**WELCOME TO BLACKBAUD**

Welcome to Blackbaud’s Fundraiser on the Go software development program (the *"Program"*).  Participation in the Program will allow you (also referred to herein as the *"Developer"*, or *"your"*) to use the Blackbaud Fundraiser on the Go application programming interface and platform (the *"API"*) in connection with certain Blackbaud software (*"Software"*). Before you access and/or use any Blackbaud Materials (as defined below), please read these terms and conditions.

Access to and use of the Blackbaud Materials is subject to the terms and conditions set forth in this Blackbaud Fundraiser on the Go API Agreement (the *"Agreement"*).  The Agreement is effective as of the date Developer completes the Program application and Blackbaud accepts Developer as a Program participant (the *"Effective Date"*).  If you do not agree to the terms and conditions of this Agreement, you may not use or access any Blackbaud Materials or participate in the Program. USING OR ACCESSING ANY PART OF THE API, DEVELOPER WEBSITE OR BLACKBAUD MATERIALS INDICATES THAT YOU ACCEPT THESE TERMS. If you are participating in the Program or accessing the Blackbaud Materials in connection with work you are doing for a company or corporate entity (*"Company"*), either as an employee or contractor, the term "Developer" includes both you as an individual as well as such Company.  In addition, you represent and warrant that you have the authority to bind such Company, and that such Company has authorized you to accept the terms of this Agreement.

1. **DEFINITIONS.**

Capitalized terms herein have the meanings as set forth in Section 25, or as otherwise defined within the context in which they are used.

1. **DEVELOPER’S LICENSE TO USE THE BLACKBAUD MATERIALS.**
   1. **The Blackbaud Materials are Licensed Solely for Your Individual Use.**You shall use the Blackbaud Materials solely in accordance with the terms of this Agreement and may not provide the Blackbaud Materials to any other individual or third party. In addition, if you accept this Agreement on behalf of a Company, you may share the Blackbaud Materials with other employees and individuals doing work for your Company, provided such individuals have a need to know the information to facilitate your Company’s development of Applications using the Blackbaud Materials.
   2. **License for Blackbaud Materials.**
      1. **Internal Use of Blackbaud Materials.** Subject to the terms and conditions of this Agreement, Blackbaud hereby grants to Developer during the term of the Agreement, a limited, revocable, non-exclusive, non-transferable, non-sublicensable, personal license to internally use the Blackbaud Materials (excluding any Open Source Software that may be included in the Blackbaud Materials, which software is licensed in accordance with Section 2(c) solely for the purpose of developing and testing Applications, and not for purposes of any distribution, commercial or otherwise, except as otherwise expressly provided herein.  EXCEPT AS EXPRESSLY PERMITTED IN THIS SECTION 2(b), DEVELOPER MAY NOT SUBLICENSE, PROVIDE OR REDISTRIBUTE ANY PORTION OF THE BLACKBAUD MATERIALS TO ANY THIRD PARTY.
      2. **Limited License for Blackbaud Sample Code.** Subject to the terms and conditions of this Agreement and Section 2(b)(iii), Blackbaud hereby grants to Developer during the term of the Agreement, a limited, revocable, non-exclusive, non-transferable, non-sublicensable, personal license to: (i) create Derivative Works of the Blackbaud Sample Code solely for the purpose of developing and testing Applications; and (ii) upon prior written consent of Blackbaud in each instance, distribute the Blackbaud Sample Code and Derivative Works thereof.
      3. **Impermissible Use of Modifiable Code.** Notwithstanding the provisions of Section 2(b)(ii) above, Developer MAY NOT USE, REPRODUCE OR DISTRIBUTE ANY APPLICATION, TOOL, FRAMEWORK OR SOFTWARE WHICH CONTAINS, ENCAPSULATES OR REPRODUCES BLACKBAUD’S SOFTWARE IN WHOLE OR SUBSTANTIAL PART.
      4. **Attribution.** Developer agrees that any Derivative Work created pursuant to Section 2(b)(ii) shall include the following copyright notice within Developer’s source code and in the location of Developer’s own copyright notice: ***"Portions copyright © Blackbaud, Inc. or licensors.  All rights reserved."*** Developer agrees not to remove, alter or obscure any product identification, copyright or other notices embedded within or on the Blackbaud Sample Code.
      5. **Reservation of Rights.** Except as expressly provided herein, no other right or license is granted by Blackbaud under this Agreement.  All rights not expressly granted hereunder are expressly reserved to Blackbaud and its licensors.
   3. **Open Source Software.** Developer hereby acknowledges that the Blackbaud Materials may contain Open Source Software.  Developer agrees to review any documentation that accompanies the Blackbaud Materials or is identified in a link provided in the documentation for the Blackbaud Materials in order to determine which portions of the Blackbaud Materials are Open Source Software and are licensed under an Open Source Software license.  To the extent any such license requires that Blackbaud provide Developer the rights to copy, modify, distribute or otherwise use any Open Source Software that are inconsistent with the limited rights granted to Developer in this Agreement, then such rights in the applicable Open Source Software license shall take precedence over the rights and restrictions granted in this Agreement, but solely with respect to such Open Source Software.  Developer acknowledges that the Open Source Software license is solely between Developer and the applicable licensor of the Open Source Software.  Developer shall comply with the terms of all applicable Open Source Software licenses, if any.
   4. **Blackbaud Proprietary Software.** At no time shall Developer distribute any Blackbaud Proprietary Software as Open Source Software, or do anything (including but not limited to the development of the Application) that in any way would cause such Blackbaud Proprietary Software to be subject to any Open Source Software or similar license.
   5. **No Endorsement.** Developer agrees that unless Developer receives the express prior written authorization of Blackbaud, Developer will not: (a) market Applications developed using the Blackbaud Materials in any manner which implies that Blackbaud or its suppliers endorse such products; or (b) use the image or likeness (e.g., photograph, drawing, etc.) of a Blackbaud product for any purpose (including, without limitation, in any advertisements, on Developer’s website, or on the packaging, marketing materials or collateral for any Applications).
   6. **Third-Party APIs and Content.** Certain portions of Blackbaud Materials, including APIs and content provided through use of the API, may be provided by third parties.  These third parties may require separate or different terms for use of their materials.  Either Blackbaud or the applicable third party will provide Developer with the applicable terms and conditions either through an email notification, a conspicuous posting on the Blackbaud’s website, or via a click through agreement.
   7. **General Restrictions.** Except as expressly provided herein, Developer shall not (and shall not allow or enable any third party, including end users of its Application(s) to):
      1. copy, modify, create a derivative work of, sublicense, rent, sell, lease or otherwise transfer or distribute the Blackbaud Materials or any portion thereof (except as expressly permitted herein solely with respect to the Blackbaud Sample Code) to any person or entity, except as expressly provided in this Agreement;
      2. decompile, disassemble, or otherwise reverse engineer or attempt to reconstruct or discover any source code or underlying ideas or algorithms of Blackbaud Materials by any means whatsoever;
      3. remove any product identification, legal, copyright, trademark or other proprietary rights notices contained in the Blackbaud Materials;
      4. engage in any activity with the Blackbaud Materials, including development and distribution of an Application, that interferes with, disrupts, damages or accesses in an unauthorized manner the servers, networks, or other properties or services of Blackbaud or any third party including, but not limited to, any mobile communications carrier;
      5. use the Blackbaud Materials for any fraudulent, unlawful or illegal activity, including developing an Application that would commit or facilitate the commission of a crime, or other tortious, unlawful, or illegal act;
      6. use the Blackbaud Materials to defame, abuse, harass, stalk, threaten or otherwise violate the legal rights (such as intellectual property rights and rights of privacy and publicity) of others, including developing an Application that would facilitate any such activities;
      7. use the Blackbaud Materials to use, display, transmit or otherwise make available content that promotes disruptive commercial messages or advertisements, including developing an Application that would facilitate any such activities;
      8. sell, lease, share, transfer, sublicense or derive income from the use or provision of the APIs, whether for direct commercial or monetary gain or otherwise, without Blackbaud’s prior written permission;
      9. use the APIs in a manner that exceeds reasonable request volume, constitutes excessive or abusive usage, or otherwise fails to comply or is inconsistent with any part of the API documentation as determined by Blackbaud in its sole discretion.
      10. use the APIs in a manner that exceeds or conflicts with the limits and quotas found in any other agreement with Blackbaud concerning the CRM product.
      11. Developer further represents and warrants that, in its performance hereunder, both Developer and the Applications developed hereunder shall comply with all applicable laws, regulations and rules of any government body or agency or other competent authority, including all applicable privacy, privacy-related, data security and data security-related laws and regulations (including, in each case, any applicable foreign laws and regulations).
2. **DEVELOPERS’ OWNERSHIP AND ABILITY TO DISTRIBUTE ITS APPLICATIONS.**
   1. **Ownership of Applications.** Except for Blackbaud Materials and other information or property of Blackbaud, Developer shall retain all rights, title and interest in and to Applications and all Intellectual Property Rights therein.  Blackbaud obtains no right, title or interest from Developer under this Agreement in or to any Applications that Developer develops.  Notwithstanding the foregoing, Developer acknowledges and agrees that Blackbaud may develop, license or otherwise acquire the rights to distribute products that are similar to or compete with Developer’s Applications.
   2. **Applications Distribution.** Developer acknowledges and agrees that (a) distribution of Applications will be subject to Blackbaud’s written consent in each instance, further terms and conditions, which may include a share of the revenue generated from sale of the Applications to be paid to Blackbaud by Developer, where such terms and conditions shall be presented to Developer upon or before Developer’s written request to Blackbaud for distribution of any Application, (b) because of certain laws, regulations, as well as contractual or other restrictions, Blackbaud may refuse to allow the distribution of certain types of Applications, and © distributed Applications may be viewable or inspectable by third parties, and Blackbaud is not obligated to take any steps to obfuscate the code associated with the Applications or take any other steps to prevent third parties from viewing or inspecting Application code.
3. **PERMITTED DISCLOSURES BY DEVELOPERS.**

Blackbaud acknowledges and agrees that it is valuable for Developers in the Program to be able to communicate with other developers and the general public about their development efforts and their applications.  Blackbaud agrees that Developer shall have the ability to discuss the Blackbaud Materials, Developer’s development efforts and Developer’s Application(s) with any third party, including but not limited to blogging, website postings, and public presentations; provided however, that IN NO CASE MAY DEVELOPER PUBLISH, REPRODUCE OR DISTRIBUTE THE BLACKBAUD MATERIALS, except as expressly licensed in this Agreement. In addition, Developer shall not disparage or make negative remarks whether written or verbal of Blackbaud or the Program.

Developer may not promote the Application in any way that implies the Application is created or endorsed by Blackbaud, or is in any other way untruthful. Developer may not issue any formal press release via any media referring to Blackbaud without Blackbaud’s prior written consent.

1. **Privacy.**
   1. **Privacy Policy – Terms of Use.** Prior to and as a condition of distribution of Applications, Developer must have a Privacy Policy and approved terms of use in place which covers use of its Application(s).
   2. **Use of Personally Identifiable Information.** If an Application accesses, uses, associates or collects information that constitutes Personally Identifiable Information under applicable law from end users, Developer must disclose such activities to each end user and obtain each end user’s consent before allowing the Application to perform such activities.  Developer shall fully indemnify, defend and hold Blackbaud harmless from any breach by Developer of this provision or breach of any provision in Developer’s Privacy Policy or breach of any provision in the Developer’s terms of use.
2. **DEVELOPER’S LICENSES TO BLACKBAUD.**
   1. **Limited License to Application.** If you choose to submit any Application to Blackbaud for any type of review, analysis or assistance, you grant to Blackbaud a worldwide, perpetual, irrevocable, non-exclusive, royalty-free license to use, reproduce, display, perform and distribute the Application in executable object code form, solely in order to evaluate, test and analyze the Application, including but not limited to providing the Application to Blackbaud personnel and third party distribution partners.  This Section 6(a) only grants a limited license and is not a sale of the Application or any portion or copy thereof.
   2. **License to Developer Data.** Developer acknowledges and agrees that certain Applications may access APIs that require Blackbaud to pass information generated by Developer’s Application (the ***"Developer Data"***) to third party partners of Blackbaud as required by such third-party partners to enable the functionality of the APIs.  Developer hereby grants Blackbaud a worldwide, perpetual, irrevocable, non-exclusive, royalty-free license to use, reproduce, display, perform and distribute the Developer Data (including providing Developer Data to third party partners of Blackbaud which require such data) solely for the purposes of (i) enabling an Application or any service used by an Application; (ii) monitoring the performance, quality and security of the APIs and Applications; or (iii) improving the API, or Blackbaud’s products or services.
3. **OWNERSHIP AND TRADEMARKS.**
   1. **Ownership of Blackbaud Materials.** This Agreement only grants a license and is not a sale of the Blackbaud Materials or any portion or copy thereof, except as expressly provided herein.  As between the parties, Blackbaud owns all right, title and interest in and to Blackbaud Materials, including but not limited to the Blackbaud Proprietary Software, the Blackbaud Sample Code, any updates thereof and all Intellectual Property Rights therein.  Blackbaud reserves all right, title and interest in and to the Blackbaud Materials not expressly granted to Developer under this Agreement, and except for the licenses granted by Blackbaud to Developer under this Agreement, no right, title, ownership, interest or license in or to the Blackbaud Materials, whether by implication, estoppel or otherwise, is granted, assigned or transferred to Developer under or in connection with this Agreement.
   2. **Ownership of Modifications.** Subject to Blackbaud’s underlying rights in the original Blackbaud Sample Code, Developer shall retain all rights, title and interest in and to any incremental modifications to or Derivative Works of the Blackbaud Sample Code developed by or for Developer in accordance with this Agreement and Section 2(b)(ii) (such Modifications and Derivative Works, the ***"Incremental Modifications"***); provided, however, Developer hereby covenants and agrees that it will not, at any time during the term of this Agreement or thereafter, assert any claim of any kind against Blackbaud, any Blackbaud customer, or any Blackbaud developer (who has agreed to substantially similar terms as this Agreement), alleging infringement of Developer’s Intellectual Property Rights or other rights in such Incremental Modifications.
   3. **Blackbaud Trademarks.** Developer acknowledges that Blackbaud or its affiliates are the sole owners of all trademark rights in the marks used by Blackbaud to designate the company itself, its products and/or services. Developer agrees to do nothing inconsistent with such ownership. Developer acknowledges that this Agreement does not grant any rights to use any of the foregoing trademarks or any other trademark of Blackbaud or any of its affiliates, even if such marks are included in any of the Blackbaud Materials. If Developer receives notice that a third party claims an intellectual property right in particular functionality or code contained in the Blackbaud Materials (or their utilization under this Agreement), Developer must notify Blackbaud of the same in writing in reasonable detail.
4. **SUPPORT AND MAINTENANCE.**
   1. **Development Support.** Blackbaud may provide support and answer questions in connection with the Blackbaud Materials at its discretion; provided, however, Blackbaud shall have no obligation pursuant to this Agreement to provide Developer with any support regarding the Blackbaud Materials.  Notwithstanding any other provisions of this Agreement, Blackbaud shall have no obligation to provide Developer with any updates to the Blackbaud Materials. Blackbaud shall have no obligation to provide any maintenance or support for the Applications under this Agreement.
   2. **End User Support.** Developer shall be solely responsible for providing support to end users of its Applications.
5. **CHANGES TO THE API AND AGREEMENT.**

In an effort to provide better and more useful information to its developers, Blackbaud may change or add certain materials in the API, or change or add to certain aspects of the Program, but is under no obligation to do so.  These changes may require changes to the terms and conditions of this Agreement.  As such, Blackbaud reserves its right, at any time and from time to time, to change or modify the terms and conditions of the Program by posting new or revised terms and conditions to Blackbaud’s website, or by providing such terms and conditions to you in writing, including via electronic mail.  If you do not agree to the new or modified terms and conditions of this Agreement, you may not continue your participation in the Program, and you may not use or access the Blackbaud Materials.  PARTICIPATING IN THE PROGRAM, OR USING OR ACCESSING ANY PART OF DEVELOPER WEBSITE OR BLACKBAUD MATERIALS AFTER BLACKBAUD POSTS OR INFORMS YOU OF NEW OR MODIFIED TERMS AND CONDITIONS, INDICATES THAT YOU ACCEPT ANY CHANGES TO THESE TERMS.  Developer acknowledges and agrees that the form and nature of the Blackbaud Materials that Blackbaud provides may change without prior notice to Developer and that future versions of the Blackbaud Materials may be incompatible with applications developed on previous versions of the Blackbaud Materials. Developer acknowledges and agrees that Blackbaud may stop (either permanently or temporarily) providing the Blackbaud Materials (or any features within the Blackbaud Materials, or any functionality that is enabled by the APIs included in the Blackbaud Materials) to Developer or end users of Applications, at Blackbaud’s sole discretion, without prior notice to Developer.

1. **TERMINATION.**

This Agreement is effective until terminated. If applicable, the purchase order document agreed to by the parties sets forth the period you are allowed to access and use the Blackbaud Materials. Your rights under this Agreement will terminate immediately and automatically if you fail to comply with any of the terms and conditions of this Agreement. Blackbaud may terminate this Agreement upon notice to you at any time. Blackbaud may also terminate upon the notice of discontinuance of any of the Blackbaud Materials or Blackbaud’s recommendation for users to upgrade to newer software. Promptly upon termination, you must cease all use of the Blackbaud Materials, destroy all copies in your possession or control, and, upon request of Blackbaud, certify such destruction. Blackbaud’s termination of this Agreement will not limit any of Blackbaud’s other rights or remedies at law or in equity.

1. **ADDITIONAL SOFTWARE/SERVICES.**

This Agreement applies to updates, supplements, add-on components, or internet-based services components, of the Blackbaud Materials that Blackbaud may provide to you or make available to you after the date you obtain your initial copy of the Blackbaud Materials, unless we provide other terms along with the update, supplement, add-on component, or internet-based services component. Blackbaud reserves the right to discontinue any internet-based services provided to you or made available to you through the use of the Blackbaud Materials.

1. **EXPORT RESTRICTIONS.**

You acknowledge that the Blackbaud Materials are subject to U.S. export jurisdiction. You agree to comply with all applicable international and national laws that apply to the Blackbaud Materials, including the U.S. Export Administration Regulations, as well as end-user, end-use, and destination restrictions issued by U.S. and other governments.

1. **DISCLAIMER OF WARRANTIES.**

DEVELOPER EXPRESSLY ACKNOWLEDGES AND AGREES THAT:

* 1. USE OF THE BLACKBAUD MATERIALS IS AT DEVELOPER’S SOLE RISK AND THE BLACKBAUD MATERIALS ARE PROVIDED "AS IS" AND WITHOUT WARRANTY OF ANY KIND AND BLACKBAUD AND ITS SUPPLIERS EXPRESSLY DISCLAIM ALL WARRANTIES, TERMS AND CONDITIONS, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES, TERMS AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OF THIRD PARTY RIGHTS AND SATISFACTORY QUALITY;
  2. NEITHER BLACKBAUD NOR ITS SUPPLIERS WARRANT THAT THE BLACKBAUD MATERIALS ARE SUITABLE FOR DEVELOPER’S USE, THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL OBTAINED BY DEVELOPER THROUGH THE BLACKBAUD MATERIALS WILL MEET DEVELOPER’S EXPECTATIONS, OR THAT DEFECTS IN THE BLACKBAUD MATERIALS WILL BE CORRECTED;
  3. NEITHER BLACKBAUD NOR ITS SUPPLIERS WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE BLACKBAUD MATERIALS OR IN TERMS OF THEIR CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE; BLACKBAUD DOES NOT WARRANT THAT THE USE OR OPERATION OF THE BLACKBAUD MATERIALS WILL BE UNINTERRUPTED OR ERROR FREE;
  4. ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED AS PART OF OR THROUGH THE BLACKBAUD MATERIALS IS DONE AT DEVELOPER’S OWN DISCRETION AND RISK AND DEVELOPER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO DEVELOPER’S COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL; AND
  5. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY BLACKBAUD SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THIS WARRANTY. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT AND NO USE OF ANY PORTION OF THE BLACKBAUD MATERIALS IS AUTHORIZED HEREUNDER EXCEPT UNDER THIS DISCLAIMER.

1. **INDEMNIFICATION; INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS.**
   1. *Applicability to Third Party Products.* BLACKBAUD MAKES NO REPRESENTATIONS OR WARRANTIES AND PROVIDES NO INDEMNIFICATION OR REPLACEMENT COVENANTS OF ANY KIND WITH RESPECT TO THIRD PARTY PRODUCTS, WHICH MAY BE EMBEDDED, LINKED OR SUPPLIED ALONGSIDE BLACKBAUD MATERIALS. Blackbaud’s sole responsibility as to Third Party Products is to pass through any intellectual property warranties, indemnification and replacement provisions that Blackbaud receives from the vendors or suppliers of such Third Party Products and which Blackbaud is allowed to pass on. **"Third Party Product"** means application software products provided by third party vendors, including operating system and application software with which the Blackbaud Materials interfaces and which provides certain functionality essential to the operation of the Blackbaud Materials. Developer represents, warrants and covenants that it shall comply with any and all requirements and conditions of any Third Party Products.
   2. *Indemnification by Developer*. Developer shall fully indemnify and hold harmless Blackbaud, its officers, agents, employees, affiliates, subsidiaries, assigns and successors in interest (each a **"Blackbaud Indemnitee"**) from, defend Blackbaud Indemnitee against, pay any judgments awarded against Blackbaud Indemnitee, and pay all of Developer’s and Blackbaud Indemnitee’s reasonable costs and attorneys’ fees resulting from any claims, liabilities, losses, suits, and damages asserted by a third party based on (i) Developer’s improper or misuse of the Blackbaud Materials (including without limitation, in violation of applicable laws, rules or regulations or this Agreement); (ii) Developer’s breach of this Agreement; (iii) any acts or omissions by a Blackbaud Materials user through Developer’s access to the Blackbaud Materials; (iv) any breach of this Agreement by Developer; (v) Blackbaud’s compliance with Developer’s instructions; (vi) Blackbaud’s use of trademarks, data, content or other materials supplied by Developer; or (vii) Developer’s installation or activation of Blackbaud Materials on behalf of any third party.
2. **EXCLUSION OF INCIDENTAL, CONSEQUENTIAL AND CERTAIN OTHER DAMAGES.**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL BLACKBAUD OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS OR CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, FOR PERSONAL INJURY, FOR LOSS OF PRIVACY, FOR FAILURE TO MEET ANY DUTY INCLUDING OF GOOD FAITH OR OF REASONABLE CARE, FOR NEGLIGENCE, AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE BLACKBAUD MATERIALS, THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT OR OTHER SERVICES, INFORMATION, SOFTWARE, AND RELATED CONTENT THROUGH THE BLACKBAUD MATERIALS OR OTHERWISE ARISING OUT OF THE USE OF THE BLACKBAUD MATERIALS, OR OTHERWISE UNDER OR IN CONNECTION WITH ANY PROVISION OF THIS Agreement, EVEN IN THE EVENT OF THE FAULT, TORT (INCLUDING NEGLIGENCE), MISREPRESENTATION, STRICT LIABILITY, BREACH OF CONTRACT OR BREACH OF WARRANTY OF BLACKBAUD OR ANY SUPPLIER, AND EVEN IF BLACKBAUD OR ANY SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

1. **LIMITATION OF LIABILITY AND REMEDIES.**

Notwithstanding any damages that you might incur for any reason whatsoever (including, without limitation, all damages referenced herein and all direct or general damages in contract or anything else), the entire liability of Blackbaud and any of its suppliers under any provision of this Agreement and your exclusive remedy hereunder (except for any remedy of repair or replacement elected by Blackbaud) shall be limited to the greater of $50 and the actual, direct damages up to the amount actually paid by you for the Blackbaud Materials. The foregoing limitations, exclusions and disclaimers (including Sections 13, 14, and 15) shall apply to the maximum extent permitted by applicable law, even if any remedy fails its essential purpose.

1. **U.S. GOVERNMENT LICENSE RIGHTS.**

The Blackbaud Materials licensed under this Agreement are "commercial computer software" as the term is described in 48 C.F.R. 252.227-7014(a)(1).  If acquired by or on behalf of a civilian agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in 48 C.F.R. 12.212 (Computer Software) and 48 C.F.R. 12.211 (Technical Data) of the Federal Acquisition Regulations ("FAR") and its successors.  If acquired by or on behalf of any agency within the Department of Defense ("DOD"), the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in 48 C.F.R. 227.7202-3 of the DOD FAR Supplement ("DFAR") and its successors

1. **DISPUTE RESOLUTION; GOVERNING LAW.**

Unresolved disputes shall be submitted to and resolved exclusively by arbitration conducted in accordance with American Arbitration Association rules, with one (1) arbitrator appointed to conduct arbitration and arbitration taking place in a mutually agreed location, or Atlanta, Georgia if the parties cannot agree otherwise within thirty (30) days of an initial filing. Any decision in arbitration shall be final and binding upon the parties. In addition to the above, either party may sue or seek injunctive relief in any court for infringement of its proprietary or intellectual property rights and Blackbaud may sue in any court to collect unpaid amounts. YOU AND BLACKBAUD EXPRESSLY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY PROCEEDING ARISING UNDER OR RELATED TO THIS AGREEMENT. This agreement shall be governed by the laws of the State of New York, excluding choice of law principles. The parties agree that this Agreement is not a contract for the sale of goods; therefore, this Agreement shall not be governed by any codification of Article 2 or 2A of any Uniform Commercial Code, or any codification of the Uniform Computer Information Technology Act (UCITA), or any references to the United National Convention on Contracts for the International Sale of Goods.

1. **ENTIRE AGREEMENT; SEVERABILITY.**

This Agreement sets forth Blackbaud’s entire liability and your exclusive remedy with respect to the Blackbaud Materials and supersedes the terms of any purchase orders and any other communications or advertising with respect to the Blackbaud Materials. You acknowledge that this Agreement is a complete statement of the agreement between you and Blackbaud with respect to the Blackbaud Materials, and that there are no other prior or contemporaneous understandings, promises, representations, or descriptions with respect to the Blackbaud Materials. No amendment to or modification of this Agreement will be binding unless made in writing and signed by Blackbaud; provided, however, Blackbaud may modify or amend these terms at any time which is effective upon Developer’s use of the API after delivery of notice of modification or amendment. No failure to exercise, and no delay in exercising, on the part of either party, any right or any power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or power hereunder preclude further exercise of any other right hereunder. If any provision of this Agreement is held to be void, invalid, unenforceable or illegal, the other provisions shall continue in full force and effect the invalid, unenforceable or illegal provision shall be amended to achieve as closely as possible the effect of the original term.

1. **INJUNCTIVE RELIEF.**

You agree that a breach of this Agreement adversely affecting Blackbaud’s proprietary rights in the Blackbaud Materials may cause irreparable injury to Blackbaud for which monetary damages would not be an adequate remedy and Blackbaud shall be entitled to seek equitable relief in addition to any remedies it may have hereunder or at law.

1. **NO ASSIGNMENT; RELATIONSHIP OF PARTIES.**

Developer may not assign or otherwise transfer this Agreement or the rights or obligations hereunder, either in whole or in part, whether voluntarily or by operation of law, without the prior written consent of Blackbaud, which consent may be withheld in Blackbaud’s sole discretion; and any attempted transfer or assignment is null and void and shall be deemed a material breach of this Agreement. Nothing stated in this Agreement will be construed as creating the relationships of joint venturers, partners, employer and employee, franchisor and franchisee, master and servant, or principal and agent.

1. **CONFIDENTIAL INFORMATION.**

You acknowledge and agree that the Blackbaud Materials and all information emanating from the Blackbaud Materials and Blackbaud’s business in any form are valuable trade secrets of Blackbaud and "Confidential Information." You agree that you will not, during or after the term of this Agreement, permit the duplication, use, or disclosure of any such Confidential Information to any person (other than your employees, agents or representatives), unless such duplication, use or disclosure is specifically authorized by Blackbaud in writing prior to any disclosure. You shall use reasonable diligence, and in no event less than that degree of care that you use in respect to your own confidential information of like nature, to prevent the unauthorized disclosure or reproduction of the Confidential Information. Without limiting the generality of the foregoing, to the extent that this Agreement permits the copying of Confidential Information, all such copies shall bear the same confidentiality notices, legends, and intellectual property rights designations that appear in the original versions and party shall keep detailed records of the location of all Confidential Information. Developer shall not make any formal public announcements relating to this Agreement (e.g., a press release) without the prior written approval of Blackbaud, unless otherwise required by law.

1. **ELECTRONIC COMMUNICATIONS; NOTICES.**

You hereby agree to the use of electronic communications in order to enter into this Agreement, to create other records and to the electronic delivery of notices, policies and records of transactions between you and Blackbaud with respect to the Blackbaud Materials and this Agreement. You hereby waive any rights or requirements under any laws or regulations in any jurisdiction which require an original (non-electronic) signature or delivery or retention of non-electronic records, to the extent permitted under applicable mandatory law. In addition, Blackbaud may deliver notices to you by prepaid certified mail, return receipt requested at the address in Blackbaud’s database; any notice that complies with this Section shall be deemed effectively given upon delivery. Any notice you provide to Blackbaud must be given by prepaid certified mail, return receipt requested at the address at the top of this Agreement.

1. **SURVIVAL.**

The provisions of Sections 2g, and 6 - 25 shall survive termination or expiration of this Agreement, for any reason.

1. **DEFINITIONS.**
   1. ***"API(s)"*** means any application program interface that is provided to Developer in the Blackbaud Materials or otherwise by Blackbaud to Developer.
   2. ***"Application"*** means one or more software application programs that are developed by Developer using the Blackbaud Materials, for use with Software, including bug fixes, updates, upgrades, new releases and new versions of such software application programs.
   3. ***"Blackbaud Application Catalog"*** means the Blackbaud-branded application catalog, which will serve as the sole mechanism for licensed commercial distribution of Applications.
   4. ***"Blackbaud Materials"*** means software, services or other materials available through the API, including but not limited to the Blackbaud Sample Code.
   5. ***"Blackbaud Proprietary Software"*** means any software or software components, tools, libraries, modules or packages included within the Blackbaud Materials that are not Open Source Software, including all documentation related to the Blackbaud Materials.
   6. ***"Blackbaud Sample Code"*** means the software source or script code provided by Blackbaud to assist Developer in the execution or development of Applications using the API.
   7. ***"Derivative Work"*** shall mean a work that is based upon one or more preexisting works, such as a revision, modification, translation, abridgement, condensation, expansion, or any other form in which such preexisting works may be recast, transformed, or adapted, and that, if prepared without authorization of the owner of the copyright in such preexisting work, would constitute a copyright infringement under the United States Copyright Act.
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