

# Master Services and Software Agreement

This Master Services and Software Agreement ("**Agreement**"), effective as of the Effective Date specified on the ATP, is made by and between Blackbaud, Inc., a Delaware corporation having a place of business at 2000 Daniel Island Drive, Charleston SC 29492, and Client. "**Blackbaud**" means Blackbaud, Inc. and its affiliates and subsidiaries. "**Client**" means the client set forth on the ATP (defined below). "Party" means Blackbaud or Client. "**Parties**" means Blackbaud and Client collectively.

The Parties agree as follows:

## 1. Definitions

Defined terms shall have the meaning set forth in this Agreement.

## 2. Ordering Procedure.

Blackbaud will furnish to Client and Client will pay for the Blackbaud software ("**Software**"), subscription(s) ("**Subscription**") and services ("**Services**") detailed in the applicable agreement to purchase ("**ATP**"). This Agreement, ATP(s), schedules, attachments, and/or scopes of work (individually, a "**SOW**" and collectively, "**SOWs**") constitute the complete and entire Agreement, and supersede all prior or contemporaneous oral or written agreements concerning such subject matter. In the event of any conflict among the terms of this Agreement, an ATP or a SOW, the following order of precedence shall apply: (1) ATP; (2) Agreement; (3) SOW.

## 3. Fees, Expenses, & Payment.

- a. **Fees.** Fees are described in the applicable ATP and the applicable corresponding SOW.
- b. **Freight, Duties and Taxes.** The charges set out in any applicable ATP and any applicable corresponding SOW are exclusive of all freight charges, duties and taxes now in force or enacted in the future and imposed upon the provision of goods and services ("**Taxes**"). Client will be responsible for all Taxes, except for Taxes based on Blackbaud's net income, capital gains taxes, or employee withholdings.
- c. **Expenses.** For all Services Client shall: (i) pay Blackbaud in accordance with the payment schedule and rates set out in the applicable ATP; and (ii) reimburse Blackbaud for all reasonable and necessary travel and living expenses Blackbaud incurs performing such Services.
- d. **Invoices.** Services, Subscriptions and Maintenance invoices are issued immediately following ATP signature. Software (defined below) invoices are issued within seven (7) days of Delivery. "**Delivery**" and its derivatives mean shipment, provision of licenses or Client's receipt of unlock codes, as applicable. All invoices for shipped Software will reflect a shipping and handling charge of \$15.00.

Continued

- e. **Payments and Late Payments.** All invoices are due upon receipt and are non-refundable, regardless of any termination of this Agreement by Client or Blackbaud. All invoices shall be deemed final and binding unless Client notifies Blackbaud in writing of any alleged discrepancies no later than thirty (30) days from the date of such invoice. Blackbaud reserves the right to invoice Client the lesser of twelve percent (12%) annual interest or the highest interest rate allowable under applicable laws for any outstanding, undisputed (in good faith) invoice not paid within thirty (30) days after receipt.

#### 4. Confidential Information.

- a. **Definitions. "Confidential Information"** means (i) any and all information which is disclosed by the Owner to the Recipient orally, electronically, visually, or in a written or other tangible form which is either (a) marked as "confidential" (or with a similar legend), or (b) is identified at the time of disclosure as being confidential, or (c) should be reasonably understood to be confidential or proprietary; and (ii) the terms, including without limitation, the pricing, of this Agreement, the ATP, any SOWs, and any proposals or other documents that preceded this Agreement. Confidential Information may include, but not be limited to, trade secrets, computer programs, software, documentation, formulas, data, inventions, techniques, marketing plans, strategies, forecasts, client lists, employee information, financial information, confidential information concerning Owner's business or organization, as Owner has conducted it or as Owner may conduct it in the future. In addition, Confidential Information may include information concerning any of Owner's past, current, or possible future products or methods, including information about Owner's research, development, engineering, purchasing, manufacturing, accounting, marketing, selling, leasing, and/or software (including third party software). **"Owner"** means the Party providing Confidential Information to the Recipient. **"Recipient"** means the Party receiving Confidential Information from the Owner.
- b. **Ownership of Confidential Information.** The Recipient shall not obtain, by virtue of this Agreement, any rights, title, or interest in any Confidential Information of the Owner.
- c. **Treatment of Confidential Information.** The Recipient shall hold Owner's Confidential Information in strict confidence and the Recipient (i) shall not use Owner's Confidential Information for any purpose other than to carry out the purposes of this Agreement; and (ii) shall not disclose Owner's Confidential Information to any third party except to those third parties operating under non-disclosure provisions no less restrictive than in this Section and who have a justified business "need to know". Client shall protect the deliverables resulting from Services with the same degree of care as it uses to protect its own confidential and proprietary information, but in any case not less than reasonable care. This Agreement imposes no obligation upon the Parties with respect to Confidential Information which either Party can establish by legally sufficient evidence: (a) was in the possession of, or was rightfully known by the Recipient without an obligation to maintain its confidentiality prior to receipt from Owner; (b) is or becomes generally known to the public without violation of this Agreement; (c) is obtained by Recipient in good faith from a third party having the right to disclose it without an obligation of confidentiality; (d) is independently developed by Recipient without the participation of individuals who have had access to any Confidential Information; or (e) is required to be disclosed by court order or applicable law, provided notice is promptly given to the Owner and provided further that diligent efforts are undertaken to limit disclosure.
- d. **Confidentiality and Disclosure of Patient Information.** Healthcare Clients Only: Blackbaud does not expect to have access to individually identifiable health information as that term is used in the Health Insurance Portability and Accountability Act ("**IIHI**") in connection with licensing of Software or provision of related Services. Because Blackbaud does have many healthcare clients and may inadvertently receive IIHI, it is Blackbaud's policy that it will: (i) treat all donor information in compliance with all applicable federal and state laws; and (ii) implement and use any and all reasonable means and appropriate safeguards to prevent the use or disclosure of IIHI and will notify Client promptly in the event of any unauthorized use or disclosure of IIHI.

Continued

- e. **Confidentiality and Disclosure of Education Records.** Education Clients Only: Blackbaud does not expect to have access to confidential student education records as that term is used in the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g ("**Records**") in connection with licensing of its Software or provision of related Services. Because Blackbaud does have many education clients and may inadvertently receive Records, it is Blackbaud's policy that it will: (i) treat all donor information in compliance with all applicable federal and state laws; and (ii) implement and use any and all reasonable means and appropriate safeguards to prevent the use or disclosure of Records and will notify Client promptly in the event of any unauthorized use or disclosure of Records.
- f. **Client Responsibilities.** Client acknowledges and agrees it shall use industry-accepted standards for encryption for any Confidential information it sends to Blackbaud; and Client further acknowledges and agrees that that it shall be responsible for its failure to use such industry-accepted standards for encryption.

## 5. License and Access.

### a. **Software License and Maintenance.**

i. **License Grant.** Blackbaud grants to Client, and Client accepts, a License. "**License**" means a revocable, nontransferable, nonassignable, nonsublicensable, nonexclusive and perpetual (subject to Section 5(a) below) license to use one copy of the Software in machine readable, object code form only, and the applicable manuals and documentation that Blackbaud generally provides or makes available for Software and/or Subscriptions, as applicable ("**Documentation**"), solely for the furtherance of Client's tax-exempt mission. For purposes of this Agreement, the License extends both to the computer program Delivered by Blackbaud and updates provided by Blackbaud thereto pursuant to Client's continued enrollment in support and maintenance purchased by Client pursuant to an ATP ("**Maintenance**"), but also all applications created by or on behalf of Client utilizing the Application Programming Interface, Software Development Kit or Visual Basic for Application contained in the Software ("**Blackbaud Tools**"), if any. Client may only install and use the Software (i) on a computer network which meets the applicable specifications and (ii) in a manner that ensures that Client's simultaneous use of and access to the Software will be limited to the number of authorized users set forth in the applicable ATP. Client's use of the Software may not exceed the scope of the use provisions above without the express written agreement of Blackbaud and Client's payment of additional license fees.

ii. **Termination.** The License set forth in Section 5(a)(i) is effective in perpetuity unless terminated pursuant to this Section 5(a)(ii). Client may terminate such License at any time by providing written notice to Blackbaud. Blackbaud shall have the right to terminate such license by providing written notice to Client (i) upon Client's failure to pay when due any undisputed invoices issued pursuant to this Agreement, provided that Blackbaud has given Client at least five (5) days prior notice of Blackbaud's intention to terminate the License and Client fails pay the undisputed invoice during that five (5) day period; (ii) upon Client's breach of the terms set forth herein or (iii) if Blackbaud is unable, using commercially reasonable efforts, to obtain the right for Client to continue using the Software if the Software becomes the subject of an infringement claim for which Blackbaud is indemnifying Client pursuant to Article 9 below. In the event of any termination of such License, within fifteen (15) days of the effective date of termination Client shall return all copies of the Software to Blackbaud or certify in writing to Blackbaud that it has destroyed or erased all copies of the Software.

iii. **Termination and Renewals of Maintenance.** Unless earlier terminated, Maintenance shall renew for consecutive one (1) year terms following the Initial Term set forth on the ATP. Renewal fees for Maintenance are subject to an annual adjustment defined at the annual invoice period. Client may cancel Maintenance by providing written notice of termination to Blackbaud at least forty-five (45) days in advance of the expiration of the then-current term; provided however, that Client shall owe all fees for the renewal term if the cancellation notice is received by Blackbaud with less than forty-five (45) days remaining in the then-current term. No credit or refunds will be given for partial Maintenance periods. Cancellations will become effective as of the final day of the then-current term. Reinstatement of lapsed Maintenance requires full payment of fees that would have been due from the expiration of the last active term period through the reinstatement date.

Continued

**b. Subscriptions.**

*i. **Subscription Access.*** Blackbaud grants to Client, and Client accepts, the nonassignable, nontransferable, nonsublicensable, and nonexclusive right to access the Subscription and use the Subscription and the applicable Documentation only as authorized in this Agreement, solely for the furtherance of Client's tax-exempt mission, during the Subscription term set forth on the ATP. The Subscription will not be provided to Client in CD-ROM form (or any other form of media) and will not be installed on any servers or other computer equipment owned or otherwise controlled by Client. During the Subscription term, Blackbaud shall provide Client with secure access to the latest supported version of the hosted Subscription, to be accessed and used by Client through the use of the Internet. If applicable, Blackbaud shall provide a single administrator user account for secure administrator access and provide this administrator user the necessary tools to create other users for access to the Subscription. Client agrees that it has elected to access the Blackbaud offering through a Subscription and that this Agreement confers no right to convert the Subscription to a License as described in Section 5(a).

*ii. **Termination and Renewal.*** Unless earlier terminated, Subscriptions shall renew for consecutive one (1) year terms following the initial term set forth on the ATP. Renewal fees for Subscriptions are subject to an annual adjustment defined at the annual invoice period. Client may cancel Subscriptions by providing written notice of termination to Blackbaud at least forty-five (45) days in advance of the expiration of the then-current term; provided however, that Client shall owe all fees for the renewal term if the cancellation notice is received by Blackbaud with less than forty-five (45) days remaining in the then-current term. No credit or refunds will be given for partial Subscription periods. Cancellations will become effective as of the final day of the then-current term. Reinstatement of lapsed Subscriptions requires full payment of fees that would have been due from the expiration of the last active term period through the reinstatement date.

**c. Copyright.** The Software and/or Subscription contains trade secret and proprietary information owned by Blackbaud or its third party licensors and is protected by United States copyright laws and international trade provisions. Client shall treat the Software or Subscription like any other copyrighted material and, except solely for copies as may be required by Client for backup or archival purposes, Client may not disclose, copy, transfer or transmit the Software, Subscription or the Documentation, electronically or otherwise, for any purpose. All permitted copies of the Software, Subscription and/or the Documentation must include Blackbaud's copyright and other proprietary notices. Client agrees that the Software, Subscriptions and Documentation are proprietary products and that all right, title, and interest in and to the Software, Subscriptions and Documentation, including all associated intellectual property rights, are and shall at all times remain with Blackbaud and its third party licensors. Client may not sublicense, assign, transfer, sell, rent, lend or lease the Software, Subscriptions or Documentation, or any portions thereof, and any attempt to do so is null and void. Client may not reverse engineer, disassemble, decompile or make any attempt to ascertain, derive, or obtain the source code for the Software or Subscription.

**d. System Requirements.** All Software and Subscriptions may only be used and/or accessed from Client's computer systems that meet the Blackbaud system requirements published at <http://www.blackbaud.com/support/support.aspx>, which Client acknowledges it has reviewed.

**e. Modifications.** Other than applications made by or on behalf of Client using the Blackbaud Tools and within the scope of the License under Section 5(a) and the access grant in 5(b), any modifications that Client makes to the Software or Subscriptions, including any modifications to any third party licensor software included with or embedded in the Software or Subscriptions, will void any warranty obligations set forth in this Agreement as well as any Maintenance. Blackbaud will not be liable, in any respect, for any such modifications or any errors or damages resulting from such modifications.

Continued

- f. **Suspension.** Blackbaud may suspend access to Subscriptions and/or the provision of Services, as applicable, upon written notice to Client (i) in response to Client's failure to pay when due any undisputed invoices issued pursuant to this Agreement, provided that Blackbaud has given Client at least five (5) days prior notice of Blackbaud's intention to suspend the Subscription and/or Services and Client fails pay the undisputed invoice during that five (5) day period; or (ii) in response to any violation by Client of the acceptable use policy posted at: <http://internet.blackbaud.com/eua/aupolicy> ("AUP"). Blackbaud will lift any payment-related suspension when Client pays the undisputed invoice on which the suspension is based. When exercising its right to suspend the Subscription or Services for a breach of the AUP, Blackbaud will respond in a manner proportionate to the severity of the violation (for example: when a single user has breached the AUP, by suspending the Subscription access or provision of Services to the user rather than suspending all users, Subscriptions and/or Services). With respect to any suspension, Blackbaud and Client agree to work together in good faith to address the violation in a reasonable manner, prevent similar violations in the future and reinstate the suspended Subscription and/or Services as quickly as possible.

#### **6. Blackbaud Payment Services (where applicable).**

Client acknowledges and agrees that it will only use Blackbaud's offerings for the storage and transmission of credit card data and information ("Blackbaud Payment Services") to process online financial transactions on its Client's behalf through the use of the Software ("Transactions"). Client's selection of a Blackbaud Payment Services option shall be designated on the applicable ATP. Client's storage and processing of credit cards and bank cards shall be subject to the then-current version of the Blackbaud Payment Services Addendum set forth at: <http://www.blackbaud.com/files/bbms/bbpstc.pdf>, which Client acknowledges it has reviewed and accepts.

#### **7. Security.**

Blackbaud will use commercially reasonable efforts to maintain database security on Transactions and records belonging to Client that contain Confidential Information. Blackbaud uses industry standard encryption technologies for transmitting and storing potentially sensitive information. Blackbaud also employs industry standard network security techniques including firewalls, intrusion detection, and authentication protocols. Blackbaud reserves the right, in its sole discretion, to change or modify these procedures at any time, but at all times will maintain commercially reasonable database security. Client shall take all commercially reasonable security precautions to prevent unauthorized or fraudulent use of the Software or Services by Client, Client's employees, agents or any other third parties.

#### **8. Indemnity. Patent and Copyright Indemnity.**

Blackbaud shall indemnify and defend Client against any third party claims that the Software, Subscription or Services as delivered or made available to Client infringe any United States or Canadian patent or copyright owned by such third party, provided that Blackbaud is given prompt notice of such claim and is given information, reasonable assistance, and the sole authority to defend or settle said claim. Blackbaud shall, in its reasonable judgment and at its option and expense: (i) obtain for Client the right to continue using the Software, Subscription or Services; (ii) replace or modify the Software, Subscription or Services so that it becomes non-infringing while giving equivalent performance; or (iii) if Blackbaud cannot obtain the remedies in (i) or (ii), as its sole obligation, terminate (x) the License for the infringing Software, (y) the access to the infringing Subscription or (z) the infringing Services, and refund any pre-paid professional Services fees related to such Software, Subscription or Services, which will be depreciated over a three (3) year term if refunded. Blackbaud shall have no liability to indemnify and defend Client to the extent (i) the alleged infringement is based on infringing information, data, software, applications, services, or programs created or furnished by or on behalf of Client (ii) the alleged infringement is the result of a modification made by anyone other than Blackbaud; or (iii) Client uses the Software, Subscription or Services other than in accordance with this Agreement, any Documentation or any delivered documentation under an SOW(s).

#### **9. Representations, Warranties, and Disclaimer.**

- a. **Mutual Representations and Warranties.** Each Party represents and warrants that: (i) it has the right and power to enter into this Agreement, (ii) an authorized representative has accepted this Agreement, and (iii) it will comply with all applicable laws and regulations pertaining to this Agreement.

Continued

**b. Blackbaud Warranties.**

*i. Services.* Blackbaud warrants that the Services will be performed in a professional and workmanlike manner in accordance with recognized industry standards.

*ii. Software.* For thirty (30) days from Client's receipt of Software (the "**Warranty Period**"), Blackbaud warrants that the media on which the Software is distributed will be free from defects in materials and workmanship and that the Software will perform substantially in accordance with the functional specifications contained in the Documentation. Any written or oral information or representations provided by Blackbaud agents, employees, resellers, consultants or service providers with respect to the use or operation of the Software will in no way increase the scope of this warranty. If during the Warranty Period the Software fails to comply with the warranty set forth above, Blackbaud's entire liability and Client's exclusive remedy will be either a) repair or replacement of the Software, or if in Blackbaud's opinion such repair or replacement is not possible, then b) a full refund of the price paid for the Software. The foregoing remedies apply only if Client returns all copies of the Software to Blackbaud within 30 days of receipt by Client. This limited warranty is void if failure of the Software has resulted from accident, abuse, misuse or negligence of any kind in the use, handling or operation of the Software, including any use not consistent with the Documentation or Training.

**c. Disclaimer.** Blackbaud and its suppliers exercise no control whatsoever over the content of the information passing through their systems. BLACKBAUD EXPRESSLY DISCLAIMS ALL REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY (BY ANY TERRITORY OR JURISDICTION) TO THE EXTENT PERMITTED BY LAW, AND FURTHER BLACKBAUD EXPRESSLY EXCLUDES ANY WARRANTY OF NON-INFRINGEMENT (EXCEPT AS SPECIFICALLY PROVIDED), TITLE, FITNESS FOR A PARTICULAR PURPOSE, OR MERCHANTABILITY TO THE EXTENT PERMITTED BY LAW.

**10. Limitation of Liability.**

EXCEPT FOR THE INDEMNIFICATION PROVIDED IN ARTICLE 8, BLACKBAUD'S MAXIMUM LIABILITY FOR ANY ACTION ARISING UNDER THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION AND WHETHER IN TORT OR CONTRACT, SHALL BE LIMITED TO THE AMOUNT OF FEES PAID BY CLIENT FOR THE SOFTWARE OR SERVICES FROM WHICH THE CLAIM AROSE DURING THE SIX (6) MONTHS PRECEDING THE CLAIM. IN NO EVENT SHALL BLACKBAUD BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION, LOST PROFITS, HOWEVER ARISING, EVEN IF BLACKBAUD HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE PARTIES AGREE TO THE ALLOCATION OF RISK SET FORTH HEREIN.

**11. Work Product.**

All expressions and results of the Services, and/or the work, findings, analyses, conclusions, opinions, recommendations, ideas, techniques, know-how, designs, programs, tools, applications, interfaces, enhancements, Subscriptions, Software, other technical information, and all derivatives of the foregoing created in connection with this Agreement ("Work Product") are the property of Blackbaud and is licensed to Client, pursuant to the License, provided, however, to the extent such Work Product provided to Client by Blackbaud contains Client's Confidential Information, Client shall retain title to such Confidential Information. Client shall have no right to sublicense, transfer, assign, convey or permit any third party to use or copy any Work Product.

**12. Independent Contractor Status.**

Blackbaud performs its obligations under this Agreement as an independent contractor, not as an employee of Client. Nothing in this Agreement is intended to construe the existence of a partnership, joint venture, or agency relationship between Client and Blackbaud.

**13. Notice.**

All notices or other communications referenced under this Agreement shall be made in writing and, in the case of Blackbaud, sent to the address designated above, or in the case of Client, sent to the address set forth on the ATP, or as designated from time to time in writing by the Parties. All notices shall be deemed given to the other Party if delivered receipt confirmed using one of the following methods: registered or certified first class mail, postage prepaid; recognized courier delivery; electronic mail, or, if to Blackbaud facsimile at 843-216-6100.

Continued



**14. Force Majeure.**

Neither Party shall be liable for any failure to perform its obligations under this Agreement or any SOW(s) if prevented from doing so by a cause or causes beyond its control.

**15. Dispute Resolution.**

Any disputes or claims under this Agreement or its breach shall be submitted to and resolved exclusively by arbitration conducted in accordance with American Arbitration Association rules. One arbitrator appointed under such rules shall conduct arbitration. Arbitration shall be in Charleston, S.C., and the laws of South Carolina shall be applied. Any decision in arbitration shall be final and binding upon the Parties. Judgment may be entered thereon in any court of competent jurisdiction. Notwithstanding the above, Blackbaud may sue in any court for infringement of its proprietary or intellectual property rights or to seek any injunctive relief. This Agreement shall be governed by the laws of the State of South Carolina, excluding choice of law principles.

**16. Professional Fundraising Counsel.**

Client acknowledges that Blackbaud is not providing fundraising counsel or any other direct or indirect fundraising services, nor manage Client's fundraising activities, campaigns or events; however, Client or other parties may use Blackbaud's software to facilitate such activity. Client further acknowledges that it shall not include Blackbaud in any list of professional fundraisers, solicitors, or fundraising counsel submitted to any federal, state, or local agency.

**17. Default and Termination.**

Either Party may terminate this Agreement if the other Party materially defaults in performing any of its obligations under this Agreement and the default remains uncured for at least thirty (30) days following receipt of written notice from the nondefaulting Party. Upon written notice from either Party, this Agreement shall also terminate upon any of the following events: (i) the institution of receivership or bankruptcy proceedings against or by a Party, which has not been dismissed within 60 days; (ii) the making of an assignment for the benefit of creditors by a Party, or (iii) the dissolution of a Party. If this Agreement is terminated for any such reason, Client shall nonetheless be obligated to pay Blackbaud upon such termination any and all accrued and unpaid fees and expenses due and payable to Blackbaud as of the date of termination.

**18. Mutual Publicity.**

Either Party may (i) create a hyperlink from its website to the other Party's website, (ii) display its name, logo and other identifying information or image on the other Party's website, and (iii) reasonably use the other Party's name in its marketing materials; provided, however, that Client may only (i) identify Blackbaud as its commercial online marketing infrastructure provider or any other term acceptable to Blackbaud, and (ii) use Blackbaud's name in publicity it employs to market its mission, programs, and service, during the period of time in which Blackbaud is the exclusive online marketing infrastructure provider for Client. Blackbaud may (i) identify Client as its client, (ii) use Client's name, logo and other identifying information or images in connection with emails, communications, and proposals to other prospective clients or present or potential donors, and (iii) disclose the terms of this Agreement as may be required by law. All such marketing and promotional efforts shall be in good taste, shall not be disparaging, and shall uphold the professional standards and goodwill associated with the other Party.

**19. General.**

Except as otherwise specifically stated herein, remedies shall be cumulative and there shall be no obligation to exercise a particular remedy. No failure or delay in enforcing any term, exercising any option, or requiring performance shall be binding or construed as a waiver unless agreed to in writing by a duly authorized representative of each Party. If any provision of this Agreement is held to be unenforceable, the other provisions shall nevertheless remain in full force and effect. No purchase order or other ordering document that purports to modify or supplement the printed text of this Agreement or any attached or referenced document shall add to or vary the terms of this Agreement. All proposed modifications, variations, edits, or additions (whether submitted by Blackbaud or Client) to this Agreement, ATP(s) and/or SOW(s) are objected to and deemed material unless otherwise mutually agreed to in writing. Any provision of this Agreement that contemplates performance or observance subsequent to termination of the Agreement, regardless of the date, cause or manner of such termination, shall survive such termination and shall continue in full force and effect.

The Parties hereby agree to all of the above terms and have accepted this Agreement by the signing of the ATP by a duly authorized officer or officer representative.