

Blackbaud Payment Services Agreement

(Revised 19 March 2009)

This **Blackbaud Payment Service Agreement** (“**BBPSA**”) is a legal 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**”).

The Parties desire to enter into an agreement pursuant to which Blackbaud will provide **Blackbaud Payment Services (BBPS)** to clients using current **Payment Application – Data Security Standard (PA-DSS)** versions of Blackbaud credit card handling applications including The RaisersEdge, NetSolutions, Blackbaud NetCommunity and Blackbaud Enterprise CRM in order for Client to become **Payment Card Industry – Data Security Standard (PCI-DSS)** compliant in Client’s transmission of card holder data to Payment Gateways and processors as follows:

1. **Services Provided by Upgrading Application Software.** For the term of this Agreement, provided Client is current in its material obligations hereunder, Blackbaud shall provide Client **Blackbaud Payment Services (BBPS)** as described herein. All software and services purchased or subscribed to are subject to the Blackbaud “**Software License**” or “**Software As A Service**” (SaaS) 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 accepting this online agreement and upgrading your application software (The RaiserEdge, NetSolutions, Blackbaud NetCommunity or Blackbaud Enterprise CRM) to a version which uses BBPS or by signing this Blackbaud Payment Services Agreement, 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 (“**Services**”):
 - a) Blackbaud will provide a “**Blackbaud Payment Service (BBPS)**”, which will hold PCI-DSS regulated credit card data. Client’s will retain “tokens” in their application database, thereby reducing their PCI-DSS compliance issues, and simplifying processing through gateways:
 - i) Blackbaud will install and operate Blackbaud Payment Services (BBPS) at load balanced, mirrored, highly available, secure locations using fully redundant equipment and networks and monitor traffic, security and performance 24x7 to insure availability, capacity, security and bandwidth.
 - ii) Blackbaud will provide secure, encrypted access, via the Internet, to the BBPS systems from currently supported versions of Client’s licensed Blackbaud applications (The RaisersEdge, NetSolutons, Blackbaud NetCommunity and Blackbaud Enterprise CRM), from the hosting facilities that Blackbaud leases from third-party hosting vendors (the “**Hosting Sites**”) on a 24x7 basis, except for scheduled system downtime for back-ups 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 “**BBPS Maintenance Windows**”, and Blackbaud will announce all planned upgrades and outages in advance as follows:
 1. “**BBPS Critical Maintenance Window**” – Nightly between 1 a.m. and 2 a.m. Local Time with twelve (12) hours advance notice for application of critical security or software updates,
 2. “**BBPS System Maintenance Window**” – Sunday mornings between 1 a.m. and 4 a.m. Local Time with seventy-two (72) hours advance notice,
 3. “**BBPS Upgrade Window**” – Sunday morning between 12:00 midnight and 12:00 noon Local Time with thirty (30) days advance notice.

“Local Time” refers to the local time zone for the Hosting Site in which the maintenance is being performed: Eastern Time (ET) for Atlanta or Pacific Time (PT) for Vancouver.

Production 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 (“**Security Related Interruption**”).

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- iii) Blackbaud will provide 99.9% “availability” to the **Blackbaud Payment Services** calculated on a monthly basis
- iv) Blackbaud shall provide and retain fully restorable, data backups of encrypted **Blackbaud Payment Services(BBPS)** databases in accordance with the following:

<u>Production Data</u> <u>Backup Type</u>	<u>Retention</u>	<u>Location</u>
Nightly	1 week	On-Site
Weekly	4 weeks	Off-Site
Monthly	3 months	Off-Site

There is no provision for individual client database restoration.

- v) Blackbaud will install minor upgrades/releases of **Blackbaud Payment Services(BBPS)** software as they are made available at no charge for the term of the Agreement. Blackbaud will determine and announce all planned upgrades as described above.
 - vi) Upgrades to major application releases (e.g. 7.x to 8.x) and related conversions in the **Blackbaud Payment Services(BBPS)** requires 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 additional 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.
 - vii) Customer Support hours of operation for the **Blackbaud Payment Services (BBPS)** will be provided in accordance to the Maintenance Service Plan and corresponding Scope of Support based on the subscribed level of Maintenance for the application software utilizing the BBPS service.
- b) 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, and further agrees not to implment or contract for any other 3rd party monitoring software, services or applications.
 - c) 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.
 - d) Blackbaud will operate **Blackbaud Payment Services (BBPS)** in accordance with the then current, applicable “**Payment Card Industry - Data Security Standards**” (PCI-DSS) and “**Center for Internet Security**” (CISecurity.org) standards.
3. **Client Responsibilities.** Client will be responsible for the following:
- a) Client shall be responsible for purchasing and managing any 3rd party gateway and payment processing providers including the establishment of merchant account that may be necessary for client payment processing utilizing the Blackbaud software per the terms of this Agreement.
 - b) Client is required to purchase and remain current in one of Blackbaud’s Software Maintenance and Support Programs for application software using BBPS.
 - c) 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,

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restoration of data, and other configuration changes. By default, the individual identified in the Blackbaud system as the Primary contact for the application for which BBPS is being used becomes the Primary Contact for BBPS.

- d) Client shall review all **Blackbaud Payment Services (BBPS)** System Requirements and Recommendations for the Services.
 - e) 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.
 - f) Client shall provide connectivity and security to the Internet for its location(s) for purposes of providing adequate access from Client's licensed Blackbaud application(s) to **Blackbaud Payment Services (BBPS)** at the Hosting Sites. 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.
 - g) 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.
 - h) Client shall provide accurate input information in the manner reasonably prescribed by Blackbaud in connection with the Services provided under this Agreement.
 - i) Client shall advise Blackbaud in advance 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.
 - j) 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.
 - k) Client shall be responsible for establishing an account with an internet merchant account for credit card transactions.
 - l) Client shall be solely responsible for "Client's Payment Card Industry – Data Security Standards (PCI-DSS)" compliance.
4. **Acceptable Use Policy.** 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 Payment Services, Blackbaud NetCommunity, The Raiser's Edge, The Information Edge, Patron Edge Online, The Financial Edge, Blackbaud Enterprise CRM, Blackbaud Direct Marketing 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.
5. **Fees and Payment.** BBPS is designed to provide secure credit card processing via Blackbaud's currently approved and certified gateway and payment processing providers. Such list shall be updated from time-to-time. Blackbaud reserves the right to only support those gateway/payment providers as it determines in its sole discretion. Any changes to the current supported gateway/processors being used by BBPS and client shall be provided to customers with 30-days advance notice. Client acknowledges that BBPS may be revised from time to time by Blackbaud at its sole discretion and as required from time to time by current and future Card

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Association and/or PCI requirements. Blackbaud reserves the right to change fees structures for use of the BBPS services with 30-day advance notice.

- 6. Term and Termination.** The term for Services will commence for BBPS when Blackbaud begins providing services and shall coincide and continue in effect with client's active software maintenance agreement and term. Should client terminate software maintenance, BBPS will also be terminated. However, client can request to terminate BBPS at any time while remaining an active maintenance customer. Such request will result in termination of BBPS services. If requested, Blackbaud will provide client BBPS data at that time. Client may reinstate BBPS at any point provided client is an active maintenance customer. Reinstatement of BBPS may incur additional fees.

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.

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.

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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 7, 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 BLACKBAUD PAYMENT 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

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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. This Agreement may be executed by facsimile.