

Blackbaud Hosting Service Level Agreement

This Blackbaud Hosting Service Level Agreement (“Agreement”) is an agreement between your organization (“Client”) and Blackbaud, Inc. (“Blackbaud”) a Delaware corporation having a principal place of business at 2000 Daniel Island Drive, Charleston, SC 29492 (collectively Blackbaud and Client are referred to as the “Parties”). You acknowledge your acceptance of this Agreement when you accept your Agreement to Purchase.

The Parties desire to enter into an agreement pursuant to which Blackbaud will provide Hosting and/or Email Services to Client for the applications licensed and listed on the Agreement to Purchase executed in connection herewith. Accordingly, the parties agree as follows:

1. **Services Purchased on ATP.** For the term of this Agreement, provided Client is current in its material obligations hereunder, Blackbaud shall provide Client **Hosting and/or Email Services** as stated and listed in the Agreement to Purchase (ATP). All software purchased with the Services are subject to the Blackbaud Software License Agreement covering your Blackbaud application software. Blackbaud retains all right, title and interest in and to the Services, all materials furnished by Blackbaud, and all trademarks, service marks and trade names worldwide, subject to a limited license necessary to perform this Agreement. By signing the applicable ATP you accept the terms of use attached herein.

2. **Services Provided by Blackbaud.** For the term of this Agreement, provided Client is current in its material obligations hereunder, Blackbaud shall provide Client with the following services or service if only purchasing email services (“**Services**”):
 - a) Blackbaud will install the hosted Blackbaud applications on hardware with specifications that meet or exceed the system recommendations and third party compatibility information set forth in Blackbaud’s Minimum System Requirements published at www.blackbaud.com/support.

 - b) Blackbaud will provide secure access to the latest supported version of hosted Blackbaud applications via the Internet from the Hosting facility that Blackbaud leases from a third-party Hosting vendor (the “Hosting Site”) on a 24x7 basis (excludes scheduled downtime), except for scheduled system back-up or other on-going maintenance as required and scheduled in advance by Blackbaud. Blackbaud and/or its Hosting or telecommunications vendor(s) may perform system maintenance during the following “Maintenance Windows”, and Blackbaud will announce all planned upgrades and outages in advance as follows:
 - (i) “Critical Maintenance Window” – Nightly between 2 a.m. and 3 a.m. U.S. Eastern Time with twelve (12) hours advance notice for application of frequently distributed security updates as provided by operating system, network, and firewall vendors,

 - (ii) “Standard Maintenance Window” – Sunday mornings between 3 a.m. and 7 a.m. U.S. Eastern Time with seventy-two (72) hours advance notice,

 - (iii) “Extended Maintenance Window” – Sunday morning between 3 a.m. and 12:00 noon U.S. Eastern Time with thirty (30) days advance notice.

Maintenance Windows start and end times specified herein may be amended to within two hours, with the same duration, provided Blackbaud has given thirty (30) days advance notice to Client. Notifications of planned system maintenance shall be delivered to this designated point of contact via electronic mail. Client understands and agrees that there may be instances where Blackbaud needs to interrupt the Services without notice in order to protect the integrity of the Services due to security issues, virus attacks, spam issues or other unforeseen circumstances.

- c) Blackbaud will provide 99.9% “availability” to the Services calculated on a monthly basis. If Blackbaud provides 99.7% or less availability in any given calendar month, Blackbaud shall refund ten (10%) percent of the Hosting fee for such month. If Blackbaud provides 99.5% or less availability in any given calendar month, Blackbaud shall refund twenty (20%) percent of the Hosting fee for such month. For purposes of this Agreement, “availability” shall mean access to the hosted application(s) without substantial degradation to the Services such that the Services are not essentially unavailable to Client as a result of unreasonable response times. The determination of “availability” shall not include Maintenance Windows defined above.

The following table illustrates “availability” refund rights on a monthly basis without giving effect to Maintenance Windows:

Total Hours Available Monthly	Actual Hours Available	Hours Down	% Available	Credit
720	719.28	.72	99.9	0
720	717.84	2.16	99.7	10%
720	716.40	3.60	99.5	20%

Client’s remedies and the procedure for obtaining refunds in the event that Blackbaud fails to meet the Service level metrics set forth above are as follows:

Client must notify Blackbaud in writing of both the date and the amount of time the Services were unavailable within five (5) business days of the end of the month in which unavailability occurred. Blackbaud will confirm the information provided in such notice. If Blackbaud cannot confirm the time that the Services were unavailable, then Client and Blackbaud agree to refer the matter to executives at each company for resolution. If Blackbaud confirms that Blackbaud is out of compliance with this Service Level Agreement, Client will receive the amount of refund set forth above for the affected month. Such refund may be reflected in the invoice for the month following confirmation of the unavailability. Except as expressly set forth herein, any remedy Client may receive pursuant to this section does not relieve Client, or allow a set-off, of any other payment obligations to us under this Agreement.

- d) Blackbaud will monitor performance indicators on the systems and network infrastructure (its own and that of third party suppliers) in order to gauge the overall performance of the Services, and will take reasonable steps to address systems and network infrastructure as required to maintain application performance. Blackbaud will use an internal system to measure whether the Services are available, and Client agrees that this system will be the sole basis for resolution of any dispute that may arise between Client and Blackbaud regarding this Agreement.
- e) Blackbaud shall provide fully restorable, Client data backups in accordance with the following:

Backup Type	Retention	Location
Nightly	1 week	On-Site
Weekly	4 weeks	Off-Site
Monthly	6 months	Off-Site

Client may request a copy of a backup by creating a case with Support. Backups sent to client shall be limited to one per month. Data backups stored off-site will be made available within three (3) days of the date of the retrieval request to Hosting Support.

- f) Blackbaud will install minor upgrades/releases of application software, including patches and/or fixes, as they are made available to its general customer base at no charge for the term of the Agreement. Blackbaud will determine and announce all planned upgrades as described in section 2(b) of this agreement.

- g) Upgrades to major releases (e.g. 6.x to 7.x) and related conversions require careful planning and data decisions that must be managed jointly by Client and Blackbaud and may require the engagement of Blackbaud consulting services which will be contracted via separate agreement. Software installation of major releases will be performed by Blackbaud on a mutually agreed upon schedule not to exceed 1 year after a major release of the software at no charge for the term of the Agreement, provided Client is a current maintenance customer. Additional services related to conversions to major releases (e.g. data conversion, report and software customizations, data cleanup) are outside the scope of this Agreement.
- h) Customer Support hours of operation will be provided in accordance to the Maintenance Service Plan and corresponding Scope of Support based on the subscribed level of Maintenance.
- i) Blackbaud will provide a single administrator user account for secure administrator access. Blackbaud will also provide this administrator user the necessary tools to create other users for access to the Services.
- j) Blackbaud will support customizations built by Blackbaud Professional Services Developers and built specifically for the Hosting Services environment. Client-built or third party-built customizations are not supported. If an existing Blackbaud built customization deployed on the Client's premise needs to be moved to the Hosting Environment, Client will need to contract with Blackbaud Professional Services to ensure the customization will work properly and meet security and audit standards.
- k) **Email Services:** The following section outlines the email services provided by Blackbaud if such services are contracted as subscriptions on the Agreement to Purchase.
 - i) **Definitions**
 - (1) **Bulk Email Service.** Bulk email is defined as an email message that is sent to one or more recipients at a time specified by Client. Examples of bulk email include but are not limited to newsletters and blasts.
 - (2) **Transactional Email Service.** Transactional email is defined as an email message that is sent to one recipient in response to an action initiated by the recipient. Examples of transactional email include but are not limited to donation acknowledgements, opt-in confirmations and event registration confirmations.
 - (3) **Email Forwarding Service.** Email Forwarding is defined as reception of email to an email address hosted by Blackbaud and automatically forwarding it to a different email address as specified by Client or one of Client's constituents. An example of Email Forwarding is where email sent to JohnSmith@alumni.university.edu is received by Blackbaud and forwarded to JohnSmith@hotmail.com.
 - ii) **Email Supporting Services**
 - (1) **Domain Name Service (DNS) Configuration and Maintenance.** Blackbaud will configure and maintain all necessary DNS records to ensure proper delivery of email through Services. Blackbaud will only configure and maintain DNS records for those domains exclusively used for Blackbaud NetCommunity.
 - (2) **Blacklist Monitoring.** Blackbaud will monitor all Private and Shared IP addresses used for Email Services for inclusion on any of the well-known Blacklists. When an IP address is listed on any of the well-known Blacklists Blackbaud will take appropriate action to get the IP address removed from the Blacklist.
- l) **Hosting Services for PaperSave:** The following section outlines the services provided by Blackbaud if such services are included on the Agreement to Purchase.
 - i) **Overview of Services:** Hosting Services for PaperSave is for the purpose of hosting the PaperSave application and corresponding database(s) for the purpose of integrating with The Raiser's Edge and Financial Edge.

- (1) Backups will be maintained per the terms in section 2 (e) of this agreement and for the purpose of providing data protection for the production PaperSave database.
 - (2) Blackbaud will not provide electronic document archival or long term retention. Client will be responsible for securing a solution for long term document archival. Long term shall be defined as greater than six (6) months.
 - (3) Papersave is not intended to store documents that are not linked to The Raiser's Edge or Financial Edge applications.
 - (4) Client will be responsible to secure a separate electronic document storage system for those documents not linked to The Raiser's Edge or Financial Edge through PaperSave.
- ii) **Backup Transmission and Storage:** Blackbaud will provide Client a copy of Client's PaperSave database via a secure, mutually agreeable method according to the following terms:
- (1) For no additional fees via the Blackbaud provided FTP or Secure FTP account if the data is less than 20 GB.
 - (2) For an annual fee of \$500, if data is needed only one time per year and if the data is larger than 20 GB.
 - (3) For a fee of \$500 to be charged each time the data is requested and if the data is larger than 20 GB.
 - (4) PaperSave backups shall be provided as a MS SQL BAK file for the current installed version of MS SQL.
 - (5) Client will be responsible for the local tools and applications needed to view electronic documents stored in any backup copy sent by Blackbaud to Client.
- iii) **Technology Requirements:** Hosting Services for Papersave will run in the primary data center and be presented to the end user using Citrix thin Client technology
- (1) Client will only be able to view those documents for which the Papersave viewer is currently configured
 - (a) Tiff Files (*.tiff, *.tif)
 - (b) Word Files (*.doc, *.docx, *.rtf)
 - (c) Excel Files (*.xls, *.xlsx)
 - (d) Powerpoint (*.ppt, *.pptx)
 - (e) HTML Files (*.htm, *.html)
 - (f) Image Files (*.jpg, *.gif, *.bmp)
 - (g) PDF Files (*.pdf)
 - (h) Email for Outlook (versions 2003 and 2007)
 - (2) All other documents types will have to be downloaded to the local workstation to be viewed.
- iv) **Business Hour Transmission Restriction:** Transmission of scanned documents to be stored in the hosted PaperSave database will be limited to 3mbps during normal business hours.

3. **Client Responsibilities.** Client will be responsible for the following:

- a) Client is required to purchase and remain current in one of Blackbaud's Software Maintenance and Support Programs.
- b) Client shall identify, and name, an appropriate individual, with corresponding contact information, including electronic mail address, as Primary Contact for Services with whom Blackbaud should communicate matters regarding Services, such as maintenance notifications, and who has the authority to make Services requests including release of Client data, both internally to Blackbaud and to the Client, restoration of data, and other configuration changes. By default, the individual who signs this Services ATP becomes the Primary Contact.
- c) Client shall review all Hosting Services System Requirements and Recommendations for the Services purchased.
- d) Client will retain responsibility for administering security within the Blackbaud applications (e.g., the granting of rights to a user for a specific form in the application). Client is also responsible for maintaining its user desktops and providing users network access to the Services.

- e) Client shall provide connectivity and security to the Internet for its location(s) for purposes of providing adequate access to Services at the Blackbaud Hosting Site. Blackbaud shall not be responsible for the reliability or continued availability of the communications lines, or the corresponding security configurations, used by Client in accessing the Internet to access Services.
- f) Client shall provide adequate industry “best practice” standards to ensure reasonable security for integration between applications at the Client site and Services hosted by Blackbaud.
- g) Client shall provide accurate input information in the manner reasonably prescribed by Blackbaud in connection with the Services provided under this Agreement.
- h) Client shall advise Blackbaud of any changes to Client’s operations, banking relationships, Primary Contact, or other information that would require a change in the support, operation, or configuration of the hosted applications.
- i) Client shall use the Services only for the internal business purposes of Client, and will not sell or otherwise provide, directly or indirectly, any of the Services or any portion thereof to any third party.
- j) Client shall configure necessary user accounts via the administrator account provided by Blackbaud.
- k) Client shall be responsible for establishing an account with International Automated Ticket Systems, for credit card transactions, if applicable.
- l) Email Services
 - i) Client shall delegate to Blackbaud the authority to manage DNS configuration for email domains used by Services, except where Client chooses to use an email domain provided by Blackbaud.
 - ii) Client shall not send unsolicited commercial email (UCE).
 - iii) Client shall not send commercial email to an individual’s email address unless Client has the prior affirmative consent of the individual to do so (as that term is defined under U.S. Law within CAN-SPAM), or has obtained the prior consent of the individual in a manner compliant with the European Commission Privacy and Electronic Communications Directive.
 - iv) Client agrees that every Bulk Email that Client sends must include an opportunity for the recipient to unsubscribe from receiving such email in the future.
 - v) Client agrees that that requests to unsubscribe shall be processed within three (3) business days, and that the recipient shall be informed of the length of time required for processing.
 - vi) Client shall not gather email addresses using surreptitious methods (e.g., scraping or harvesting).
 - vii) Client must notify Blackbaud NetCommunity support via email five (5) business days in advance of when there will be any changes to the customer’s MailConstructor Service server IP address to coordinate the IP address transition date and time.
 - viii) All email domains and sub-domains owned by the Client but configured for use for Blackbaud NetCommunity email services must be used exclusively for Blackbaud NetCommunity.

4. Service Use Restrictions. Use of Services is restricted to use by the purchasing entity only. Services and content shall not be used for any commercial purpose beyond the functionality driven by Blackbaud NetCommunity, The Raiser’s Edge, The Information Edge, Patron Edge Online, The Financial Edge, The Education Edge, Blackbaud Student Information System, and/or The Researcher’s Edge, and only for the specific licensing Client. Email forwarding web services shall not be used for bulk transfers of mail from any source; this service is intended for individual users only. Client shall not lease their capacity for use by third parties. Client will not use the Service to take any actions that (i) infringe on any third party’s copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy; (ii) violate any applicable law, statute, ordinance or regulation (including those regarding export control); (iii) are defamatory, trade libelous, threatening, harassing, or obscene; (iv) interfere with or disrupt network users, services or equipment with the intent to cause an excessive or disproportionate load on Blackbaud’s or its suppliers’ infrastructure by means of (but not limited to) distribution of unsolicited bulk emails or chain letters, viruses, Trojan horses, worms, or other similar harmful or deleterious programming routines; or (v) constitute unauthorized entry to any machine accessible via the network. Client will comply with the usage policies of Blackbaud’s suppliers. Blackbaud may, in its discretion, revise these service use

restrictions upon thirty (30) days' prior notice to Client. Client is responsible for ensuring that Users comply with the applicable terms and conditions of the Agreement with respect to use of the Service and the Software, including these terms. Client will indemnify and hold Blackbaud harmless from and against any and all loss, liability, cost, or expense arising from or relating to Client's or User's failure to comply with these terms.

Where applicable, all data mart refreshes should only be scheduled or performed between the hours of 8 pm and 7 am U.S. Eastern Time.

- 5. Fees and Payment.** Client shall pay Hosting Services fees in accordance with the terms described in the Agreement to Purchase. Hosting Services annual fees are calculated annually for a 1-year period and may be subject to an annual adjustment defined at the annual invoice period.

Blackbaud shall include a default maximum of storage space, including the backup and off-site storage and tape retention thereof, to the Client within the hosted environment. Blackbaud will monitor disk usage on a regular basis, and will increase Clients commitment for disk space in 5GB increments, as per the price schedule in the Agreement to Purchase, when disk utilization exceeds the next pending threshold. Blackbaud shall include a default maximum storage space for each hosted application as per the table below:

Hosted Application	Default Maximum Storage Space
The Raiser's Edge and/or The Information Edge	10 GB
Blackbaud NetCommunity	5 GB
Patron Edge Online	5 GB
The Financial Edge	5 GB
The Education Edge or Blackbaud Student Information System	5 GB
The Researcher's Edge	1 GB
PaperSave	20 GB

- 6. Term and Termination.** The term for Services will commence on the Service Commencement Date indicated in the Notice of Service Commencement delivered by Blackbaud to Client when Blackbaud begins providing Services. Services shall commence, and shall continue in effect, for an Initial Service Period of thirty-six (36) months. Thereafter, the Service Period shall automatically renew for successive twelve (12) month periods, unless either party gives written notice to the other of its intent to terminate at least ninety (90) days prior to the end of the Initial Service Period of renewal period.

In addition, either Client or Blackbaud may terminate the Agreement as a result of a material breach of this contract by the other party, if a) such party provides written notification to the other party of the material breach, and b) such material breach is not resolved within thirty (30) days of notification, or, in the case of a failure to pay fees in a timely manner by Client, a ten (10) day period. For purposes of this Section, a material breach by Blackbaud shall include, but not be limited to, a failure to provide at least 99.5% availability in three (3) calendar months of any calendar year and for which refunds have been applied under Section 2(c) above. If a breach described in the preceding sentence occurs, Client shall have to right to forego termination and request a refund of Service fees commensurate with the lack of availability. Blackbaud and Client shall determine the amount of the refund in good faith, and if the parties agree that a refund is appropriate, the Agreement shall remain in full force and effect.

In the event this Agreement is terminated by Client for convenience or by Blackbaud as a result of a material breach by Client prior to the completion of the Initial Service Period, Client shall pay Blackbaud the remaining balance owed for the Services for the Initial Service Period. Both parties

acknowledge that this payment(s) represents a reasonable estimate of Blackbaud's damages in the event of an early termination.

7. Confidential Information.

- a) **Definition.** The term "**Confidential Information**" shall mean: (i) any and all information which is disclosed by either party ("**Owner**") to the other ("**Recipient**") verbally, electronically, visually, or in a written or other tangible form which is either identified or should be reasonably understood to be confidential or proprietary; and (ii) the terms, including without limitation, the pricing, of this Agreement and any proposals or other documents that preceded this Agreement. Confidential Information may include, but not be limited to, personal donor information (individual name, address, contact information, and individual donation amounts), organization and donor credit card information, trade secrets, computer programs, software, 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 programs, fundraising initiatives, donor relationship plans, and similar information. Blackbaud does not guarantee that Confidential Information provided to it in order for Blackbaud to perform its support or professional services will be stored indefinitely and we reserve the right to purge such Information from our database after one (1) year. The preceding statement does not affect information stored in the application.
- b) **Treatment of Confidential Information.** Owner's Confidential Information shall be treated as strictly confidential by Recipient and shall not be disclosed by Recipient 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. 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 the 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.
- c) **Rights and Duties.** The Recipient shall not obtain, by virtue of this Agreement, any rights, title, or interest in any Confidential Information of the Owner. Within fifteen (15) days after termination of this Agreement, each party shall certify in writing to the other that all copies of Confidential Information in any form, including partial copies, have been destroyed, returned, or used solely as the Owner so directs.
- d) **Survivability.** The terms of this Section 7 shall survive termination of this Agreement.

8. Indemnity.

- a) **By Blackbaud.** Blackbaud shall indemnify and defend Client against any claims that the software or Services delivered to Client infringes any United States or Canadian patent or copyright, 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 have no liability to indemnify and defend Client to the extent (i) the alleged infringement is based on infringing information, data, or content 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 Services other than in accordance with this Agreement or the underlying software license to use the software.

b) **By Client.** Client shall indemnify and defend Blackbaud against any claims (i) resulting from the use of Blackbaud's software or the Services or (ii) that any of Client's content provide and included on the donation site infringes or violates any rights of third parties, including without limitation, rights of publicity, rights of privacy, intellectual property, trade secrets or licenses.

c) **Survival.** The terms of this Section 8 shall survive termination of this Agreement.

9. **Warranties and Representations.** Each party warrants that: (i) it has the right and power to enter into this Agreement, (ii) an authorized representative has executed this Agreement, and (iii) it will comply with any applicable laws and regulations pertaining to this Agreement and the provision of Services. Blackbaud warrants that the Services will be performed in a professional and workmanlike manner in accordance with recognized industry standards. Blackbaud and its suppliers exercise no control whatsoever over the content of the information passing through their systems. Client and Users must exercise their own due diligence before distributing and/or relying on information available on the Internet, and must determine that they have all necessary rights to copy, publish, or otherwise distribute such information under copyright and other applicable laws. Neither Blackbaud nor its suppliers will be liable for any consequences of providing email services, including those suffered as a result of delivering or accessing information or content, such as accessing information with offensive, inaccurate or inappropriate content, the possibility of contracting computer viruses, or unauthorized access to or alteration, theft, or destruction of any data, files, programs, procedures, or information through accident, fraudulent means or devices, or any other method, regardless of whether such damage occurs as a result of Blackbaud' or its suppliers' negligence. BLACKBAUD EXPRESSLY DISCLAIMS ALL OTHER 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 SECTION 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 SERVICES FEES PAID BY CLIENT FOR THE SERVICES FROM WHICH THE CLAIM AROSE. IN NO EVENT SHALL BLACKBAUD BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION, LOST DATA OR LOST PROFITS, HOWEVER ARISING, EVEN IF CLIENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE PARTIES AGREE TO THE ALLOCATION OF RISK SET FORTH HEREIN. BLACKBAUD SHALL HAVE NO LIABILITY OR RESPONSIBILITY IN THE EVENT OF ANY LOSS OR INTERRUPTION IN HOSTING SERVICES DUE TO CAUSES BEYOND ITS REASONABLE CONTROL OR FORESEEABILITY, SUCH AS LOSS, INTERRUPTION OR FAILURE OF TELECOMMUNICATIONS OR DIGITAL TRANSMISSIONS AND LINKS, INTERNET SLOWDOWN OR FAILURES.

11. **Rights to Work Product.** Any expression or result of Blackbaud's Services, or the work, programs, applications, interfaces, software, and other technical information (collectively "**Work Product**") created by Blackbaud in the course of performing the Services hereunder are the property of Blackbaud and are licensed to Client, without further license fees, pursuant to the Blackbaud software license(s) to which the Client is bound, provided, however, Work Product does not include, and Client shall retain title to (i) Confidential Information of Client, (ii) all content provided by Client, including without limitation all proprietary rights of Client. 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 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. **Assignment.** This Agreement shall not be assigned by either Party without the prior written consent of the other; except that either Party may assign its rights and delegate its obligations hereunder to any Affiliate or in connection with a merger, acquisition, spin-out or other transfer of all or substantially all of the business, stock or assets to which this Agreement relates, provided such assignee agrees in writing to be bound by this Agreement. Any attempted assignment in violation of this provision shall be null and void. From and after the making of any such assignment and delegation by the assignor, the assignee shall be substituted for the assignor as a Party hereto and the assignor shall no longer be bound hereby. Subject to the foregoing, this Agreement is binding upon, inures to the benefit of, and is enforceable by the Parties hereto and their respective successors and assigns.
14. **Notice.** All notices or other communications referenced under this Agreement shall be made in writing and sent to "Attention: General Counsel" at Blackbaud's address designated above or otherwise designated from time to time in writing by the Parties, and to Client's address set forth in the Agreement to Purchase. 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; or electronic mail.
15. **Waiver.** No modification to this Agreement nor any 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 both parties.
16. **Force Majeure.** Except for Client's obligation to pay Blackbaud, neither party shall be liable for any failure to perform its obligations under this Agreement if prevented from doing so by a cause or causes beyond its control, including without limitation, acts of God or public enemy, failure of suppliers to perform, fire, floods, storms, earthquakes, riots, strikes, war, and restraints of government.
17. **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, SC 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.
18. **General.** This Agreement shall be governed by the laws of the State of South Carolina, excluding choice of law principles. Except as otherwise specifically stated herein, remedies shall be cumulative and there shall be no obligation to exercise a particular remedy. If any provision of this Agreement is held to be unenforceable, the other provisions shall nevertheless remain in full force and effect. This Agreement constitutes the entire understanding between the Parties with respect to the subject matter herein, supersedes all prior oral and written understandings, and may only be amended or modified by a writing signed by a duly authorized representative of each party.