

# TERMS & CONDITIONS

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## Database Service, Training & Conversion Agreement

These Terms and Conditions are incorporated in the most recent Proposal between your Organization (as indicated on the signature page) and eTapestry, which is a division of Blackbaud, Inc. (“eTapestry”). That Proposal, as modified from time to time by mutual written agreement, is referred to as the “Proposal.” These Terms and Conditions and the Proposal are collectively referred to as the “Agreement.”

### Article 1. DATABASE SERVICE

**Section 1.1 The Database Service** The “Database Service” consists of a browser interface, data encryption, data access, eTapestry software access, and data storage. Your Organization is responsible for obtaining and maintaining all computer hardware, software and communications equipment needed to access the Database Service, and for paying all third-party access charges (e.g., ISP, telecommunications) incurred while using the Database Service. eTapestry reserves the right to monitor usage of the Database Service for diagnostic and security protection purposes and the right to improve and modify the Database Service at any time without notice.

#### Section 1.2 Use of Database Services, including Proprietary Software

(a) eTapestry grants to your Organization, subject to the terms and conditions of this Agreement, a non-exclusive, non-sublicensable and non-transferable license to access and use the Database Service for up to the number of concurrent users licensed by your Organization in the Proposal.

(b) You agree that neither your Organization, nor any person accessing the Database Service by means of your Organization's account, will, directly or indirectly, reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code or underlying ideas or algorithms of eTapestry's software; modify, translate, or create derivative works based on the software; or rent, lease, distribute, assign, or otherwise transfer rights to the software or Database Service. eTapestry retains exclusive ownership throughout the world of all software related to the Database Service.

(c) You agree that your Organization will use the Database Service in compliance with all applicable laws, including without limitation copyright, trademark, obscenity and defamation laws.

(d) During the term of this Agreement and at all times thereafter, neither party shall disclose, sell or transfer to any third party, other than for the performance of this Agreement or as required by law, any confidential information and intellectual property of the other party without the express written consent of the other party. This includes but is not restricted to personal and business information stored by either party.

**Section 1.3 Passwords and Security.** Your Organization is responsible for any and all activities that occur under its account(s) and the confidentiality of all its passwords in connection with the Database Service. Your Organization shall notify eTapestry of any unauthorized use of its account(s) or any other breach of security. eTapestry will suspend or change access to your Organization's account within one (1) business day or less after receipt of written notice from you that a password has been lost or otherwise compromised.

**Section 1.4 Credit Card Information.** For all ecommerce transactions processed via an on-line giving page, event registration page, or other type of transaction page on the eTapestry hosted system, the credit card information that is collected is used solely for the purpose of completing the specific transaction. After the transaction is complete, none of that credit card data is stored or retained by the Database Service or eTapestry in any manner.

**Section 1.5 Software Escrow.** A current version of the source code will be escrowed annually with EscrowTech International, Inc., in Lincoln, Utah. <http://www.escrowtech.com/Facilities.htm>. This code will be made available to any subscribing organization for their private use (subject to the terms of this Agreement, including the license limitations) only upon request in the event eTapestry discontinues business because of insolvency or bankruptcy and no successor assumes eTapestry's obligation to provide the hosting service. Your

Organization shall remain obligated to pay eTapestry the Fees notwithstanding the release of the source code from the escrow. Every organization who is a Database Service customer of eTapestry is part of the "Multiple Beneficiaries Program" <http://www.escrowtech.com/SoftwareEscrow.htm>.

**Section 1.6 Application Programming Interface.** This section does not apply if your Organization does not request access to eTapestry's application programming interface, which is an interface to push data to, or pull data from, an eTapestry database (the "API"). The API may only be licensed to your Organization upon submission of an application along with any requested information and receipt of eTapestry's approval, which may be granted or denied in eTapestry's sole discretion. If eTapestry provides your Organization with access to the API, it will be deemed to be included in the "Database Services" for purposes of this Agreement, except that any consulting services, support or other assistance requested by your Organization relating to the API are not included in any Fees specified in the Proposal unless expressly stated therein. eTapestry may limit the amount of data that may be transferred by your Organization through the use of the API, the number of concurrent sessions that your Organization may establish with the API, and/or any other activity with respect to the API, in its sole discretion and may change such limitations from time to time. eTapestry also reserves the right to terminate your Organization's license to use the API at any time after such license is granted if eTapestry believes your Organization is using the API in an inappropriate manner. The API shall be treated by your Organization as confidential information of eTapestry. If your Organization engages a third party to provide support to your Organization and such third party requires access to the API, your Organization shall ensure that such third party does not provide the API to anyone else and uses the API solely to provide support to your Organization. Any breach of the foregoing restrictions (or this Agreement) by such third party service provider shall be deemed a breach of this Agreement by your Organization.

## **Article 2. IMPLEMENTATION AND TRAINING.**

**Section 2.1 Proposal.** The Proposal between your Organization and eTapestry shall set forth the details regarding implementation, training, fees, and billing/invoicing information. The Proposal may be amended from time to time as mutually agreed by the parties in writing.

**Section 2.2 Implementation.** The details and timing for implementation of the Database and Conversion Services are set forth in the Proposal. While eTapestry will employ commercially reasonable efforts to meet the milestones in the Proposal, eTapestry will not be liable for any delays.

**Section 2.3 Training.** The types of training and descriptions of each training type for the Database and Conversion Services are set forth in the Proposal.

**Section 2.4 Fee for Training Services.** eTapestry shall perform the training services identified in the Proposal on a time and materials basis at eTapestry's standard billing rate set forth in the Proposal.

**Section 2.5 Billing and Invoices.** Training and/or consulting fees will be billed 100% in advance in order to secure your right to schedule classes or consulting. Unless otherwise provided in the Proposal, your Organization agrees to pay all invoices within ten (10) days of receipt.

## **Article 3. CONVERSION SERVICES.**

**Section 3.1 The Conversion Service.** The "Conversion Service" consists of eTapestry converting your Organization's data into file structures that are compatible with eTapestry software.

**Section 3.2 Responsibility.** Your Organization is responsible for providing the original data and ensuring the accuracy of the converted data subsequent to the conversion. YOUR ORGANIZATION AGREES TO PROMPTLY REVIEW YOUR DATA FOR ACCURACY AND COMPLETENESS AND REPORT ANY ISSUES OR PROBLEMS TO eTAPESTRY PRIOR TO HAVING YOUR DATA LOADED ONTO THE PRODUCTION SERVER.

**Section 3.3 Correction of Errors.** eTapestry will correct any issues or problems which are reported to it within ten (10) days after the data is placed on a test server for review. eTapestry's correction of the issue or problem reported in that period is your Organization's exclusive remedy, and eTapestry's only liability, for any inaccuracy in the converted data. It is the responsibility of your organization to review your data during the 10 day

testing phase. Any changes made after the 10 day test phase will not affect the billing schedule. **Once your organization has approved your data for loading onto the eTapestry Production server, any changes or adjustments in the converted data are subject to additional costs.** Should your Organization cancel the conversion at any time after eTapestry has begun work on the conversion, your Organization will be liable for the pro-rata % of the completed work at the time eTapestry receives written notice of the cancellation.

## **Article 4. DATA.**

Section 4.1 **Protection of Data.** Once the Conversion is complete, your Organization will control all logins and passwords which provide access to the Data.

Section 4.2 **Data Security.** In the agreement between eTapestry and its infrastructure provider (the "Provider") the Provider agrees to provide: (1) on-site facility security staffed 24 hours a day, 7 days a week, 365 days per year, (2) biometric hand scanners for access to the center, (3) video surveillance and electronic motion sensors, (4) proprietary technology to monitor systems, (5) individually locked cabinets for vital company servers, (6) direct connection to the Internet, (7) early warning smoke detection and fire suppression systems, (8) monitored humidity and temperature systems, (9) uninterruptible power systems (UPS) and multiple power backup, and (10) firewall protection.

Section 4.3 **Title to Data.** All of your Organization's data remains the sole property of your Organization. Your Organization may download its data for free via the standard reporting parameters provided by the Database Service any time during the term of this Agreement. eTapestry will provide your Organization its data, upon request, in a standard format for a fee equal to three (3) months' rental fees. eTapestry is not responsible for storage or retention of data more than thirty (30) days after termination of this Agreement. Should you desire eTapestry to keep your data protected on our servers without access rights for a stated time period there will be a fee of ½ of your standard base fee minus all additional user and module fees paid on your normal billing cycle.

## **Article 5. PAYMENT.**

Section 5.1 **Payment.** Your Organization agrees to provide eTapestry with accurate and complete contact and billing information, and to pay eTapestry the applicable fees set forth in the Proposal (the "Fees"). You agree to pay all invoices based on eTapestry's standard terms of Net 10 unless otherwise provided in the Proposal. Any service period less than twenty-four (24) months requires ACH or Credit Card payment processing to be established.

Section 5.2 **Database Services.** The Database Service period will begin and eTapestry will issue an invoice: (i) if your Organization buys a custom data conversion from eTapestry, within 10 calendar days after your data is converted to eTapestry and placed on a test server for your review; (ii) if you are using the eTapestry 2Quick conversion service, within 15 calendar days after your online order is received by eTapestry; (iii) otherwise, within one (1) day after your online order is received by eTapestry. All service, telephone support and/or on-going maintenance (if a virtual license is chosen) are payable in advance for a three (3) month or a twelve (12) month period based upon your Organization's choice of a quarterly or annual payment term for this Agreement. Quarterly payment periods require the properly completed and signed Credit Card Authorization form or Virtual Check Authorization form (both are attached). Training and/or consulting fees will be billed 100% in advance in order to secure your right to schedule classes or consulting.

Section 5.3 **Conversion Services.** You agree that 50% of all custom data conversion fees will be paid at the time of the initial order and the remaining 50% will be paid within 10 days of invoicing which is sent after your data is converted to eTapestry and placed on a test server for your review.

Section 5.4 **API Services.** Consulting services, support, or other assistance provided to your Organization relating to the API will be billed at eTapestry's then-current standard rate on a monthly basis.

Section 5.5 **Additional Terms.** eTapestry reserves the right to change the fees and to institute new fees or charges upon thirty (30) days prior notice to you (which notice may be sent by e-mail).

Section 5.6 **Suspended Access.** Your Organization's access to the Database Service may be suspended if its account is delinquent for more than thirty (30) days. Data is subject to permanent removal at 60 days delinquency.

## **Article 6. TERM AND TERMINATION.**

Section 6.1 **Term.** The term of this Agreement is two years (based on the date the Database Service period begins pursuant to Section 5.2) and shall automatically renew for additional two year terms unless either party requests non-renewal at least thirty (30) days prior to the renewal date. Subsequent purchases of services from eTapestry will automatically be governed by the terms and conditions of this Agreement. In the event of any conflict between the terms and conditions of this Agreement and any subsequent ordering document, this Agreement shall control. eTapestry may terminate this Agreement immediately or suspend your Organization's access to the Database Service upon any material breach of this Agreement by your Organization (such as failure to timely pay for the Database Service) or if eTapestry determines that your Organization may be performing activities harmful to eTapestry or other users of the Database Service. In addition, either party may terminate this Agreement by notifying the other party in writing ninety (90) days in advance of the termination date on the organization's letterhead with an officer's signature. eTapestry may terminate this Agreement based upon ninety (90) days of non-use (zero logins) by your Organization without any notification in writing.

## **Article 7. LIMITATION OF LIABILITY.**

Section 7.1 **Warranty Disclaimer.** ALTHOUGH ETAPESTRY WILL TAKE COMMERCIALY REASONABLE STEPS TO PROVIDE ERROR-FREE AND CONTINUOUS SERVICE, ETAPESTRY DOES NOT REPRESENT, WARRANT OR GUARANTEE THAT THE DATABASE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE. AS A RESULT, THE DATABASE SERVICE IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, AND ETAPESTRY DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOUR ORGANIZATION.

Section 7.2 **Infringement Indemnity.** eTapestry shall indemnify and defend your Organization against any third party claims that the eTapestry software (the "Software") provided by eTapestry to your Organization in connection with the Database Service infringes any United States or Canadian patent or copyright, provided that eTapestry is given prompt notice of such claim and is given information, reasonable assistance, and the sole authority to defend or settle said claim. In the defense or settlement of any claim, provided this Agreement has not been terminated, eTapestry shall, in its reasonable judgment and at its option and expense: (i) obtain for Your organization the right to continue using the Software; (ii) replace or modify the Software so that it becomes non-infringing while giving substantially equivalent functionality; or (iii) if eTapestry determines the remedies in (i) or (ii) are not commercially reasonable, as its sole obligation, terminate the license for the infringing Software and return the license fee paid by your Organization for such Software. eTapestry shall have no liability to indemnify and defend your Organization to the extent (i) the alleged infringement is based on infringing information, data, software, applications, services, or programs created or furnished by or on behalf of your Organization; (ii) the alleged infringement is the result of a modification made by anyone other than eTapestry; or (iii) your Organization uses the Software other than in accordance with this Agreement or any instructions or other documentation provided by eTapestry. This Section states eTapestry's entire liability and your Organization's sole and exclusive remedy for claims relating to infringement.

Section 7.3 **Limitation of Liability.** **ETAPESTRY'S TOTAL LIABILITY, IF ANY, WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT (INCLUDING, BUT NOT LIMITED TO, LIABILITY ARISING OUT OF CONTRACT, TORT, STRICT LIABILITY, BREACH OF WARRANTY OR OTHERWISE), IS LIMITED TO THE FEES PAID BY YOUR ORGANIZATION TO ETAPESTRY UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT OR INJURY THAT GAVE RISE TO THE LIABILITY; PROVIDED, HOWEVER, THAT SUCH LIMITATION DOES NOT APPLY TO DAMAGES TO YOUR ORGANIZATION DIRECTLY CAUSED BY WILLFUL OR**

**MALICIOUS MISCONDUCT BY ETAPESTRY OR ITS EMPLOYEES. ETAPESTRY WILL NOT BE LIABLE IN ANY EVENT FOR LOSS OR INACCURACY OF DATA, LOSS OF PROFITS OR REVENUE, OR INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, THE COST OF ANY SUBSTITUTE SERVICE), WHETHER OR NOT FORESEEABLE AND EVEN IF ETAPESTRY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS SECTION SHALL APPLY TO ANY ACTION OR ARBITRATION HEREUNDER.**

**Article 8. MISCELLANEOUS.**

Section 8.1 **Survival.** Article 5 (with regard to your Organization's obligation to pay any outstanding amounts), and Section 7.3 and Section 8.3 will survive termination of this Agreement. Any Fees prepaid for Database Services that are not provided due to termination will be refunded to your Organization after any unpaid invoice balances are deducted.

Section 8.2 **Construction.** In the event of a conflict between the Proposal and these Terms and Conditions, these Terms and Conditions shall control.

Section 8.3 **Miscellaneous.** This Agreement is between eTapestry and your Organization, and is not for the benefit of any third party (including, if applicable, any user accessing the Database Service by means of an account established by your Organization). The failure of either party to exercise any right provided for herein will not be deemed a waiver of that right or any further rights hereunder. If any provision of this Agreement is found to be unenforceable or invalid, the remainder of this Agreement will remain in effect. This Agreement is governed by and construed in accordance with the laws of the State of South Carolina excluding its conflict of laws rules. Except for any actions deemed necessary by eTapestry to protect its intellectual property rights, all disputes under this Agreement shall be subject to arbitration before a single arbitrator in the English language in accordance with the Commercial Arbitration Rules of the American Arbitration Association (AAA) held at an agreed-upon location, or if not agreed upon, then at a neutral location designated by the AAA. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Any action or arbitration related to this Agreement must commence within one (1) year after the cause of action arose. The prevailing party in any action or arbitration proceeding to enforce rights under this Agreement will be entitled to recover its costs and reasonable attorneys' fees. This Agreement (including the Proposal) is the complete and exclusive statement of the mutual understanding of the parties and supersedes all previous written and oral agreements, communications and other understandings relating hereto. All modifications to this Agreement must be in a writing signed by both parties. No agency, partnership, joint venture, or employment is created as a result of this Agreement and neither party has any authority to bind the other party. Except as otherwise specified herein, all notices under this Agreement must be in writing.