

RESOLUTION NO. 2020-123

RESOLUTION OF THE VILLAGE BOARD OF THE VILLAGE OF CALEDONIA TO APPROVE AN AGREEMENT WITH BRYCER, LLC

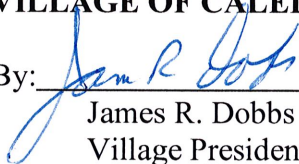
The Village Board for the Village of Caledonia resolves as follows:

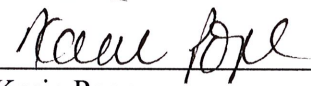
WHEREAS, the Fire Chief has recommended the use of a service provider named Brycer, LLC to provide the Village with the service product named "Compliance Engine", a fire inspection and record retention system to help ensure fire code compliance (the "Solution").

NOW, THEREFORE, BE IT RESOLVED by the Caledonia Village Board that the Agreement between the Village of Caledonia and Brycer, LLC as set forth in **Exhibit A** attached hereto and incorporated herein (the "Agreement"), is hereby authorized and approved and the Village President and Village Clerk are authorized to execute said agreement and Village staff are authorized to take all such actions necessary in furtherance of the Agreement.

Adopted by the Village Board of the Village of Caledonia, Racine County, Wisconsin, this 7th day of December, 2020.

VILLAGE OF CALEDONIA

By: 
James R. Dobbs
Village President

Attest: 
Karie Pope
Village Clerk

770272..001(864)

BRYCER, LLC's Service Agreement for the Compliance Engine

November __, 2020

This Agreement is made and entered into on _____, 2020 (the "Effective Date"), and provides the terms by which Brycer, LLC ("Brycer") shall provide the Village of Caledonia ("Client") (herein collectively referred to as the "Parties") with the service product named "Compliance Engine", an inspection and record retention system (the "Solution"). The use of the Solution and all matters between Brycer and Client will be subject to the standard "Terms and Conditions" attached to this proposal as Exhibit A. The basic terms are as follows:

1. **Term:** Brycer shall provide Client with the Solution for three years, commencing _____ (the "Initial Term"). Thereafter, this Agreement shall automatically renew for successive three-year periods unless terminated by Brycer or Client in writing at least ninety (90) days prior to the expiration of the current Term (the "Renewal Term"). The Initial Term and each subsequent Renewal Term are hereafter collectively referred to as the "Term." Following the expiration or termination of the Term (as provided in this agreement and the Terms and Conditions), Client shall stop using the Solution; provided, however, Brycer shall make available, and Client shall have the right to download, Client's data from the Solution for a period of ninety (90) days after the expiration or termination of the Term. Client shall have the right to terminate this agreement at any time upon giving ninety (90) days written notice to Brycer.
2. **Fees:** Client shall not pay any fees for use of the Solution. Brycer shall collect all fees due and payable by third party inspectors in connection with activities relating to the Solution. Client and Brycer shall agree on any fee schedule before implementation.
3. **Brycer Responsibilities:** During the Term, Brycer shall be responsible for the following in connection with Client's use of the Solution:
 - **Services provided.** Brycer shall provide the following as a part of the Solution:
 - (a) Collect, organize, and categorize third-party inspection reports;
 - (b) Track code for compliance; and
 - (c) Follow up phone calls on inspections.
 - **Availability.** Brycer shall make the Solution available to Client as set forth on Exhibit B. The maintenance schedule and minimum service levels for the Solution are set forth on Exhibit B.
 - **Service Level.** Brycer shall provide commercially reasonable levels of customer service with respect to the Solution to all third parties who transact business with Client and access the Solution.
 - **Backup.** Brycer shall backup the database used in connection with the Solution to a separate server located within the same web hosting firm which the Solution is being hosted on a real time basis. Upon request by Client (which can be no more than once a month) or made prior to or within sixty (60) days after the effective date of termination of the Term, Brycer will make available to Client a complete and secure (i.e. encrypted and appropriately authenticated) download file of Client data in XML format including all schema and attachments in their native format. Brycer shall maintain appropriate administrative, physical and technical safeguards for protection of the security, confidentiality and integrity of Client data. Brycer shall not modify Client data or disclose Client data except as required by law.
 - **Retention of Information.** Brycer will maintain all information entered into the database by third party inspectors for at least seven (7) years from the time such information is entered into the database.
 - **Notices.** Brycer will be responsible for generating and delivering the following notices to third parties in connection with the Solution:
 - (a) Reminders of upcoming inspections that are due;
 - (b) Notices that an inspection is past due; and

- (c) Notices of completed inspection reports which contain one or more deficiencies.
 - **Call Center.** Phone calls by Brycer on behalf of the Client to the property for EACH life-safety system overdue for service based on dates automatically tracked within the TCE database. Brycer is not an agent of the Client and all scripts for the overdue calls will be approved by the Client.
 - **Updates and Enhancements.** In the event Brycer releases any updates, corrections, or enhancements to the Solution during the Term, Brycer shall promptly provide such updates or corrections to Client free of any charge or fee.
4. **Client Responsibilities:** During the Term, Client shall be responsible for the following in connection with Client's use of the Solution:
- **Operating System.** Client shall be solely responsible for providing a proper operating environment, including computer hardware or other equipment and software, for any portion of the Solution installed on the Client's equipment (the "Client Access Software") and for the installation of network connections to the Internet. In addition to any other Client Access Software requirements, Client must use version Internet Explorer 11.0, Edge, Firefox version 37, Chrome 40 or Safari 7.1 (or more recent versions), in addition to having a .pdf reader installed on machines to view attachments.
 - **Training.** Client shall allow Brycer at Client's facilities to train all applicable personnel of Client on the use of the Solution.
 - **Information.** Client shall promptly provide Brycer with all appropriate information necessary for Brycer to create the database for the Solution, including without limitation:
 - (a) All commercial building addresses within the Village for Brycer's initial upload; and
 - (b) Quarterly updates to in a format acceptable to Brycer in its discretion.
 - **Enforcement.** Client shall take all actions necessary to require (e.g. resolution, ordinance, fire policy, code amendment) the use of the Solution by third party inspection companies.
 - **Reports.** Client will require all compliant and deficient test results to be submitted.
5. **Ownership and Protection of Data.** Client owns all the data provided by Client and received from third party contractors for Client. Brycer shall maintain appropriate administrative, physical and technical safeguards for protection of the security, confidentiality and integrity of Client's data.
6. **Termination.**
- This Agreement may be terminated for cause in the event Brycer does not cure a material breach of this Agreement within thirty (30) days' of receiving written notice of such breach from Client.
 - This Agreement 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. Nothing in this paragraph shall limit the ability of either party to file a claim for amounts owed under this Agreement, injury or damages related to such terminations.
 - Because a breach of any of the provisions of this Agreement will irreparably harm the non-breaching party, Client and Brycer agree that if a party breaches any of its obligations thereunder, the non-breaching 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. The Client does not waive any limitations of municipal liability or municipal immunities provided for by the Wisconsin Statutes and/or Wisconsin case law.
 - 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 or refunds and remedies for breach of this Agreement shall survive the expiration or termination of this Agreement or any Statement of Work.

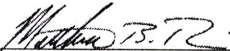
7. **Applicable and Governing Law Clause.** The validity, construction and enforcement of this Agreement shall be determined in accordance with the laws of the State of Wisconsin, without reference to its conflicts of laws principles, and any action (whether by arbitration or in court) arising under this Agreement shall be brought exclusively in the State of Wisconsin. Both Parties consent to the personal jurisdiction of the state and federal courts located in Wisconsin. Venue shall be in the Racine County Circuit Court. Brycer specifically acknowledges and agrees that Client and its records are bound by the public records laws of the State of Wisconsin and that public records created under this Agreement, as that term is defined by Wisconsin Statute, whether in possession of the Client or Brycer shall be maintained and disclosed in accordance with Wisconsin law by Brycer and by Client.
8. **Non-Collusion.** Brycer hereby represents and agrees that it has in no way entered into any contingent fee arrangement with any firm, employee of Client, or other person or entity concerning the obtaining of this Agreement. In addition, Brycer agrees that a duly authorized Brycer representative will sign a non-collusion affidavit, in a form acceptable to Client, that Brycer has received from Client no incentive or special payments, or considerations not related to the provision of the system described in this Agreement.
9. **Warranty**
 - Each Party represents and warrants to the other that it has full power and authority to enter into and perform this Agreement and the person signing this Agreement on behalf of each party hereto has been properly authorized and empowered to enter into this Agreement.
 - 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 Brycer 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 Brycer provides Services under this Agreement.
 - Brycer warrants that any Services that it provides to Client under this Agreement will be performed in accordance with generally accepted industry standards of care and competence.
10. **Business License.** In the event a local business license is required for Brycer to perform series hereunder, Client will notify Brycer prior to the Effective Date and will provide Brycer with the necessary paperwork and/or contact information.
11. **Notices.** All notices or communications required or permitted as a part of this Agreement shall be in writing (unless another verifiable medium is expressly authorized) 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 below.

Brycer, LLC
4355 Weaver Parkway
Suite 230
Warrenville, IL 60555

Village of Caledonia
Attn: Village Clerk
5043 Chester Lane
Racine, WI 53402

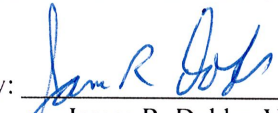
12. **Survival Clause.** All duties and responsibilities of any party that, either expressly or by their nature, extend into the future, shall extend beyond and survive the end of the Term or cancellation of this Agreement.
13. **Superseding Clause.** In the event a conflict, contradiction, or disagreement between this Agreement and the Terms and Conditions attached as Exhibit A exists, this Agreement shall control.

BRYCER, LLC

By: 
Its: President

Acknowledged and Agreed to this
7th day of December, 2020 :

VILLAGE OF CALEDONIA

By: 
James R. Dobbs, Village President

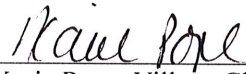
Attest: 
Karie Pope, Village Clerk

Exhibit A

Terms and Conditions

Any capitalized terms not defined in these Terms and Conditions shall have the meaning assigned to it in that certain Letter Agreement attached hereto by and between Brycer, LLC and Client (the "Agreement").

1. Restrictions on Use. Client shall not copy, distribute, create derivative works of or modify the Solution in any way. Client agrees that: (a) it shall only permit its officers and employees (collectively, the "Authorized Users") to use the Solution for the benefit of Client; (b) it shall use commercially reasonable efforts to prevent the unauthorized use or disclosure of the Solution; (c) it shall not sell, resell, rent or lease the Solution; (d) it shall not use the Solution to store or transmit infringing or otherwise unlawful or tortious material, or to store or transmit material in violation of third party rights; (e) it shall not interfere with or disrupt the integrity or performance of the Solution or third-party data contained therein; (f) it shall not reverse engineer, translate, disassemble, decompile or otherwise attempt to create any source code which is derived from the Solution (g) it shall not permit anyone other than the Authorized Users to view or use the Solution and any screen shots of the Solution and (h) it shall not disclose the features of the Solution to anyone other than the Authorized Users. Client is responsible for all actions taken by the Authorized Users in connection with the Solution.
2. Proprietary Rights. All right, title and interest in and to the Solution, the features of the Solution and images of the Solution as well any and all derivative works or modifications thereof (the "Derivative Works"), and any accompanying documentation, manuals or other materials used or supplied under this Agreement or with respect to the Solution or Derivative Works (the "Documentation"), and any reproductions works made thereof, remain with Brycer. Client shall not remove any product identification or notices of such proprietary rights from the Solution. Client acknowledges and agrees that, except for the limited use rights established hereunder, Client has no right, title or interest in the Solution, the Derivative Works or the Documentation.
3. Independent Contractor. Nothing in the Agreement may be construed or interpreted as constituting either party hereto as the agent, principal, employee or joint venturer of the other. Each of Client and Brycer is an independent contractor. Neither may assume, either directly or indirectly, any liability of or for the other party. Neither party has the authority to bind or obligate the other party and neither party may represent that it has such authority.
4. Reservation of Rights. Brycer reserves the right, in its sole discretion and with prior notice to Client, to discontinue, add, adapt, or otherwise modify any design or specification of the Solution and/or Brycer's policies, procedures, and requirements specified or related hereto. All rights not expressly granted to Client are reserved to Brycer, including the right to provide all or any part of the Solution to other parties.
5. Use of Logos. During the term of this Agreement, Brycer shall have the right to use Client's logos for the purpose of providing the Solution to Client.
6. Confidential Information. Brycer and Client acknowledge and agree that in providing the Solution, Brycer and Client, as the case may be, may disclose to the other party certain confidential, proprietary trade secret information ("Confidential Information"). Confidential Information may include, but is not limited to, the Solution, computer programs, flowcharts, diagrams, manuals, schematics, development tools, specifications, design documents, marketing information, financial information or business plans. Each party agrees that it will not, without the express prior written consent of the other party, disclose any Confidential Information or any part thereof to any third party. Notwithstanding the foregoing, the parties acknowledge that Client and Brycer shall be permitted to comply with any all federal and state laws concerning disclosure provided that any such required disclosure will not include any of Brycer's screen shots. The disclosing party shall provide prior written notice of any required disclosure of the nondisclosing party's Confidential Information to the nondisclosing party and shall disclose only the information that is required to be disclosed by law. In the event that Client requests from Brycer any reports or other information for purposes of complying with federal and state disclosure laws, Brycer shall provide such information within five business day following such request. Confidential Information excludes information: (a) that is or becomes generally available to the public through no fault of the receiving party; (b) that is rightfully received by the receiving party from a third party

without limitation as to its use; or (c) that is independently developed by receiving party without use of any Confidential Information. At the termination of this Agreement, each party will return the other party all Confidential Information of the other party. Each party also agrees that it shall not duplicate, translate, modify, copy, printout, disassemble, decompile or otherwise tamper with any Confidential Information of the other party or any firmware, circuit board or software provided therewith.

7. Brycer Warranty. Brycer represents and warrants to Client that Brycer has all rights necessary in and to any patent, copyright, trademark, service mark or other intellectual property right used in, or associated with, the Solution, and that Brycer is duly authorized to enter into this Agreement and provide the Solution to Client pursuant to this Agreement.

8. Disclaimer. All information entered into Brycer's database is produced by third party inspectors and their agents. **THEREFORE, BRYCER SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY AS TO THE ACCURACY OR COMPLETENESS OF ANY INFORMATION ENTERED INTO BRYCER'S DATABASE BY EITHER CLIENT OR THIRD PARTY INSPECTORS. EXCEPT AS SET FORTH IN SECTION 7, BRYCER MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SOLUTION OR ANY OTHER INFORMATION AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ARE HEREBY DISCLAIMED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. BRYCER'S SOLE LIABILITY FOR BREACH OF THE REPRESENTATION AND WARRANTY SET FORTH IN SECTION 7, AND CLIENT'S SOLE REMEDY, SHALL BE THAT BRYCER SHALL INDEMNIFY AND HOLD RECIPIENT HARMLESS FROM AND AGAINST ANY LOSS, SUIT, DAMAGE, CLAIM OR DEFENSE ARISING OUT OF BREACH OF THE REPRESENTATION AND WARRANTY.**

9. LIMITATION ON DAMAGES. **BRYCER SHALL ONLY BE LIABLE TO CLIENT FOR DIRECT DAMAGES PURSUANT TO THE**

AGREEMENT. EXCEPT AS OTHERWISE PROVIDED IN SECTION 7, IN NO EVENT SHALL BRYCER BE LIABLE FOR OR OBLIGATED IN ANY MANNER FOR SPECIAL, CONSEQUENTIAL, OR INDIRECT DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF USE, LOSS OF PROFITS OR SYSTEM DOWNTIME. CLIENT ACKNOWLEDGES AND AGREES THAT IN NO CASE SHALL BRYCER'S LIABILITY FOR ANY LOSS OF DATA OR DATA INTEGRITY EXCEED THE REPLACEMENT COST OF THE MEDIA ON WHICH THE DATA WAS STORED.

10. Risks Inherent to Internet. Client acknowledges that: (a) the Internet is a worldwide network of computers, (b) communication on the Internet may not be secure, (c) the Internet is beyond the control of Brycer, and (d) Brycer does not own, operate or manage the Internet. Client also acknowledges that there are inherent risks associated with using the Solution, including but not limited to the risk of breach of security, the risk of exposure to computer viruses and the risk of interception, distortion, or loss of communications. Client assumes these risks knowingly and voluntarily releases Brycer from all liability from all such risks. Not in limitation of the foregoing, Client hereby assumes the risk, and Brycer shall have no responsibility or liability of any kind hereunder, for: (1) errors in the Solution resulting from misuse, negligence, revision, modification, or improper use of all or any part of the Solution by any entity other than Brycer or its authorized representatives; (2) any version of the Solution other than the then-current unmodified version provided to Client; (3) Client's failure to timely or correctly install any updates to the Client Access Software; (4) problems caused by connecting or failure to connect to the Internet; (5) failure to provide and maintain the technical and connectivity configurations for the use and operation of the Solution that meet Brycer's recommended requirements; (6) nonconformities resulting from or problems to or caused by non-Brycer products or services; or (7) data or data input, output, accuracy, and suitability, which shall be deemed under Client's exclusive control.

11. Indemnity. Brycer (the "Indemnifying Party") will defend and indemnify Client against any damages, losses, liabilities, causes of action, costs or expenses (including reasonable attorneys' fees) arising from Brycer's breach of this Agreement, gross negligence or

intentional misconduct. Client will defend and indemnify Brycer against any damages, losses, liabilities, costs or expenses (including reasonable attorneys' fees) arising from Client's breach of this Agreement, gross negligence or intentional misconduct. Client acknowledges that Brycer does not create any of the data and information included in the Solution and is not responsible for and does not assess or make any suggestions or recommendations with respect to any such data or information. Client will defend and indemnify Brycer against any damages, losses, liabilities, costs or expenses (including reasonable attorneys' fees), claims, demands, suits or proceedings made or brought against Brycer by a third party in connection with Client's or an Authorized User's use of the Solution, or any action or inaction taken by a third party, including, but not limited to, third party inspectors, in connection with such third party providing services for Client or otherwise at Client's or an Authorized User's request or direction.

12. Breach. Brycer shall have the right to terminate or suspend this Agreement, and all of Client's rights hereunder, immediately upon delivering written notice to Client detailing Client's breach of any provision of this Agreement. If Client cures such breach within 30 days of receiving written notice thereof, Brycer shall restore the Solution and Client shall pay any fees or costs incurred by Brycer in connection with the restoration of the Solution.

13. Illegal Payments. Client acknowledges and agrees that it has not received or been offered any illegal or improper bribe, kickback, payment, gift or anything of value from any employee or agent of Brycer in connection with the Agreement.

14. Beneficiaries. There are no third party beneficiaries to the Agreement.

15. Force Majeure. Neither party shall be responsible for any failure to perform due to unforeseen, non-commercial circumstances beyond its reasonable control, including but not limited to acts of God, war, riot, embargoes, acts of civil or military authorities, fire, floods, earthquakes, blackouts, accidents, or strikes. In the event of any such delay, any applicable period of time for action by said party may be deferred for a period of time equal to the time of such delay, except that a party's failure to make any payment when due hereunder shall not be so excused.

16. Notices. All notices required in the Agreement shall be effective: (a) if given personally, upon receipt; (b) if given by facsimile or electronic mail, when such notice is transmitted and confirmation of receipt obtained; (c) if mailed by certified mail, postage prepaid, to the last known address of each party, three business days after mailing; or (d) if delivered to a nationally recognized overnight courier service, one business day after delivery.

17. JURISDICTION AND VENUE. THE AGREEMENT SHALL BE GOVERNED BY, CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, AND ENFORCEABLE UNDER, THE LAWS OF THE STATE IN WHICH CLIENT EXISTS APPLICABLE TO CONTRACTS MADE IN SUCH STATE AND THAT ARE TO BE WHOLLY PERFORMED IN SUCH STATE WITHOUT REFERENCE TO THE CHOICE-OF-LAW PRINCIPLES OF SUCH STATE. THE PARTIES IRREVOCABLY AGREE THAT ALL ACTIONS OR PROCEEDINGS IN ANY WAY, MANNER OR RESPECT ARISING OUT OF OR FROM OR RELATED TO THE AGREEMENT SHALL BE LITIGATED ONLY IN COURTS LOCATED WITHIN THE STATE IN WHICH CLIENT EXISTS. THE PARTIES HEREBY CONSENT AND SUBMIT TO THE EXCLUSIVE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURT LOCATED WITHIN SAID STATE. THE PARTIES HEREBY WAIVE ANY RIGHTS THEY MAY HAVE TO TRANSFER OR CHANGE VENUE OF ANY SUCH ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT. THE PARTIES WAIVE ANY RIGHT TO TRIAL BY JURY ON ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THE AGREEMENT, AND AGREE THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

18. Attorneys' Fees. The prevailing party in any proceeding in connection with the Agreement shall be entitled to recover from the non-prevailing party all costs and expenses, including without limitation, reasonable attorneys' and paralegals' fees and costs incurred by such party in connection with any such proceeding.

19. Entire Agreement. The Agreement sets out the entire agreement between the parties relative to the subject matter hereof and supersedes all prior or contemporaneous agreements or representations, oral or written.

20. Amendment. The Agreement may not be altered or modified, except by written amendment which expressly refers to the Agreement and which is duly executed by authorized representatives of both parties. The waiver or failure by either party to exercise or enforce any right provided for in the Agreement shall not be deemed a waiver of any further right under the

Agreement. Any provision of the Agreement held to be invalid under applicable law shall not render the Agreement invalid as a whole, and in such an event, such provision shall be interpreted so as to best accomplish the intent of the parties within the limits of applicable law. The Agreement may be executed by facsimile and in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

21. Expiration. The rights and obligations contained in these Terms and Conditions shall survive any expiration or termination of the Agreement.

Exhibit B

Maintenance Schedule and Minimum Service Levels

1. **Uptime and Maintenance.**

The Solution shall be available 24 hours per day during the term of this Agreement. The Solution shall be fully functional, timely and accessible by Client at least 99.5% of the time or better and Brycer shall use reasonable efforts to provide Client with advance notice of any unscheduled downtime.

2. **Response Time.**

Brycer shall respond to telephone calls from Client within two hours of the call and/or message and all emails from Client within two hours of the receipt of the email.

3. **Customer Support**

Customer support hours are 24/7/365. The toll free number is 1-855-279-2371

Brycer will assign client a dedicated customer representative with direct access to their email and work number.