



## Convio® Application Services for Partners Program Terms of Use (v2008.1)

These Terms of Use (“Terms of Use”) govern the provision of services by Convio, Inc. (“Convio”) to its partner (“Partner”). These Terms of Use, the Program Document(s) signed by the Partner (“Program Document(s)”), and if applicable, the General Terms and Conditions referenced in any such Program Documents (“General Terms and Conditions”), and any policies or other documents expressly incorporated by reference herein or therein are collectively referred to as the “Agreement”. These Terms of Use shall be effective as of the date set forth as the Effective Date in the Application Services for Partners Program Document.

### 1. Services Provided; Permitted Uses.

1.1 Application Services. Subject to the terms and conditions of the Agreement, Convio will make the application services identified on the Program Document (the “Application Services”) available to Partner in such a manner that Partner, but not the general public, may access the functionality of the Application Services over the World Wide Web. The Application Services may only be used by Partner for Partner’s own website(s), and subject to the Permitted Uses (as defined in Section 1.4 below and Usage Allowances specified in the Program Document, and may not be used by Partner to provide services to third parties.

1.2 Technical Support. Convio shall have no obligation to provide any technical support for the Application Services. Support will only be provided by Convio on an as available basis.

1.3 Third Party Products or Services. Certain Application Services may consist of or include third party products or services. Convio may at any time replace such products or services with comparable or improved products or services.

1.4 Permitted Uses. Partner’s use of the Application Services will be limited to one or more of the following use(s) as indicated in the Program Document (“Permitted Uses”):

- (i) Internal Training and Product Familiarization. Partner may access and use the Application Services internally for the purposes of internal training of Partner personnel and familiarization with the Application Services
- (ii) Partner Solution Development and Testing. Partner may access and use the Application Services for testing and development of applications (e.g. a web site, intranet site, mobile device application or personal computer application) developed by Partner which interoperate with the Application Services. This will normally be provided in conjunction with a license of Convio’s API Materials pursuant to a separate API License Agreement. Access to donation functionality is permitted for testing and development purposes if included in the Application Services listed on the Program Document, but no merchant account or payment gateway is provided or Credit Card Transactions authorized.
- (iii) Email Marketing Public Site Use. Partner may use the Email Marketing, Pagebuilder, and Events Application Services for public facing production purposes; provided that such use may not include use which in any way assists Partner in developing, representing, selling, advertising, promoting, servicing or consulting with regard to software or services, whether Partner’s or a third party’s, which are substantially competitive with the Application Services. Partner may not use the donation functionality Application Services under this Permitted Use for any Credit Card Transactions.
- (iv) Training Courses Registration/Tracking/Credit Card Processing Use. Partner may use the Application Services for the registration and tracking of, and payment by, participants in Convio training provided by Partner as permitted under the Authorized Training Program Document.
- (v) Evaluation. Partner may access and use the Application Services internally for evaluation for the purpose of entering into a mutually beneficial relationship with Convio.

### 2. Partner Obligations.

2.1 Establishment of Merchant Account and Payment Gateway. If credit card processing is included in the Permitted Uses, it is the responsibility of Partner to establish a merchant account from a provider approved by Convio. Convio will provide a list of pre-approved merchant account providers upon request. In addition, in such event, Convio shall provide payment gateway services for Partner with a third party payment gateway. Additional terms and conditions shall apply based on the payment gateway provided, as set forth at <http://www.convio.com/partners/Legal/PaymentGatewayTerms.pdf>.

2.2 Password Administration; Confidentiality of Administration Tools. The administration tools used by Partner to administer the Application Services will be password-protected and only Administrators who have properly registered and received a login ID and password will be able to access the administration tools. Partner will be solely responsible for administering and monitoring the use of login IDs and passwords. Partner will not permit anyone other than Administrators to view or use the administration tools. Upon the termination of employment of any Administrator, Partner will immediately terminate access of the login ID of that individual to the administration tools.

2.3 Acceptable Use Policy. Partner’s use of the Application Services shall comply with Convio’s Acceptable Use Policy (v2007.2), as the same may be modified from time to time to incorporate new governmental requirements, or requirements established by third parties which interact with the Application Services, such as payment processing or delivery assurance vendors, or Internet Service Providers providing email accounts to end users (“AUP”). The current version of the policy is posted online at <http://www.convio.com/partners/Legal/AcceptableUsePolicy.pdf> and is incorporated herein. Any such updated or modified policy will be binding upon Partner thirty (30) days after Partner receives written or email notification thereof. Convio reserves the right to suspend the provision of Application Services or take other appropriate remedial action to address any violation or suspected violation of the AUP. Convio shall use reasonable efforts to notify Partner and provide an opportunity to cure before taking any such action, if practicable and if allowed by law.

2.4 Compliance with Laws. Partner is solely responsible for ensuring that Partner Data and Content (as defined below) and Partner’s use of the Application Services provided to Partner will comply at all times with all applicable laws and regulations Partner will not engage in any illegal activities or make any illegal or unauthorized use of any information collected through the Application Services. Except as expressly set forth with respect to Convio’s responsibilities under this Agreement, Partner is solely responsible for any and all damages that flow from Partner’s use of the Application Services.

2.5 Prohibited Uses: Partner may not conduct any benchmarking or other competitive activity, modify, rent, sublease, sublicense, assign, use as a service bureau, copy, lend, adapt, translate, sell, distribute, derive works from, decompile or reverse engineer the Application Services or any Convio intellectual property, except as explicitly permitted hereunder.

### 3. Ownership, Confidential Information and Attribution.

3.1 Partner Ownership. Partner will retain all right, title and interest in and to any materials provided by Partner such as content, data, designs, images, templates, sketches, artwork, logos, trade names, trademarks and type, as well as all information processed by the Application Services regarding individual donors or members (“Partner Data and

Content”).

3.2 **Convio Ownership.** Convio will retain all right, title and interest in and to all proprietary rights with respect to the Application Services and other Services provided by Convio, together with any and all software and other technology that enables the provision of such Services, any training materials, product documentation, whitepapers, or deliverables provided by Convio under the Agreement, and any suggestions for modifications or improvements to the Application Services provided by Partner.

3.3 **Confidential Information.** The receiving party will only use the Confidential Information to exercise its rights or carry out its obligations under the Agreement and will protect the Confidential Information by using the same degree of care as it uses to safeguard its own confidential or proprietary information of a like nature from unauthorized use, disclosure, or dissemination, but no less than a reasonable degree of care. The receiving party will restrict access to Confidential Information to only its employees or Consultants who require such access in the course of performing their assigned duties and responsibilities in accordance with this Agreement and who have been informed of the receiving party’s obligations of confidence and have agreed in writing to preserve the confidentiality of such information under terms and conditions no less restrictive than those set forth herein, provided that in the case of Partner, Partner may not permit a Consultant which is a competitor of Convio to access Confidential Information of Convio without the express written approval of Convio. In the event that any Confidential Information is required to be disclosed pursuant to any law, code or regulation, if permitted by law, the receiving party will give the disclosing party immediate notice thereof and will use its commercially reasonable efforts to seek or to cooperate with the disclosing party in seeking a protective order with respect thereto.

3.4 **Attribution.** If Partner is permitted to use the Application Services for Email Marketing Production Use under Section 1.4(iii) above, each email message generated through the Application Services shall have a Convio attribution footer with a link to the Convio home page.

#### **4. Indemnification.**

4.1 Each party (the “indemnifying party”) will defend and hold harmless the other party (the “indemnified party”) from and against any claim brought against the indemnified party arising out of a breach or an alleged breach by the indemnifying party of the provisions of Section 2.3 (Acceptable Use Policy) of these Terms of Use. In the event of any such indemnifiable claims, Section 4.2 below shall apply.

4.2 Procedures. In the event of any such indemnifiable claims, the party entitled to indemnification (the “Indemnified Party”) will notify the party responsible for indemnification (the “Indemnifying Party”) of any matter with respect to which the Indemnified Party may seek indemnification or other relief from the Indemnifying Party under this Section promptly after the Indemnified Party becomes aware of such matter; provided, however, that any failure to give prompt notice will not relieve the Indemnifying Party from any of its liabilities or obligations except to the extent that the failure adversely affects the ability of the Indemnifying Party to defend the claim. In the event that the Indemnified Party requests that the Indemnifying Party defend the Indemnified Party with respect to any Loss, the Indemnifying Party will assume the defense of such matter, and will pay any amounts in settlement and all costs and damages awarded against or incurred by the Indemnified Party or any other person indemnified hereunder, provided that the Indemnified Party will have the right to participate in the defense with counsel of its own choice and to approve any settlement,

unless the settlement includes a release of the Indemnified Party and any other indemnified person from all liability, and there are no other terms and conditions as part of such settlement which could adversely affect the Indemnified Party or any other indemnified Person.

#### **5. Warranty Disclaimer.**

PARTNER ACKNOWLEDGES THAT THE APPLICATION SERVICES ARE PROVIDED “AS IS” AND CONVIO MAKES NO WARRANTIES TO PARTNER WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT AND DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. Convio does not warrant that the Application Services and the data stored through the use of such services are not susceptible to intrusion, attack or computer virus infection; provided, however, that Convio will use commercially reasonable efforts to secure its systems with commercially appropriate security measures.

#### **6. LIMITATION OF LIABILITY**

CONVIO WILL UNDER NO CIRCUMSTANCES BE LIABLE TO PARTNER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES, SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUES OR COST OF COVER.

#### **7. Effect of Termination.**

Convio may terminate Partner’s access to and use of the Application Services at any time, for any reason or no reason, with or without notice. Upon termination of the Agreement:

- (i) Convio shall immediately deactivate and terminate Partner access to the Application Services.
- (ii) For a period of thirty (30) days after termination or expiration of this Agreement, upon request, Convio will make available for retrieval from the Convio system all Partner Data and Content capable of being reused and exported using Application Services report download functionality and export functionality and Partner-provided automated scraping tools.
- (iii) Each party will cease use of the other party's Confidential Information and will return to the other party or destroy, as requested by the disclosing party, the original and all copies (except copies on unreturned back-up tapes) of any Confidential Information of the disclosing party and any summaries, analyses, studies or notes thereon and, at the disclosing party's request, have one of the officers of the receiving party certify in writing that it has complied with these obligations and.

The provisions of Sections 3, 5, 6, 7, 8 and 9 will survive termination of the Agreement.

8. **Miscellaneous.** The Agreement constitutes the entire agreement between the parties relating to the subject matter hereof and supersedes all previous agreements or representations, whether oral or written. The Agreement may not be modified or amended except in writing signed by a duly authorized representative of each party. Client may not assign its rights under the Agreement to a third party. The Agreement will be construed and governed in accordance with the laws of the State of Texas, without reference to the conflict of laws provisions of any jurisdiction. Unless otherwise elected by Convio in writing for a particular instance (which Convio may do at its option), the sole jurisdiction and venue for actions related to the subject matter

of this Agreement will be in Travis County, Texas. Both parties consent to the jurisdiction of such courts with respect to any such actions and agree that process may be served in the manner provided herein for giving of notices or otherwise as allowed by Texas law. If any action is brought by either party to the Agreement against the other regarding the subject matter hereof, the substantially prevailing party will be entitled to recover reasonable attorney fees and reasonable expenses of litigation. Notices under the Agreement shall be provided to the contact and address indicated in the Program Document, provided, that a party may change such contact or address by written notice to the other party. Failure to perform hereunder shall be excused to the extent that performance is rendered impossible by act of war, terrorism, strike, fire, flood, governmental acts or orders or restrictions or any other reason where failure to perform is beyond the control and not caused by the negligence of the non-performing party.

**9 Certain Definitions.** The following terms have the following meanings when used in the Agreement:

9.1 “Administrator” means, collectively, Authorized eCRM Administrators and Authorized CMS Administrators.

9.2 “Authorized eCRM Administrator” mean an employee or Consultant of Partner who is given password-protected access to the administration tools used by Partner to administer all Application Services other than the CMS Application Service.

9.3 “Authorized CMS Administrator” mean an employee or Consultant of Partner who is given password-protected access to the administrative tools used by Partner to administer the CMS Application Service.

9.4 “Confidential Information” means all information disclosed by one party (“disclosing party”) to the other party (“receiving party”), before or after the Effective Date, and generally not publicly known. Confidential Information of Partner includes, without limitation, identification of, and information regarding, individual donors and members of Partner. Confidential Information of Convio includes, without limitation, the administration tools, the login IDs and passwords used by Partner to access

the Application Services, materials in the Convio Partner Center extranet, any and all product documentation, whitepapers, product guides, data sheets and training materials. The Agreement, including the terms in any Program Document, are Confidential Information. Confidential Information does not include information which the receiving party can document: (i) was in the possession of or known by it without an obligation of confidentiality prior to receipt from the disclosing party, (ii) is or becomes general public knowledge through no fault or acts of the receiving party; (iii) is or becomes lawfully available to the receiving party from a third party without an obligation of confidentiality; or (iv) is independently developed by the receiving party without reference to or use of any Confidential Information.

9.5 “Consultant” means an individual or entity providing services or other assistance to Convio or Partner, as applicable.

9.6 “Credit Card Transaction” means an instance in which an online authorization of a credit card transaction or EFT or ACH transaction is processed by the Convio system.

9.7 “Email Address Record” means a discrete record in the “CONSTITUENT” table in the Convio database in which information about an individual tracked by the Convio system is stored that contains one or more email addresses.

9.8 “Pagebuilder Page” means a Website page managed in the Convio PageBuilder application. Each active, inactive or archived Website page is considered one Page. Pages assigned to different categories but with the same name and URL created for personalization are considered multiple Pages. Versions of a page in the PageBuilder application are not considered separate pages. Other pages and forms generated by the Application Services including those generated by Constituent360™, Convio Advocacy, Convio Directory, Convio eCommerce, Convio Email Marketing, Convio Events, Convio Fundraising, Convio Photo Album, Convio TeamRaiser™, Convio Tributes, Convio StoryBuilder, Convio Surveys and Forms, and Convio CMS are not considered discrete PageBuilder Pages.