

# GiveNow Terms and Conditions

This agreement is between your organisation (the Agency) and Our Community Proprietary Limited  
ABN 24 094 608 705  
of 552 Victoria St  
North Melbourne 3051  
Victoria, Australia

## Introduction:

A. Our Community Pty Ltd offers an online donations and payments facility through its GiveNow Website located at [www.givenow.com.au](http://www.givenow.com.au) for the primary purpose of processing payments ('the Website').

B. The Agency is a not-for-profit organisation and is eligible to be fundraising or collecting payments in accordance with mandated government laws and guidelines.

C. Our Community Pty Ltd has agreed to provide an online donations and payments facility to the Agency on the terms set out in this Agreement.

D. This agreement should be read in conjunction with the Our Community Terms of Use and Our Community Privacy Policy. Where inconsistencies occur, this Agreement will take priority.

## It is agreed:

### 1 Preconditions to agency

(a) The Agency must provide copies of the following to Our Community Pty Ltd:

- (1) any Authority held by the Agency, under any of the Fundraising Statutes, and, if none is held, the reason why the Agency is not required to hold an Authority;
- (2) evidence from the Australian Charities and Not-for-profits Commission of registration as a charity, if applicable;
- (3) evidence from the Australian Taxation Office advising of the endorsement of the Agency as a Deductible Gift Recipient (DGR), if they are DGR; and
- (4) a draft of the Agency Information which must include details of the reason or purpose of the fundraising and the intended use of the funds raised and the States and Territories in which the Agency can legally collect or solicit donations (where applicable).

(b) Our Community Pty Ltd may request further information or an interview or site visit prior to accepting the appointment as an agent under this agreement.

(c) Our Community Pty Ltd may reasonably request amendments, additions, deletions or redrafting of the not-for-profit information.

## **2 Our Community Pty Ltd**

### Warranties

(a) Our Community Pty Ltd warrants that it has the necessary skills, knowledge and equipment needed and carries the necessary Authority to collect online payments on behalf of the Agency;

(b) Our Community Pty Ltd will obtain the necessary consent from the User to pass the funds and personal information onto the Agency;

(c) Our Community Pty Ltd will have information available on its website for the User as to the collection and use of their funds and personal information.

## **3 Our Community's obligations as agent**

### **3.1 Bank Account**

Our Community Pty Ltd must keep a separate Bank Account for all payment services and pay all funds received through the Website, less applicable fees, for the Agency into the Bank Account.

### **3.2 Bank Account records**

Our Community Pty Ltd must maintain the Bank Account showing:

(a) all computerised records and payments received on behalf of the Agency;

(b) the amount of Credit Card Merchant Fees deducted in accordance with clause 3.3(b); (c) the amount of Platform Fee deducted in accordance with Schedule 1; and

(d) all payments made from the Bank Account.

### **3.3 Return to Agency**

The Payment Amount paid by the Our Community Pty Ltd must be calculated in accordance with the plan used to raise the funds. At the end of each month the following calculations shall be made to determine the Payment Amount:

#### **3.3.1 Payment Amount**

(a) calculate the Monthly Amount as defined by the confirmed transactions received through its website for the preceding calendar month on behalf of the Agency;

(b) deduct from the Monthly Amount, the Credit Card Merchant Fees and the Platform Fees where not covered by the Donor;



(c) pay the total Monthly Amount of donations and payment services, minus the Credit Card Merchant Fees and Platform Fees, to an account nominated by the Agency ('the Donation Payment Amount').

### **3.4 Payment to Agency**

Our Community Pty Ltd will electronically transfer the Payment Amount to the Agent's nominated management account within five Business Days from the end of the month.

### **3.5 User Information**

Within five Business Days of the end of each month, Our Community Pty Ltd will send to the Agency:

- (a) a copy of the Funds Remittance Advice as a spreadsheet with User details for the Agency;
- (b) the names and addresses of the Users who have deposited funds to the Agency in the previous month.

### **3.6 Receipts**

(a) Our Community Pty Ltd will provide receipts, if requested to do so when setting up the service event, on behalf of the Agency to the Users who have made payments to the Agency. The receipt is at the point of payment, in addition to an end of financial year donation summary.

(b) Receipts must include:

- (1) a statement that the receipt is issued by Our Community Pty Ltd, as agent of the Agency;
- (2) the name of the Agency and its ABN;
- (3) a statement that the receipt is for a gift (when a donation); and
- (4) if the Agency is a DGR, a statement that a tax deduction may be claimed for donations of \$2 or more.

### **3.7 Records**

(a) Our Community Pty Ltd must keep full and proper accounts and records showing clearly all transactions relating to the Agency established under this agreement.

(b) The Agency or its representative may, at all reasonable times and on at least 10 Business Days' notice examine and take copies of the records and documents of Our Community Pty Ltd which relate to the Agency.

### **3.8 User Details**

Information obtained from Users will be disclosed by Our Community Pty Ltd to the Agency which will deal with that information in accordance with its own privacy policy. Our Community Pty Ltd will also retain that information after disclosure to the Agency and will maintain and use that information in accordance with the GiveNow Privacy Policy. Our Community Pty Ltd will not use this



information other than as set out in this policy or as required by law or as consented to by the Agency.

### **3.9 Remittance Failure**

In the event that funds are unable to be remitted to the designated bank account (other than due to the act or omission of Our Community Pty Ltd), Our Community Pty Ltd will notify the organisation within three business days. After five attempts, or six months, whichever is greater, Our Community Pty Ltd have the right to choose and remit the funds to a like-minded group.

## **4 Obligations of the Agency**

The Agency must:

- (a) comply with all conditions of its Authority and all applicable Fundraising Statutes;
- (b) advise Our Community Pty Ltd, as soon as practicable, of any changes to its ABN, Authority, ACNC charity registration status or to its DGR tax status;
- (c) return any donations to the Users with addresses in States or Territories in which the Agency is not legally entitled to collect or solicit donations should the Agency fail to advise Our Community Pty Ltd that Our Community Pty Ltd must not collect donations in a certain State or Territory due to a change in Authority.
- (d) return any remitted donations to Our Community Pty Ltd gained as a result of a fraudulent transaction.
- (e) if the Agency is an overseas aid fund, comply with the Australian Council for International Development Code of Conduct.
- (f) provide consent for Our Community Pty Ltd to provide organisation and Cause information captured during the registration process to Westpac in order to:
  - create a unique Sub Merchant Identification
  - establish Westpac's right to audit, review and inspect all Sub-Merchants on a regular basis.
- (g) in the event that the Agency processes in excess of \$100,000 or more per scheme (Visa or Mastercard) per annum, a re-evaluation of processes are required.

## **5 Indemnity**

The Agency indemnifies Our Community Pty Ltd from any loss arising directly from or in relation to:

- (a) A material defect in the Agency information;
- (b) any breach of an Authority or of a condition in any Authority by the Agency;
- (c) any breach of any Fundraising Statute or other Act or Regulation by the Agency; (d) any breach by the Agency of this agreement;



(e) any information given, or representation made to Our Community Pty Ltd by the Agency prior to entering this agreement or during or after its term;

(f) any information given, or representation made to any Donor or Payer by the Agency or by Our Community Pty Ltd where it is based on information given or a representation made by the Agency; or

(g) any dispute, claim or action alleging infringement of any Intellectual Property Rights of any person on grounds in any way related to the Agency Information; except to the extent that the loss is directly attributable to the negligence or wrongful act or omission of Our Community Pty Ltd.

Each party's total liability to the other for loss or damage suffered or incurred by the other party arising out of or in connection with this Agreement is limited in aggregate to \$500.

## **6 Licence from the Agency**

(a) The Agency grants Our Community Pty Ltd a licence to use, reproduce, adapt and communicate to the public the Agency Information including using it by posting it on the Website or in publicity, marketing or internal documents for Our Community Pty Ltd.

(b) Our Community Pty Ltd is not entitled to edit, modify or change the Agency Information without authorisation from the Agency.

## **7 Agency's Representations**

The Agency represents and warrants to Our Community Pty Ltd that:

(a) the Agency Information is true and correct and not misleading;

(b) the publication of the Agency Information is lawful;

(c) the execution and performance of this agreement complies with:

(1) all applicable Fundraising Statutes;

(2) any Authority; and

(3) the constituent documents of the Agency;

(d) the Agency has taken all necessary actions to authorise the execution and performance of this agreement in accordance with its terms;

(e) all information which is material to an agent for collecting donations or payments on behalf of the Agency has been fully disclosed to Our Community Pty Ltd;

(f) the Agency has the rights necessary to grant the licence in clause 6;

(g) the use by Our Community Pty Ltd of the Agency's Information will not infringe any Intellectual Property Rights of any other person;

(h) the Agency has all necessary Authorities and has complied with all conditions; and

(i) the Agency adheres to the Anti-Money Laundering and Counter-Terrorism Financing Act 2006.

## **8 Intellectual Property**

Our Community Pty Ltd own all trademarks, logos, designs, text, graphics, images, video, information, software and sound made available through our online services, together with any goodwill or reputation and intellectual property rights subsisting in those things (our Intellectual Property), other than such material as is provided to Our Community Pty Ltd by the Agency.

The Agency must not copy, reproduce, transmit, display or otherwise distribute any of Our Community Pty Ltd's Intellectual Property in whole or in part without Our Community Pty Ltd's prior written consent, which may be given or withheld in our sole discretion.

## **9 Termination**

### **9.1 Termination by Our Community Pty Ltd or the Agency**

(a) Either Our Community Pty Ltd or the Agency can terminate the agreement on 28 days written notice.

(b) Either party may terminate this Agreement immediately if:

- the other party is in breach (other than a trivial breach causing no material harm) of any provision of this Agreement and (where the breach is capable of remedy) the party in breach has failed to remedy the breach within seven days of receipt of written notice from the other party describing the breach and calling for it to be remedied; or
- an Insolvency Event occurs in relation to the other party.

(c) Our Community Pty Ltd can immediately terminate the agreement if any cause or appeal is seen by the Our Community Pty Ltd to incite hatred, vilification or marginalise individuals or causes.

### **9.2 Effect of Termination**

(a) Our Community Pty Ltd must remove the Agency Information from the Website and refuse to accept donations or payments on behalf of the Agency, as soon as practicable, after termination.

(b) Within five Business Days of the end of the month in which this Agreement was terminated, Our Community Pty Ltd must send

(1) the balance of any outstanding donations or payments to the Agency less the Credit Card Merchant Fees and any applicable Platform Fee referred to in clause 3.3; and

(2) the information referred to in clause 3.7.

### **9.3 Dispute Resolution concerning the Agreement**

(a) If any dispute arises out of or in connection with this Agreement ('Dispute'), Our Community Pty Ltd or the Agency must not commence any court or arbitration proceedings unless they have



complied with this clause except where a party seeks urgent interlocutory relief;

(b) A party to this Agreement claiming that a Dispute has arisen out of or in relation to this Agreement must give written notice (Notice) to the other party to this Agreement specifying the nature of the Dispute.

(c) The parties must meet within seven days of receipt of the Notice (or such further period as agreed in writing by them) as seek to resolve the dispute. If the parties are unable to resolve the dispute within seven days, then the parties may mediate the Dispute or commence proceedings in accordance with the law of this Agreement.

## 10 Definitions

In this agreement:

- **Authority** means all necessary licences, consents, permissions, authorities, registrations and permits the Agency is required to have in order to request donations or payments from the public and appoint Our Community Pty Ltd as its agent for collection of donations or payments under the terms in this agreement;
- **Average Rate of Total Fees** means the weighted average of the total of merchant fee, scheme and weighted interchange (where applicable) as determined by Westpac Bank on the first day of the subsequent month.
- **Bank Account** means the bank account maintained by Our Community Pty Ltd, as agent for the Agency, for the receipt and holding of all money received for donations or payments on the Website.
- **Credit Card Merchant Fees** are the processing fees charged to the Agency by the credit card companies. We have negotiated a reduced charge for most major credit cards.
- **CrowdRaiser** is a member of the public that is a supporter who wants to promote eligible fundraising activities of the Agency(s). The CrowdRaiser undertakes this activity with the understanding that it will not result in any material or financial personal benefit to themselves. All benefits, including all financial proceeds are transferred to the Agency.
- **CrowdRaising** is a service that provides members of the public with a customisable page to request donations for a specific Agency.
- **User** means an individual who makes a donation or payment or uses the information provided through the Website;
- **Agency Information** means the information posted on the Website relating to the Agency and its request for fundraising and includes the States and Territories in which the Agency can collect or solicit donations in compliance with any applicable Fundraising Statutes;
- **DGR** means an entity endorsed as a deductible gift recipient under Subdivision 30- BA of the Income Tax Assessment Act 1997;
- **Intellectual Property Rights** means copyright and neighbouring rights, all rights conferred by statute, common law or equity in or in relation to inventions (including patents), registered or unregistered trademarks, copyright, registered and unregistered designs, circuit layouts and confidential information and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;
- **Insolvency Event** means any of the following:
  - a liquidator or provisional liquidator is appointed to a party;
  - a party enters or resolves to enter into a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class

of its members or creditors, or it proposes a re- organisation, moratorium or other administration involving any of them;

- a party resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so or is otherwise wound up or dissolved; or
- a party refuses or is unable to pay its debts as and when they fall due or is deemed unable to pay its debts under any applicable legislation.
- **Monthly Amount** means the balance at the end of the month in the Bank Account kept under clause 3.1 prior to any amount being deducted for Credit Card Merchant Fees;
- **Payments** means money collected on behalf of an Agency by Our Community for services or products being sold or distributed by or on behalf of an Agency.
- **Payment Amount** means the amount calculated in accordance with clause 3.3;
- **Personal Information** means information or an opinion about an identified individual, or an individual who is reasonably identifiable. *See Our Community Privacy Policy for more information on the use of personal information.*
- **Regular Transaction** means a transaction that Our Community Pty Ltd has been engaged to complete at periodic intervals on behalf of the user to a Agency. The fees associated with the regular transaction will reflect the service used to initiate the regular transaction.
- **Service** includes but is not limited to Other Ways to Give and CrowdRaising listings
- **Tax** means any tax, levy, charge, impost, duty, fee, deduction which is assessed, levied, imposed or collected by any government agency and includes, but is not limited to, any interest, fine, penalty, charge, or fee.

## 11 General

### 11.1 Severability

If a provision of this agreement is invalid, illegal or unenforceable it must, to the extent that it is invalid, illegal or unenforceable, be treated as severed from this agreement, without affecting the validity and enforceability of the remaining provisions.

### 11.2 Governing law

(a) This agreement is governed by the laws of Victoria.

(b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria.

### 11.3 Whole agreement

This agreement is the whole agreement between the parties concerning the subject matter. It replaces any prior agreement, arrangement or understanding concerning the subject matter.





**Schedule 1 Service description, Merchant Fees and Platform Fees**

Plan	Credit Card Merchant Fees	Platform Fee
Starter	<ul style="list-style-type: none"> <li>• Average Rate of Total Merchant Service Fees per scheme per month from Visa &amp; Mastercard is to be confirmed within 3 business days of the next month*.</li> <li>• 1.43% AMEX</li> <li>• 0% Bank direct debit transfer</li> </ul>	0.00%
Basic		2.40%
Pro		3.25%

\*Approximate fee range:

- Between 0.25 – 0.39% for Agencies with Deductible Gift Recipient status.
- Between 0.60 – 0.99% for Agencies without Deductible Gift Recipient status.