

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY



Contract Number

24 738

SAP Number

4400025693

### Department of Public Health

Department Contract Representative	Rebecca Saucedo
Telephone Number	(909) 725-5426
Contractor	Western Kentucky University Research Foundation, Inc.
Contractor Representative	Cherly D. Davis
Telephone Number	(270) 745-6733
Contract Term	July 1, 2024 through June 30, 2026
Original Contract Amount	\$400
Amendment Amount	\$0
Total Contract Amount	\$400
Cost Center	930004100
Grant Number (if applicable)	N/A

**Briefly describe the general nature of the contract:**

Approve the Terms of Use with Western Kentucky University Research Foundation, Inc., including non-standard terms, for the non-exclusive license of the Bingocize evidence-based health prevention program, in the amount not-to-exceed \$400 for the period of July 1, 2024 through June 30, 2026.

**FOR COUNTY USE ONLY**

Approved as to Legal Form

Adam Ebright, Deputy County Counsel

Date 07/31/24

Reviewed for Contract Compliance

Date

Reviewed/Approved by Department

Joshua Dugas (Jul 31, 2024 15:42 PDT)

Joshua Dugas, Director of Public Health

Date 07/31/24

**TERMS OF USE FOR NON-EXCLUSIVE LICENSE  
TO USE BINGOCIZE®**

These Terms of Use (“Terms”), are to be read and agreed to before purchase of a license for use of the Bingocize® game, a proprietary health promotion program (the “Licensed Technology”).

Your access to and use of the Licensed Technology is conditioned on your acceptance of and compliance with these Terms. These Terms apply to all users who access or use the Licensed Technology.

**1. License Grant.**

By accepting these Terms, you agree to accept a non-exclusive license to use the Licensed Technology solely within the facilities located in the counties identified on the invoice for your purchase of Licensed Technology (the “Invoice”).

**2. Use of Bingocize® Trademark.**

Bingocize® is a federally registered trademark owned by WKU Launch Pad, Inc., doing business as Bingocize (“Bingocize”). By agreeing to these Terms, you agree that no action will be taken by you to invalidate or challenge the validity of the Bingocize® mark or attempt to register any confusingly similar trademarks in your own name, or act in any manner that would jeopardize Bingocize’s rights to the Bingocize® mark. Bingocize will have the right to exercise quality control over your use of the Bingocize® mark to the extent needed to maintain the validity of any registrations of the Bingocize® mark and to protect the associated goodwill.

**3. Term and Termination.**

The Term for this non-exclusive license is for two years from the date on the Invoice. Upon a breach of these Terms by you, Bingocize may terminate your right to use the Licensed Technology, without prior notice or liability. All provisions of the Terms, which by their nature should survive termination, shall survive termination, including, without limitation, ownership provisions, warranty disclaimers, indemnity and limitations on liability.

**4. License and Training Fees.**

All license and training fees for the use of the Licensed Technology shall be identified on the Invoice. All fees are non-refundable. All payments of fees shall be made payable to “Bingocize” to the contact indicated on the Invoice.

**5. Indemnity.**

By accepting these Terms, you agree to indemnify and hold harmless, Bingocize and its affiliated entities and their officers, directors, employees and agents from any and all claims, suits damages, attorney's fees, costs and other expenses arising from your performance of the Licensed Technology.

**6. Disclaimer.**

Your use of the Licensed Technology is at your sole risk. The Licensed Technology is provided on an "AS IS" and "AS AVAILABLE" basis. The Licensed Technology is provided without warranties of any kind, whether express or implied, including, but not limited to, implied warranties of merchantability, fitness for a particular purpose, non-infringement or course of performance.

**7. Limitation of Liability**

IN NO EVENT SHALL BINGOCIZE, INCLUDING ITS DIRECTORS, OFFICERS, EMPLOYEES, STUDENTS AND AGENTS BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

IN NO EVENT SHALL BINGOCIZE'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID BY YOU FOR THE LICENSED TECHNOLOGY HEREUNDER.

**8. Assignment.**

You may not assign any of your rights under these Terms, without Bingocize's prior written consent, which shall not be unreasonably withheld.

**9. Governing Law.**

These Terms shall be governed and construed in accordance with the laws of the Commonwealth of Kentucky. Exclusive venue for any dispute not barred by sovereign immunity arising under, out of, or in connection with this Agreement will be the state and federal courts in, or in close proximity, to Warren County, Kentucky, unless the action cannot be brought in such court due to statutory proclamation in which case only the venue will be as so proscribed. By agreeing to these Terms, you consent to the personal jurisdiction of all such courts and hereby waive any claims of

lack of personal jurisdiction or inconvenience of such court.

Signature below, by your duly authorized officer, indicates consent to these Terms.

Company: San Bernardino County Public Health Department

Address: 1505 S. D Street


San Bernardino, CA. 92415



Signature  
Name: Dawn Rowe

AUG 06 2024  
Date

Title: Chair, Board of Supervisors

SIGNED AND CERTIFIED THAT A COPY OF  
THIS DOCUMENT HAS BEEN DELIVERED  
TO THE CHAIRMAN OF THE BOARD  
LYNNA MONELLI  
Clerk of the Board of Supervisors  
of the County of San Bernardino  
By:   
Deputy

