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202-659-6934

January 23, 2023

Roy Q. Lockett, Esq.
Acting Assistant General Counsel
Complaints Examination & Legal Administration
Federal Election Commission
1050 First Street NE
Washington, DC 20463
VIA EMAIL: CELA@fec.gov**Re: MUR 8066; Response to Complaint from Mike McCauley**

Dear Mr. Lockett:

We write as counsel to Mike McCauley in response to the complaint filed by Summur-Rayn Berrett on September 12, 2022 (the “Complaint”). Through the Complaint, Ms. Berrett seeks to involve the Federal Election Commission (the “Commission”) in a commercial dispute between her father’s campaign committee, Burgess 4 Utah (the “Committee”), the principal campaign committee for Congressman Burgess Owens in Utah’s Fourth Congressional District, and Mr. McCauley, who is the former treasurer of the Committee. For the reasons stated below, the Commission should follow the course it has taken in analogous cases and not inject itself into what is clearly a private, commercial dispute between two parties. Furthermore, under the Commission’s Enforcement Priority System, this matter does not warrant further administrative enforcement proceedings and should be promptly dismissed.

I. Factual Background

Mike McCauley is founder and owner of McCauley and Associates P.C., a full service political compliance firm based in Salt Lake City, Utah, that provides compliance, reporting, caging, and other services to an array of political and nonprofit clients.¹ Since 1998, Mr. McCauley has provided political consulting and compliance services to numerous candidates, state party committees, nonconnected committees, Super PACs, and corporate PACs. A Certified Public Accountant, Mr. McCauley is a member in good standing of the American Institute of Certified Public Accountants and the Utah Association of Certified Public Accountants, and is an Associate Member of the Certified Fraud Examiners.

¹ See Website for McCauley & Associates P.C., <https://politicalcomplianceservices.com/>.

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In November 2019, Mr. Owens announced his intention to run for Congress in Utah's Fourth Congressional District. He engaged McCauley and Associates to provide compliance consulting services to his campaign at that time. McCauley and Associates filed Mr. Owens' statement of candidacy and a statement of organization for his campaign committee on November 4, 2019. For the first eight months of the campaign, Mr. Owens was reasonably successful in fundraising for the campaign but had not yet consolidated support due to the fact that he was facing three other viable Republicans in the June 30, 2020 primary election, including a state senator who ultimately received more votes at the Utah Republican Party's nominating convention on April 25, 2020. Nevertheless, Mr. Owens wound up winning the June 30, 2020 primary election by twenty points.

Mr. Owens' primary victory combined with his name identification from his NFL playing days and regular national television appearances resulted in a significant uptick in fundraising after the primary. From the inception of the campaign in November 2019 through May 2020, the campaign raised contributions from a total of 2,454 donors. However, from June 2020 through the date of the general election on November 3, 2020, the Owens campaign raised contributions from **74,651 donors**, the vast majority of which was received in July through September 2020.

As is often the case when a first-time candidate runs for Congress, the Owens campaign sought to be frugal with its compliance costs during the primary election. Accordingly, McCauley and Associates tracked and reported the campaign's contributions and disbursements using the Commission's free FECFile software, where Mr. McCauley and his team had to manually input all contributor information. This process worked fine for the first eight months of the campaign, where there was a manageable amount of activity to input and report. However, after the primary election on June 30, 2020, Mr. McCauley foresaw a drastic influx in fundraising and sought the campaign's approval to purchase compliance software to handle the sheer number of contributions coming in.

After receiving approval to acquire compliance and reporting software from the campaign, Mr. McCauley engaged in discussions with representatives for CMDI to purchase its Crimson software. Mr. McCauley spoke with Jack Blakely, a sales manager for CMDI on July 1, 2020, the day after Mr. Owens won the primary election, to discuss CMDI's services and the Crimson software. Mr. Blakely emailed Mr. McCauley the following day with some pricing options, and assured Mr. McCauley that the CMDI team was "very proficient at FECfile conversions, so should be able to have the campaign up and running within 10 business days if they do want to come over."² Mr. McCauley had expressed to Mr. Blakely during their phone call the need to quickly and seamlessly convert the campaign's existing FECFile database into the Crimson system so he and his team would not fall behind in tracking the thousands of contributors that were beginning to come in daily at that point.

² Email from J. Blakely to M. McCauley (July 2, 2020) (attached as Exhibit A)

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Mr. Blakely provided a standard contract to Mr. McCauley in his follow-up email on July 2, 2020,³ and Mr. McCauley promptly presented the agreement to the campaign for its approval. Despite Mr. McCauley emphasizing the critical need for the software to the campaign, the campaign and its fundraisers dragged its heels for a month and did not ultimately authorize Mr. McCauley to execute the CMDI contract until July 30, 2020.⁴ Meanwhile, Mr. McCauley and his team were forced to make do with the campaign's existing and ill-equipped FECFile database at a time when thousands of contributions were coming in every day. With that said, the month-long delay by the campaign in approving the CMDI contract was not the only factor that created issues with the campaign's reporting and hindered Mr. McCauley's ability to perform his treasurer duties despite his best efforts.

Following execution of the CMDI contract on July 30, 2020, Mr. Blakely connected Mr. McCauley through email with CMDI employees, Rachel Bryant and Joe Carothers, who he said would be "managing the conversion process and initial training for the campaign and will also be your ongoing support contacts."⁵ Mr. McCauley promptly responded by sending Ms. Bryant and Mr. Carothers the Owens campaign FECFile database (i.e. DCf file) on August 3, 2020, so they could import the FECFile data into the Crimson software and assign users for the campaign's Crimson account.⁶

Unfortunately, CMDI did not perform any data or records integration for almost two months due to errors with the campaign's WinRed imports, which CMDI programmers were unable to pinpoint and fix until September 30, 2020.⁷ It was not until then—just fifteen days before the October Quarterly report was due—that CMDI was even able to begin importing the campaign's records into the Crimson system. Yet, CMDI offered to import only 18,000 records, representing only July activity, instead of the close to 75,000 records that had accrued from July through the end of September. As Mr. Blakely had previously made clear on July 2, 2020, the import and integration process would take ten business days, and likely longer with so many records. It would have therefore been unrealistic to expect CMDI to conclude its integration in time for Mr. McCauley and his team to have time to accurately complete the October Quarterly Report consisting of over 75,000 records. In light of the campaign's delay in approving the CMDI contract and CMDI's inability to quickly fix errors and integrate the campaign's data, Mr. McCauley and his team were left having to use insufficient FECFile software at a time when the campaign was being deluged with thousands of reportable contributions.

³ *Id.* CMDI unexecuted contract attached as Exhibit B.

⁴ Email from M. McCauley to J. Blakely (July 30, 2020) (attached as Exhibit C).

⁵ Email from J. Blakely to M. McCauley (Aug. 3, 2020) (attached as Exhibit D).

⁶ Email from M. McCauley to J. Carothers (Aug. 3, 2020) (attached as Exhibit E).

⁷ Email from S. Amaya to M. McCauley and S. McCauley (Sep. 30, 2020) (attached as Exhibit F).

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All of these issues occurred in the third and fourth quarter of 2020, which coincides with the reporting periods at the crux of the RAD referral and enforcement matter⁸ that was the impetus for Ms. Berrett filing the current complaint. However, the campaign was fully aware of these delays and the CMDI integration issues and understood that they could jeopardize the accuracy of the campaign's reports during these periods and make it impossible for Mr. McCauley's team to account for the sheer volume of contributions despite their best efforts.

II. Legal Analysis

On January 3, 2005, the Commission issued a Policy Statement on the Naming of Treasurers in Enforcement Matters, which addressed the Commission's position with regard to naming treasurers in their official versus personal capacities in Matters Under Review.⁹ The Policy explains that a treasurer will continue to be a named party in his or her official capacity when the Commission is seeking relief against the treasurer's political committee. However, a treasurer will be named in his or her personal capacity, and will be held personally liable, **only when**:

available information (or inferences fairly derived therefrom) indicates that the treasurer had knowledge that his or her conduct violated a duty imposed by law, or where the treasurer recklessly failed to fulfill his or her duties under the act and regulations, or intentionally deprived himself or herself of facts giving rise to the violations. If, at any time in the proceeding, the Commission is persuaded that the treasurer did not act with the requisite state of mind, subsequent findings against the treasurer will only be made in his or her official capacity.¹⁰

In short, the Commission will only "pursue the treasurer in a personal capacity if information shows that the treasurer":

- (1) knowingly and willfully violated the Act, or
- (2) recklessly failed to fulfill the duties imposed by law, or
- (3) intentionally deprived himself or herself of the operative facts giving rise to the violation.¹¹

⁸ See MUR 7973.

⁹ See Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 Fed. Reg. 3 (Jan. 3, 2005), <https://www.fec.gov/resources/cms-content/documents/notice2004-20.pdf>.

¹⁰ *Id.* at 5.

¹¹ *Id.* at 5 n. 9.

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In this case, there is no information provided in the Complaint or otherwise showing that Mr. McCauley knowingly or willfully violated the Act, recklessly failed to fulfill his treasurer duties, or intentionally deprived himself of operative facts giving rise to the violation. To the contrary, it was the campaign that deprived themselves of operative facts—namely, that the campaign’s contributor database was insufficient to track the massive uptick in contributions after Mr. Owens’ primary election victory on June 30, 2020. Mr. McCauley and his team were the only ones to have the wherewithal to proactively identify the database deficiencies at the time and promptly inform the campaign that more sophisticated software was required to ensure accurate and complete reporting. However, the campaign did not have a sense of urgency in approving the CMDI contract or have the foresight to predict the influx of contributions prior to the primary when it was apparent in polling Mr. Owens would win and was building a national media presence. Moreover, Mr. McCauley and his team cannot be blamed for what was clearly an integration delay by CMDI in onboarding the campaign’s data after the contract with CMDI was ultimately approved by the campaign in late July 2020.

The reality is that Mr. McCauley fulfilled his treasurer obligations and recordkeeping duties. He used his best efforts to keep records and report the Owens campaign’s financial activity during the course of McCauley and Associates’ engagement with the campaign. He and his team were forced to make do with an insufficient reporting system and a client that did not prioritize the need for compliance software at a time when it was deluged with contributions. This, combined with documented vendor delay in data integration, clearly demonstrates that Mr. McCauley satisfied his treasurer duties under the Act. Indeed, his work for the campaign fails to meet the test set forth by the Commission in its 2005 Policy Statement for inclusion of treasurers in their personal capacity in enforcement matters. The Complaint should therefore be promptly dismissed.

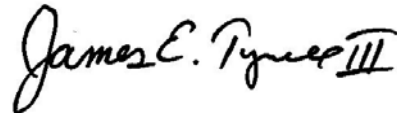
III. Conclusion

In light of the foregoing, there is no reason to believe Mr. McCauley violated the Act or the Commission’s regulations with respect to his role as treasurer for the Owens campaign. We therefore respectfully request that the Commission dismiss the Complaint.

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Thank you for your prompt consideration of these matters, and please do not hesitate to contact me directly at (202) 659-6934 with any questions.

Respectfully submitted,

A handwritten signature in black ink that reads "James E. Tyrrell III". The signature is written in a cursive, flowing style.

James E. Tyrrell III
Counsel to Mike McCauley

Enc.

EXHIBIT A

From: Jack Blakely <jblakely@cmdi.com>
Sent: Thursday, July 2, 2020 1:46 PM
To: Mike McCauley <Mikem@mccauleyassociatespc.com>
Subject: Special Crimson pricing for Owens campaign

Hi Mike,

Thank you again for taking the time to chat yesterday.

I wanted to see if we could extend some special pricing for the Owens campaign, and am happy to say I got approval on a great deal!

The campaign would be able to get two months free to start, and there's an out clause in case of an electoral loss (Section 13 of the attached contract.)

We're very proficient at FECfile conversions, so should be able to have the campaign up and running within 10 business days if they do want to come over.

I've attached a contract to this email for your review, please let me know if they might have any interest in upgrading before the election or would like to see a demo of the software.

Thanks, and have a great 4th of July!

Jack Blakely

Manager, Sales

CMDI

Main: 703-790-8676

Email: jblakely@cmdi.com

Web: CMDI.com | [Helpdesk](#)

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To stop receiving these emails, click [here](#)

EXHIBIT B

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Order Form

Committee Information

Committee Name: _____

Address: _____

City, State Zip: _____

Contact Name: _____

Contact Email: _____

Contact Phone: _____

Payment Information**AUTHORIZATION AGREEMENT FOR DIRECT PAYMENTS (ACH Debits)**

CMDI is hereby authorized to initiate debit entries to the deposit account indicated below. All payments debited will be referenced by a CMDI invoice number, and the invoice will be sent (electronically) as a PAID receipt of the transaction.

Name of Financial Institution

Branch Address

Routing Number

Account Number

Please scan or send a blank voided check for verification.

This authorization is effective as of _____ (Date).

Should there be insufficient funds in the deposit account to pay all sums when due, the full amount of the payment due shall be immediately payable, as well as any fees incurred.

Authorized Signature

Date

Name

Title

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Services Required & Schedule of Prices

Crimson Enterprise Platform

Monthly Invoice Amount	CTD Contributions Raised
\$600	\$00.00 - \$50,000.00
\$800	\$50,000.01 - \$200,000.00
\$900*	\$200,000.01 - \$500,000.00
\$1,000	\$500,000.01 - \$1,000,000.00
\$1,200	\$1,000,000.01 - \$2,000,000.00
\$1,400	\$2,000,000.01 - \$3,000,000.00
\$1,600	\$3,000,000.01 - \$4,000,000.00
\$1,800	\$4,000,000.01 - \$5,000,000.00
\$2,000	\$5,000,000.01 - \$10,000,000.00
\$2,400	\$10,000,000.01+

Subscription Term: Client agrees to a 24-month term.

First 2 Months Free: New client promotion (Candidates only).

CTD (Cycle-to-Date): All donations tracked in Crimson since date of last general election result.

Conversion: First 10 hours free, \$195/hour over 10.

Users: Unlimited

***New (Next) Cycle:** Committees which raised more than \$200,000 in the previous election cycle will reset to \$900 as of January 1 of the next election cycle. If the >\$200,000 threshold is not met, You will stay at your current rate.

Merchant Account

Optional service that includes a free merchant account with no monthly fees. Pay-as-you-go integrated online donations are processed at a rate of 4.0% + \$.30 per transaction. *

Crimson Credit Card Processing*

Optional Crimson service. Transactions internally run by CMDI Caging or through Crimson's Donate Now and Data Entry modules are processed at a rate of 2.9% + \$0.50 for each Visa/Discover/Mastercard credit card and 3.25% + \$0.50 for each American Express credit card (these are inclusive of all merchant fees).

*Subject to separate Terms and Conditions.



crimson

Master Subscription Agreement

In order for Your Committee to use Crimson, you must purchase Our Services by agreeing to the terms of this Master Subscription Agreement.

Your Committee agrees to the purchase of Our Services by approving the attached ORDER FORM **and** by SIGNING ON THE LINE below indicating your acceptance of the Terms and Conditions of this Agreement. Only committees registered with the Federal Election Commission and assigned an ID number by the same may purchase Our Services under this Agreement. You must have the authority from Your Committee to enter into this Agreement and bind it to these terms and conditions. If you do not have that authority, you must not accept these terms and must not use our Services.

This Agreement will become effective as of the date of your acceptance of this Agreement.

1. Definitions

“You” or “Your” means the committee for whom you are accepting this Agreement.

“Services” means online, Web-based platform and applications of Crimson and CMDI’s affiliates and partners.

“Order Form” means the documents You completed indicating the Services You are purchasing, including any addenda thereto which may be made from time to time. Order Forms, including any addenda, are incorporated herein by reference.

“Our”, “We” or “Us” means CMDI, the Virginia-based company that provides the Services.

“Subscription Term” means the period of the subscription as specified in the Order Form.

“User” or “Users” means the person or persons who you authorized to use Our Services using subscriptions purchased by You and who You supplied identifications and passwords by You or by Us at Your request.

“Your Data” means any information owned by You which is entered or loaded into Crimson.

2. You are Purchasing

You are purchasing the Services you indicated on the ORDER FORM for the Subscription Term. Unless otherwise specified in the Order Form or by Amendment to this Agreement, Our Services are purchased as User Subscriptions. User Subscriptions may be accessed by an unlimited number of Users. User Subscriptions cannot be shared or used by more than one User but may be reassigned to new Users who are replacing former Users who will no longer be accessing Our Services. Your purchase is not contingent on any other written or oral representations.

3. Our Responsibility

Our responsibility is to make a commercially reasonable effort to make the services you purchase available to you 24 hours a day, 7 days a week, except for (i) planned downtime for which we will give you 8 hours’ notice and try to restrict, as practicable, to nights between the hours of 4 a.m. Eastern time (1 a.m. Pacific) and 6 a.m. Eastern time (3 a.m. Pacific) or (ii) conditions beyond our reasonable control, such as,



acts of God, acts of government, acts of terror, civil unrest, flood, tornado, fire, earthquake, Internet provider delay or failure. We will provide you with basic support for your use of the Services at no additional charge. We do not offer accounting, legal, or FEC compliance advisory services under this Agreement.

4. Your Responsibility

Your responsibility is to make sure that Users' comply with the terms of this Agreement. You will make commercially reasonable efforts to prevent unauthorized access to or use of Our Services and will promptly notify us of any unauthorized access or use. You will only use Our Services for Your Committee. You will not sell, resell, rent or lease Our Services to anyone else. You are solely responsible for the quality, accuracy, and integrity of Your Data and any use of the Your Data for any purpose including itemized and summarized data reported to the Federal Election Commission or other government authority. You shall not use Our Services to store or transmit (i) infringing, libelous, tortuous, unlawful material or store or transmit (ii) material in violation of third-party privacy rights or (iii) material containing malicious code.

5. Subscription Fees

Subscription Fees are based on Services purchased and not actual usage. Payment is non-cancelable and fees paid are non-refundable. Fees for Services Required selected above apply to the current elective office being sought. Should You seek a different office while under this Agreement, new pricing may apply.

6. Payment

Payment will be made with Your authorization for direct payments (ACH Debits) attached hereto above and incorporated by reference. You will authorize us to initiate payment for all services listed in the Order Form. Your Order Form will not be complete, and Your Subscription and Our Services will not commence until Your Authorization Agreement for Direct Payments Agreement (ACH Debits) is fully completed and signed. For the initial Crimson Subscription Term and any renewal subscription term, payment will be made in advance based on a time period indicated on the Order Form. CrimsonPay is invoiced and paid weekly. Any additional CMDI services provided will be invoiced and paid by ACH Debit.

7. Taxes

Taxes are not included in our fees. You are responsible for paying taxes on your purchases from us, if any. If we are required to collect any taxes for which you are responsible, taxes will be billed to you for payment unless you provide us a valid tax exemption certificate. We are solely responsible for taxes on our income, property and employees.

8. Non-Payment

Non-payment for 10 or more days beyond due date may result in an acceleration of your unpaid fee obligations which shall then be immediately due and payable and in the suspension of Our Services until all amounts are paid in full. Interest will accrue at the rate of one (1) percent a month on all overdue balances. If there is a reasonable, good faith dispute and you are diligently cooperating to resolve the dispute, we will not exercise our Rights to charge interest or suspend service. Failure by you to pay within sixty (60) days of invoice date will result in our taking ownership of a copy of your data held in our systems with the right to unrestricted use.

9. Client Data

We will not sell, share, or rent Client Data, except in the case of your failure to comply with the payment terms of this agreement. We hold Client Data confidential and take precautions — including administrative, technical, and physical measures — to safeguard Client Data against loss, theft, and misuse, as well as



unauthorized access, disclosure, alteration, and destruction. We warrant and represent that we have commercially reasonable information security policies in place. In the event of an unauthorized release of personally identifiable information or sensitive data, You shall be notified in writing within 24 hours of discovery of such breach.

10. Confidential Information

Confidential Information belonging to either one of us will not be disclosed by the other to a third party for any purpose outside the scope of this Agreement. Confidential Information means all information, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information includes any information you load or enter into Crimson and your advertising and marketing plans. Our Confidential Information includes Our Services, our pricing, our service providers, our partners, our product designs, our technology and business processes. Confidential Information for both of us also includes the terms and conditions of this Agreement and all Order Forms. However, Confidential Information (other than Your Data) does not include any information that is or becomes generally known to the public without a violation of this Agreement or the person receiving the information already knew the information, received the information from another party or independently developed the information.

Each of us will use the same degree of care to protect the confidential information of the other that it uses to protect its own confidential information, but in no event less than reasonable care. Each of us will limit access to confidential information of the other to only those employees, contractors and agents who need access to the confidential information for purposes consistent with this Agreement.

11. Proprietary Software and Methods

Proprietary Software and Methods are owned solely and exclusively by us along with all right, title, and interest in and to them and all modifications and enhancements thereto (including ownership of all trade secrets, patents and copyrights). Our programs and systems are commercially valuable, proprietary products of ours, the design and development of which reflect the effort of skilled development experts and the investment of considerable time and money. Our programs and systems contain substantial trade secrets of ours which shall be treated by you as confidential. We claim and reserve all rights and benefits afforded under federal copyright law in all software programs and user material that now constitute or may become part of the programs and systems used by You under this Agreement and in all system documentation related thereto, as unpublished works. Under no circumstances may you "unlock" the code of our software, as the term is generally used in the trade. Under no circumstances may you disclose or disseminate our software or methods to any our competitors. You will devote your best efforts to ensure that all your personnel and all other persons afforded access to our software and methods will protect it against improper use, dissemination, or disclosure. You will not permit any of our competitors or other third party to access our Services without our express written permission. Also, you will not permit any party to (i) create derivative works based on our Services, (ii) copy, frame or mirror our Services, (iii) reverse engineer our Services, or (iv) access our Services in order to build a competitive product or service, copy any features, functions, methods or graphics of our Services.

By entering this Agreement, you acknowledge that, in the event of your breach of any of the foregoing provisions, we will not have an adequate remedy in money or damages. We shall therefore be entitled to obtain an injunction against such breach from any court of competent jurisdiction immediately upon request and without the necessity of posting bond. Our right to obtain injunctive relief will not limit Our right to seek further remedies.



12. Warranties and Disclaimer

a. We warrant that Our Services provided will be commercially acceptable for your fundraising and FEC compliance activities. The functionality will not be materially reduced during the term of this Agreement. If We breach this obligation, Your exclusive remedy is to Terminate for Cause and seek a Refund as provided by this Agreement.

b. You warrant that you have the authority to enter into this Agreement on behalf of a committee registered with the Federal Election Committee.

EXCEPT AS OTHERWISE STATED HEREIN, THERE ARE NO OTHER WARRANTIES EXPRESS OR IMPLIED HEREUNDER, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES, FINES OR PENALTIES, HOWEVER CAUSED, INCLUDING, BUT NOT LIMITED TO, LOST INCOME, LOST REVENUE OR FAILURE TO FILE OR COMPLY WITH THE RULES AND REGULATIONS OF ANY GOVERNMENTAL AUTHORITY, INCLUDING THE FEDERAL ELECTION COMMISSION.

13. Term and Termination

a. The Term of This Agreement commences on the Effective Date of signing as indicated on the Order Form and continues until the Expiration Date or until all Services purchased under this Agreement have expired or been terminated. In the event of an electoral loss or official withdrawal from the race, You may terminate this Agreement upon 30 days written notice to Us. We will cease providing software and services 30 days after receiving written notification.

b. Either You or We may Terminate this Agreement for cause by giving the other party 30 days written notice of a material breach during which time the other party has the opportunity to avoid termination by curing the breach. Upon termination for cause by You, We will refund any prepaid fees for the remainder of Subscription Term after the effective date of termination. Upon termination by Us, you will remain obligated to pay any and all fees payable to Us for the period prior to the effective date of termination. Upon your request within 30 days following termination and final payment, **Your Data will be returned** in a comma delimited (.csv) format along with any attachments for a Process for Export fee of no more than \$1,500.

c. Renewal. This agreement will automatically renew for a term of one year (1) unless either You or We notify the other party no later than thirty (30) days prior to the Expiration Date of this Agreement of their intention not to renew. We may provide You a revised Schedule of Prices no later than thirty (30) days prior to the Expiration Date of this Agreement which shall be incorporated into and become part of this Agreement upon renewal and shall supplant the Schedule of Prices in effect during the initial Subscription Term.

14. Indemnification

a. We will indemnify You and hold you harmless against all claims, causes of action, judgments, damages, fines or expenses (including reasonable attorney's fees) arising from a third party claim that Your use of Our Services in accordance with this Agreement infringes upon or otherwise violates such third-party's patent, copyright, trade secret or other intellectual property rights.

b. You will indemnify Us and our third party suppliers and licensors and hold them harmless against all claims, causes of action, judgments, damages, fines or expenses (including reasonable attorneys' fees) arising from a third-party claim relating to Your use of Our Services, except to the extent such claim is a



result of Our breach of this Agreement or conduct or events for which We have the obligation to indemnify under this Agreement.

c. Indemnification is contingent on a party giving prompt notice of any claim for which it seeks indemnification. An indemnified party will provide the indemnifying party with reasonable nonmonetary assistance in the defense of the claim(s) on which indemnity is sought. An indemnified party may select counsel of its choice, subject to the approval of the indemnifying party, which consent shall not be unreasonably withheld. A party will not be obligated to indemnify the other in the event the claim for which indemnity is sought arises from the other's gross negligence, willful misconduct, or breach of this Agreement.

15. Limitation of Liability

IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, EXCEED THE TOTAL AMOUNT PAID BY YOU HEREUNDER OR, WITH RESPECT TO ANY SINGLE INCIDENT, THE AMOUNT PAID BY YOU HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT. YOUR OBLIGATION TO PAY FEES FOR OUR SERVICES IS NOT LIMITED BY THIS PROVISION.

16. Non-Assignment

You may not assign or transfer this Agreement or its rights or obligations to another party without the express prior written consent of Us.

17. Applicable Law

This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Virginia, without regard to its choice of law rules. The parties to this Agreement consent to jurisdiction and venue of the courts of the Commonwealth of Virginia in connection with any and all actions arising out of this Agreement. In the event of any dispute adjudicated between the parties, whether in litigation or permitted appeal, the prevailing party will be entitled to recover from the party not prevailing its reasonable attorneys' fees and costs incurred in such proceeding. The parties agree that neither party may bring a claim or assert a cause of action against the other, in any forum or manner, more than one (1) year after the cause of action accrued, except where the party could not have reasonably discovered the wrong giving rise to the claim within one (1) year.

18. Employee Solicitation

Neither You nor Us will **Solicit for Employment**, nor employ an employee of the other party during the term of this Agreement, nor for a period of one (1) year after termination of this Agreement without written consent of the other party.

19. Entire Agreement

This Agreement, together with the Order Form, constitutes the **Entire Agreement** between the parties with respect to the subject matter hereof and supersedes any and all written or oral prior agreements and understandings between the parties.

20. Modification/Severance/Waiver

This Agreement, or any of the attachments hereto, may only be amended by a separate writing signed or electronically agreed to by both parties. If any one or more of the provisions of the Agreement shall for any reason be held to be invalid, illegal or unenforceable, the same shall not affect any of the other portions of the Agreement. Failure or delay by either party in exercising any right or power hereunder shall not operate as a waiver of such right or power.



21. Committee Organization

You are an incorporated, not-for-profit political committee. Your members, officers, employees, and agents will not be personally liable for any debt, liability, or obligation of the Committee. All persons, corporations, or other entities extending credit to, contracting with, or having any claim against the Committee, may look to the funds and property of the Committee for payment of any such claim, or for the payment of any debt, damages, judgment or decree, or any money that may otherwise become due or payable to them from the Committee.

22. Notices

Any notice or other communication shall be made in writing and addressed to the parties at their addresses set forth below.

If to Us: CMDI
 1593 Spring Hill Road, Suite 400
 Tysons Corner, VA 22182
 Attn: David Milton, CPA/VP Finance & Accounting
 Phone: (703) 790-8676
 Fax: (703) 903-8852

If to You:
Committee Name: _____

Address: _____
Attn: _____
Phone: _____
Fax: _____
Email: _____

23. Captions and Headings

All captions and headings in this Agreement are intended solely for the convenience of parties, and none shall be deemed to affect the meaning or construction of any provision hereof.

24. Survival

The following provisions shall survive any termination or expiration of this Agreement: Subscription Fees, Payment, Taxes, Non-payment, Client Data, Confidential Information, Proprietary Software and Methods, Indemnification, Limitation of Liability, Applicable Law, Employee Solicitation, Entire Agreement, Modification/Severance/Waiver, Notices, Captions and Headings.

Acceptance of Terms

I ACCEPT the terms of this Agreement on behalf of the committee named in the ORDER FORM.

Authorized Signature: _____ Date: _____

Name: _____



EXHIBIT C

From: Mike McCauley <mikem@mccauleyassociatespc.com>

Sent: Thursday, July 30, 2020 7:22 PM

To: Jack Blakely <jblakely@cmdi.com>

Subject: noreply@gmail.com 20200730 170021;

Here you go. Let me know if you need anything else.

noreply@gmail.com 20200730 170021;

EXHIBIT D

From: Joseph Carothers [<mailto:jcarothers@cmdi.com>]

Sent: Monday, August 03, 2020 7:46 AM

To: Mike McCauley

Cc: Rachel Bryant; Sofia Amaya

Subject: Re: Crimson set-up: Burgess 4 Utah

Good morning Mike,

Welcome to Crimson, we are excited to have you on board! Right now our programmers are setting up your Crimson database. Below are a couple of items for us to review:

1. In order to convert your existing FecFile data into Crimson, please send us the .dcf file that you may download from your FecFile account.
2. We will setup users after the conversion has been completed. Please email a list of users you will want us to add to the database. We typically assign initial users "All Access" rights, but attached is some language on other user group options available if needed. We will need:
 - o First Name
 - o Last Name
 - o Email Address
3. We will also plan to schedule a general training to go over the features and functionality of Crimson 3. These trainings take about an hour and gives us the opportunity to answer any questions you may have about Crimson. Once we have a conversion ETA we can schedule this.

This should be plenty to get us started. Feel free to let me know if you have any questions.

Thank you,

Joseph

Joseph Carothers

Client Representative

CMDI

Main: 703-770-6007

Email: jcarothers@cmdi.com

Web: CMDI.com | [Helpdesk](#)

From: Jack Blakely <jblakely@cmdi.com>
Sent: Monday, August 3, 2020 9:29 AM
To: Mike McCauley <mikem@mccauleyassociatespc.com>
Cc: Rachel Bryant <rbryant@cmdi.com>; Joseph Carothers <jcarothers@cmdi.com>
Subject: Crimson set-up: Burgess 4 Utah

Hi Mike,

Thank you again for choosing Crimson!

I've cc'd Rachel Bryant and Joe Carothers on this email, they will be your points of contact going forward for this account. They'll be managing the conversion process and initial training for the campaign and will also be your ongoing support contacts.

Thanks!

Jack Blakely | Manager, Sales
CMDI
1593 Spring Hill Road, Suite 400
Tysons Corner, VA 22182
Main: 703-790-8676
[Free for 2 months. Starts at \\$50 in the 3rd month.](#)
[website](#) | [email](#)

EXHIBIT E

From: Mike McCauley <mikem@mccauleyassociatespc.com>
Sent: Monday, August 3, 2020 4:03 PM
To: 'Joseph Carothers' <jcarothers@cmdi.com>
Cc: 'Rachel Bryant' <rbryant@cmdi.com>; 'Sofia Amaya' <samaya@cmdi.com>
Subject: RE: Crimson set-up: Burgess 4 Utah

Joseph:

Thanks for Reaching out. I look forward to working with you. Attached is the DCF file. Also, initially I would like Steve and I to have Full access rights. Contact info below.

Mike McCauley mikem@mccauleyassociatespc.com
Steve MCCAuley Steve@mccauleyassociatespc.com

I will add read only users (fundraisers) after that. Call with any questions.

Mike McCauley, CPA
801.664.2155

EXHIBIT F

From: Sofia Amaya <samaya@cmdi.com>
Sent: Wednesday, September 30, 2020 2:48 PM
To: Mike McCauley <Mikem@mccauleyassociatespc.com>; Steve McCauley <Steve@mccauleyassociatespc.com>
Cc: Rachel Bryant <rbryant@cmdi.com>
Subject: Burgess 4 Utah - Follow-Up

Good Afternoon Mike and Steve,

My colleague, Nick in accounting, forwarded your correspondence to me for follow-up regarding the Burges 4 Utah database importing issues. I appreciate your patience, as well as your assistance, while we troubleshooted the issue with WinRed attribution imports Steve was experiencing. To confirm, our programmers were able to identify the issue and publish a fix.

For convenience, I have forwarded my other colleague's, Joe, last email on the matter below. I am purposely excluding the attached excel he originally included just in case it is causing any issues for the delivery of the email. That excel included a list of People Records that were incorrectly created as a result of the failed imports (they only had last name, no money or any other details associated with them). With your permission, we would like to go ahead and have those bad records removed from the database. Could you please let us know if Steve had received that file for review and, if so, may we move forward with processing the record removals?

Joe also extended an offer to help load the WinRed attributions that failed/remained. Steve mentioned there were about 18,000 records to load. We'd be happy to assist with getting those uploaded. Can you please confirm if that works for you both? If so, then can you please provide us with a list of the payout totals/dates as well as the corresponding attribution files to upload for each?

I hope this information is helpful. Please let me know if you have any other questions I can help answer at this time.

Thank You!
Sofia



[Free for 2 months. Starts at \\$50 in the 3rd month.](#)

Sofia Amaya | VP of Client Relations
CMDI
1593 Spring Hill Road, Suite 400
Tysons Corner, VA 22182
Main: 703-790-8676

[website](#) | [email](#)



From: Joseph Carothers <jcarothers@cmdi.com>
Sent: Wednesday, September 23, 2020 4:04 PM
To: Steve <steve@mccauleyassociatespc.com>

Cc: Sofia Amaya <samaya@cmdi.com>; Rachel Bryant <rbryant@cmdi.com>
Subject: Re: Update on loading our file

Good afternoon Steve,

I hope you've had a good week!

Our programmers were able to identify an issue on the back end that was causing the Error: 763 you were seeing with your WinRed imports. This caused the imports to fail part way through, creating people records with just last names. Our programmers have resolved this issue and successfully imported the file you provided. You will see the attributions that were imported in the gift record, MID: 11877.

The next steps will be to remove any incorrect records that were created during the failed imports. I've attached an excel of People Records with just Last Name. With your **confirmation**, I will have these removed.

After these are removed, we can continue to load the data you have. I'd like to offer to load any WinRed files you currently have. I know you mentioned you had about 18,000 records to load, so I want to reduce any friction on your end. If so, we can coordinate the file transfer.

Let me know how you would like to proceed. I appreciate your patience through this process.

Thank you,
Joseph

Joseph Carothers

Client Representative

CMDI

Main: 703-770-6007

Email: jcarothers@cmdi.com

Web: CMDI.com | [Helpdesk](#)

From: Joseph Carothers <jcarothers@cmdi.com>
Sent: Wednesday, September 16, 2020 6:04:18 PM
To: Steve <steve@mccauleyassociatespc.com>
Cc: Sofia Amaya <samaya@cmdi.com>; Rachel Bryant <rbryant@cmdi.com>
Subject: Re: Update on loading our file

Steve,

One of our programmers is working with your file to trace the error you are receiving. As soon as this is resolved your data can be uploaded. When I hear back that this is resolved I will send you and update.

I appreciate your patience as we work through this.

Let me know if you have any questions.

Thank you,
Joseph

Joseph Carothers

Client Representative

CMDI

Main: 703-770-6007

Email: jcarothers@cmdi.com

Web: CMDI.com | [Helpdesk](#)

From: Steve <steve@mccauleyassociatespc.com>

Sent: Wednesday, September 16, 2020 3:00 PM

To: Joseph Carothers <jcarothers@cmdi.com>

Subject: Update on loading our file

Hey Joseph,

I'm just looking for an update on how you're coming with the file I sent to you? When can I expect some information?

Thanks,

Steve McCauley