit Organization may access compiled donation reports listing (a) the total number of donations, (b) the aggregate amount of Proceeds transferred to the Non-Profit Organization, (c) any adjustments to the remitted Proceeds reflecting refunds due to consumer misdonaions or other errors, and (d) such other information as Boomerang Giving and the Non-Profit Organization may agree upon from time to time. Additionally, Boomerang Giving will provide the Non-Profit Organization with a yearly report that sets forth such information related to Fundraising Program donations made to the Non-Profit Organization, in such form as Boomerang Giving and the Non-Profit Organization will agree upon from time to time.

2.3 Compliance. Boomerang Giving will, at its own expense, use its best efforts to comply with all state, local, and federal laws, rules, and regulations governing Boomerang Giving's activities and obligations herein, including using its best efforts to comply with all state, Federal and local laws relating to necessary registration with appropriate governmental agencies. Boomerang Giving is providing the App with the intent to act as a local fundraising facilitator and to not act as a professional fundraiser. However, to the extent required by state law, Boomerang Giving will register as a professional fundraiser (paid solicitor, contracted fundraiser, or otherwise as defined in the state) in the Territory. Boomerang Giving's registration numbers in the Territory are set forth at Exhibit A.

### 3. TERM AND TERMINATION; EXCLUSIVITY

3.1 Term. Unless earlier terminated in accordance with Section 3.2, the term of this Agreement (the "**Term**") shall be set forth in Exhibit B.

3.2 Early Termination. The Term of this Agreement will terminate upon the expiration of: (a) immediately after a Party's written notice of intent to terminate the Term; or (b) 15 days after either party gives the other party written notice of a material breach by the other party of any of the terms of this Agreement; provided, that such breach is not cured within such 15 day period.

3.3 Survival; Specific Performance. Sections 2, 3.3, 4.1, 4.3, 4.4, 4.5 and 5 (together with all other provisions of this Agreement that may reasonably be interpreted or construed as surviving termination of the Term) will survive any termination of the Term. Notwithstanding Section 5.1 hereof, specific performance will be available as a remedy for breach of Sections 4.3, 4.4, 4.5 and 5.3 hereof.

### 4. USE OF NAMES, LOGOS, TRADEMARKS, APP AND OTHER PROPRIETARY RIGHTS

4.1 Definitions. For the purposes of this Section 4, the following capitalized terms will have the following defined meanings:

**"Marks"** means any of the logos, trade names, trademarks, trade dress and other product identifiers that Boomerang Giving or the Non-Profit Organization uses to promote and identify its respective products or operations.

**"Materials"** means all designs, text, videos, graphics, pictures, information, data, software, sound files, other files and the selection and arrangement thereof on the App or Boomerang Giving's website, which are the proprietary property of Boomerang Giving or its licensors and are protected by U.S. and international copyright, trademark and other laws.

**"Proprietary Right"** means any copyright, trademark right (including, without limitation, any applications for federal trademark registration) or other intellectual property right that is protected or protectable (whether or not a filing with any government office is made) under the laws of the United States of America, any state of the United States of America, or any foreign country.

#### 4.2 Licenses.

(a) Subject to subparagraph 4.2.(c) below, Boomerang Giving hereby grants to the Non-Profit Organization a limited, nonexclusive, nontransferable, royalty-free license to use Boomerang Giving's Marks during the Term in the Territory in connection with the Non-Profit Organization's promotion to potential donors of the App and the Fundraising Program.

(b) Subject to subparagraph 4.2.(c) below, the Non-Profit Organization hereby grants to Boomerang Giving a limited, nonexclusive, nontransferable, royalty-free license to use the Non-Profit Organization's Marks during the Term in the Territory in connection with Boomerang Giving's promotion to potential donors of the App and the Fundraising Program (including, but not limited to, the right to use the Non-Profit Organization's name and logo on receipts to donors).

(c) A representative sample of any proposed use by one party (the "**Licensee**") of the other party's (the "**Licensor**") Marks, will be submitted, at the Licensee's expense, to the Licensor for approval at least five (5) business days prior to such proposed use. Licensee will not use the Licensor's Marks in any manner not approved in writing in advance by Licensor pursuant to this paragraph.

(d) Boomerang Giving hereby grants to the Non-Profit Organization a limited, non-exclusive, non-transferable, non-sublicensable and revocable license to access, use, publish, and distribute deep links to the App in the fundraising communications the Non-Profit Organization sends to its members and potential donors during the Term and to access and use the App and the Materials. Except as expressly permitted in this subparagraph, the Non-Profit Organization will not reproduce, redistribute, sell, create derivative works from, decompile, reverse engineer or disassemble the App or the Materials, nor take any measures to interfere with or damage the App or the Materials.

#### 4.3 Restrictions; Reservation of Rights.

(a) The licenses granted in Section 4.2 describe the entirety of any right the Licensee may have to use the Licensor's Marks. Without limiting the generality of the foregoing, the Licensee hereunder with respect to any such licensed Marks, will not (1) sublicense or otherwise authorize any third party to use the Marks, (2) use the Marks, for any purpose other than those set forth in Section 4.2, or (3) use the Marks after the expiration or termination of the Term. Except as expressly granted in Section 4.2, Boomerang Giving and the Non-Profit Organization each reserve all right, title and interest in and to their respective Marks and any Proprietary Rights associated with their Marks. All goodwill arising out of the Licensee's use of the Marks will be owned by, and inure to the sole benefit of, the Licensor of the Marks.

(b) Except as expressly permitted in Section 4.2(d), the Non-Profit Organization will not reproduce, redistribute, sell, create derivative works from, decompile, reverse engineer or disassemble the App or the Materials, nor take any measures to interfere with or damage the App or the Materials.

4.4 Protection of the Marks, Materials and the App. Boomerang Giving and the Non-Profit Organization each acknowledge the Licensor's exclusive right, title and interest in the Licensor's Marks. Each of Boomerang Giving and the Non-Profit Organization, as Licensee, will refrain from any act that in any way represents that it has or otherwise owns any rights, title or interest in the Licensor's Marks beyond the limited rights specifically granted herein. Without limitation, neither Boomerang Giving nor the Non-Profit Organization will infringe any Proprietary Right of the Licensor, derogate or compromise any such Proprietary Right, or contest or challenge the validity of any such Proprietary Right.

4.5 Nondisclosure. Boomerang Giving and the Non-Profit Organization acknowledge that each party ("**Discloser**") may disclose certain confidential or proprietary information ("**Confidential Information**") to the other party ("**Recipient**") in the course of performance of this Agreement. The

Recipient will use such Confidential Information solely for the purposes for which it is provided by the Discloser and will not, except as required by law, disclose such Confidential Information to any third party (other than the Recipient's attorneys or professional advisors). The Recipient will protect such Confidential Information against unauthorized use, disclosure, copying or distribution. The obligations under this Section 4.5 will not apply to any (a) information that the Recipient obtains from a third party and is not subject to an unexpired obligation to such third party restricting Recipient's use or disclosure thereof, (b) information that is independently developed or acquired by the Recipient without reliance upon or use of any of the Confidential Information provided by the Discloser, (c) information that is or becomes publicly available through no fault of the Recipient, or (d) disclosure with the prior written consent of the Discloser.

## **5. MISCELLANEOUS**

5.1 Limitation of Liability; Excused Performance. The liability of either party (whether arising in tort, contract or otherwise and notwithstanding any fault, negligence (whether active, passive or imputed), product liability or strict liability of Boomerang Giving or the Non-Profit Organization) under this Agreement or with regard to any Services will be limited to the actual damages resulting from such party's breach of the terms of this Agreement and will not include, among other things, consequential, speculative or punitive damages. Each party's cumulative aggregate liability to the other party hereunder will not, under any circumstances, be greater than the total Proceeds remitted by Boomerang Giving to the Non-Profit Organization during the previous twelve (12) month period. Neither party will be liable for, or be considered in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement caused by any condition, circumstance, event or occurrence beyond such party's reasonable control (including, but not limited to, any fire, storm, flood, wind, or other acts of God or the elements; breakdown of or damage to any equipment, facilities or other property; unavailability of materials, supplies, equipment, transportation, services and other necessary items; and any act or omission of the other party).

5.2 Warranty by the Non-Profit Organization. The Non-Profit Organization represents and warrants that (a) it is and will remain a federally registered charitable organization in the Territory, (b) it has all of the rights to use and permit the use of the Marks as contemplated herein and that such use will in no way infringe upon the rights of any third party, and (c) it has complied with all applicable laws, statutes, rules, regulations and requirements of all governmental and regulatory bodies (including, without limitation, charitable fundraising laws under applicable provincial legislation) to engage in charitable fundraising.

5.3 Indemnification by the Non-Profit Organization. The Non-Profit Organization will at all times defend, indemnify and hold Boomerang Giving harmless from and against any and all claims, losses, damages, liabilities, costs and expenses, including reasonable legal fees (collectively "Claims") arising out of or related to: (a) the use of any Non-Profit Organization's Marks and any promotional materials provided by the Non-Profit Organization, (b) any breach by the Non-Profit Organization of any representation, warranty, or agreement made by the Non-Profit Organization under this Agreement, and (c) the Non-Profit Organization's negligence or willful misconduct.

5.4 Independent Contractor. Boomerang Giving will be an independent contractor (and not an agent, representative or employee of the Non-Profit Organization) in the performance of this Agreement. This Agreement will not be interpreted or construed as creating or evidencing an association, joint venture, partnership or franchise between the parties or imposing any partnership obligation or liability on either party.

5.5 No Assignment. Neither party will assign this Agreement without the prior written consent of the other. Subject to the foregoing restriction on assignment, this Agreement is binding upon, inures to the benefit of, and is enforceable by the parties and their respective successors and assigns.

5.6 Notices. Any notice or other communication under this Agreement given by one party to the other will be deemed properly made if given in writing and delivered in person, by overnight courier or mailed, properly addressed and stamped with the required postage, by U.S. certified mail to the intended recipient at the address appearing on the signature page of this Agreement or by email to the email address appearing on the signature page of this Agreement. Notices will be deemed received three (3) days after deposit with the United States Postal Service, or one (1) business day after deposit with an overnight courier service. Either party may change its address and recipient by giving the other party notice of the change in accordance with this Section 5.4.

5.7 Further Assurances. Upon either party's reasonable request from time to time, the other party hereto will deliver and/or execute such further instruments that are reasonably required to facilitate the transactions contemplated by this Agreement.

5.8 No Waiver; Governing Law; Counterparts; Severability; Entire Agreement. Any terms, covenants or obligations of any party may be waived at any time in writing executed by the party or parties for whose benefit such terms exist. The failure to enforce any provision of this Agreement will not constitute a waiver of any term hereof. No waiver in any one or more instances will be deemed to be a further or continuing waiver of any other condition or any breach of any other terms, covenants or representations. This Agreement will be governed by the laws of the State of Washington, without reference to its choice of laws principles to the contrary. The parties hereby incorporate the recitals as if set forth fully herein. In the event that any provision of this Agreement will be held invalid, illegal or unenforceable under applicable law, the remainder of this Agreement will remain valid and enforceable, unless such invalidity, illegality or unenforceability substantially diminishes the rights and obligations, taken as a whole, of any party. This Agreement sets forth the entire agreement, and supersedes any and all prior agreements, between the parties with respect to the subject matter hereof. It is the complete and exclusive expression of the parties' agreement on the matters contained in this Agreement. All prior contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement, whether written or oral, are expressly merged into and superseded by this Agreement. No amendment or modification of any provision of this Agreement will be valid unless set forth in a written instrument signed by both parties. This Agreement may be executed in counterparts, each of which will be deemed an original, and all of which together constitute one and the same instrument. A signature delivered by facsimile, .pdf or other reliable form of electronic reproduction will be considered an original for purposes of this Agreement.

*[Signature Page Follows]*

IN WITNESS WHEREOF, each party has caused this Agreement to be executed by its authorized representatives, and as required by applicable law, as of the Effective Date.

<b>Boomerang Giving</b>	<b>Non-Profit Organization:</b>
	_____
<b>By:</b> _____	<b>By:</b> _____
<b>Name:</b> _____	<b>Name:</b> _____
<b>Title:</b> _____	<b>Title:</b> _____
<b>Email:</b> _____	<b>Email:</b> _____
<b>Signature Date:</b> _____	<b>Signature Date:</b> _____
	and
	<b>By:</b> _____
	<b>Name:</b> _____
	<b>Title:</b> _____
	<b>Email:</b> _____
	<b>Signature Date:</b> _____

**EXHIBIT A  
TO FUNDRAISING SERVICES AGREEMENT**

**Boomerang Giving Information**

Boomerang Giving's registration numbers in the Territory

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**EXHIBIT B**  
**TO FUNDRAISING SERVICES AGREEMENT**

**Term of the Fundraising Program**

Parties agree that the Term shall run from the Effective Date to December 31, 2016.

**Additional Terms**

**EXHIBIT C**  
**TO FUNDRAISING SERVICES AGREEMENT**

**App Set-Up and License Fees**

The Non-Profit Organization will pay the following Fundraising Program Set-Up Fee based on the Non-Profit Organization's annual budget:

<b>Non-Profit Organization's Annual Budget (USD)</b>	<b>Set-Up Fee (USD)</b>
Up to \$999,999	\$100
\$1,000,000 - \$2,999,999	\$200
\$3,000,000 and above	\$300

Boomerang Giving will provide access to the App after the Non-Profit Organization pays the Setup Fee.

The Non-Profit Organization will pay a License Fee based on the total donations received by the organization through the App during the Term as outlined in the table below:

<b>Total Amount Received on Behalf of the Nonprofit Organization During the Term</b>	<b>Percentage of Donations to the Nonprofit Organization Boomerang Giving Will Retain</b>
Up to the first \$2,499	No fee
\$2,500 and above	3%

The Non-Profit Organization will not be required to pay Boomerang Giving any other expenses related to the Fundraising Program (other than the Set-Up and License Fees), except as may be agreed upon by the parties in writing.

Boomerang Giving will issue an invoice for the License Fee to the Non-Profit Organization on a quarterly basis. Non-Profit Organization agrees that payment terms will be net 30.