



## Terms and Conditions

This online donations agreement is between your organisation (the Donee) and Our Community Foundation Limited  
ABN 72 102 593 484  
of 51 Stanley Street  
West Melbourne, Victoria, 3003

### Introduction:

- A. Our Community Foundation offers an online donations facility through its GiveNow Website located at [www.givenow.com.au](http://www.givenow.com.au) for the sole purpose of collecting donations ('the Website').
- B. The Donee is a not-for-profit organisation and is eligible to be fundraising in accordance with state and, or federal requirements.
- C. Our Community Foundation has agreed to provide an online donations facility to the Donee on the terms set out in this Agreement.

### It is agreed:

#### 1 Preconditions to agency

- (a) The Donee must provide copies of the following to Our Community Foundation:
  - (1) any Authority held by the Donee, under any of the Fundraising Statutes, and, if none is held, the reason why the Donee 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 Donee as a DGR, if they are DGR; and
  - (4) a draft of the Donee 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 Donee can legally collect or solicit donations (where applicable).
- (b) Our Community Foundation may request further information or an interview or site visit prior to accepting the appointment as an agent under this agreement.
- (c) Our Community Foundation may reasonably request amendments, additions, deletions or redrafting of the Donee Information.

#### 2 Our Community Foundation

##### Warranties

- (a) Our Community Foundation warrants that it has the necessary skills, knowledge and equipment needed and carries the necessary Authority to collect online donations on behalf of the Donee;

- (b) Our Community Foundation will obtain the necessary consent from the User to pass the funds and personal information onto the Donee;
- (c) Our Community Foundation 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 Foundation must keep a separate Bank Account for all donations and pay all funds received through the Website for the Donee into the Bank Account.

#### **3.2 Bank Account records**

Our Community Foundation must maintain the Bank Account showing:

- (a) all computerised records and donations received on behalf of the Donee;
- (b) the amount of Credit Card Merchant Fees deducted in accordance with clause 3.3(b);
- (c) the amount of commission deducted in accordance with Schedule 1; and
- (d) all payments made from the Bank Account.

#### **3.3 Return to Donee**

The Payment Amount paid by the Our Community Foundation must be calculated in accordance with the service engaged 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 for the donations service**

- (a) calculate the Monthly Amount as defined by the confirmed transactions received through its website for the preceding calendar month on behalf of the Donee;
- (b) deduct from the Monthly Amount, the Credit Card Merchant Fees incurred by Our Community Foundation on behalf of the Donee which relate to the number of transactions to or from the Donee's management account;
- (c) pay the total Monthly Amount of donations minus the Credit Card Merchant Fees to an account nominated by the Donee ('the Donation Payment Amount').

##### **3.3.2 Payment Amount for all other GiveNow Services**

- (a) calculate the Monthly Amount of funds received through the Service pages on the website on behalf of the Donee;
- (b) deduct from the Monthly Amount:
  - the Credit Card Merchant Fees incurred by Our Community Foundation on behalf of the Donee which relate to the number of transactions to or from the Donee's management account; and
  - the service commission as specified in Schedule 1 of this agreement
- (c) pay the total Monthly Amount of donations minus the Credit Card Merchant Fees and the Commission to an account nominated by the Donee ('the Service Payment Amount').

#### **3.4 Payment to Donee**

Our Community Foundation will electronically transfer the Donation Payment Amount and the Service Payment Amount to the Donee's nominated management account within 5 Business Days from the end of the month.

#### **3.5 User Information**

Within 5 Business Days of the end of each month, Our Community Foundation will send to the Donee:

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

### **3.6 Receipts**

(a) Our Community Foundation will provide receipts, if requested to do so when setting up the service event, on behalf of the Donee to the Users who have donated funds to the Donee.

(b) Receipts must include:

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

### **3.7 Records**

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

(b) The Donee 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 Foundation which relate to the Donee.

### **3.8 User Details**

Information obtained from Users will be disclosed by Our Community Foundation to the Donee which will deal with that information in accordance with its own privacy policy. Our Community Foundation will also retain that information after disclosure to the Donee, and will maintain and use that information in accordance with the GiveNow Privacy Policy. Our Community Foundation will not use this information other than as set out in this policy or as required by law or as consented to by the Donee.

### **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 Foundation), Our Community Foundation will notify the organisation within 3 business days. After 5 attempts, or 6 months, whichever is greater, the Our Community Foundation have the right to choose and remit the funds to a like-minded group.

## **4 Obligations of the Donee**

The Donee must:

- (a) comply with all conditions of its Authority and all applicable Fundraising Statutes;
- (b) advise Our Community Foundation, as soon as practicable, of any changes to its 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 Donee is not legally entitled to collect or solicit donations should the Donee fail to advise Our Community Foundation that Our Community Foundation must not collect donations in a certain State or Territory due to a change in Authority.
- (d) return any remitted donations to Our Community Foundation gained as a result of a fraudulent transaction.
- (e) use GiveNow only to receive genuine gifts or donations and not to receive payments for goods or services (including for payment of membership fees).
- (f) if the Donee is an overseas aid fund, comply with the Australian Council for International Development Code of Conduct.
- (g) provide consent for Our Community Foundation to disclose 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.

(h) in the event that the Donee 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 Donee indemnifies Our Community Foundation from any loss arising directly from or in relation to:

- (a) A material defect in the Donee information;
- (b) any breach of an Authority or of a condition in any Authority by the Donee;
- (c) any breach of any Fundraising Statute or other Act or Regulation by the Donee;
- (d) any breach by the Donee of this agreement;
- (e) any information given or representation made to Our Community Foundation by the Donee prior to entering this agreement or during or after its term;
- (f) any information given or representation made to any Donor by the Donee or by Our Community Foundation where it is based on information given or a representation made by the Donee; 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 Donee Information; except to the extent that the loss is directly attributable to the negligence or wrongful act or omission of Our Community Foundation.

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 Donee**

- (a) The Donee grants Our Community Foundation a licence to use, reproduce, adapt and communicate to the public the Donee Information including using it by posting it on the Website or in publicity, marketing or internal documents for Our Community Foundation.
- (b) Our Community Foundation is not entitled to edit, modify or change the Donee Information without written authorisation from the Donee.

## **7 Donee's Representations**

The Donee represents and warrants to Our Community Foundation that:

- (a) the Donee Information is true and correct and not misleading;
- (b) the publication of the Donee 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 Donee;
- (d) the Donee 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 on behalf of the Donee has been fully disclosed to Our Community Foundation;
- (f) the Donee has the rights necessary to grant the licence in clause 6;
- (g) the use by Our Community Foundation of the Donee's Information will not infringe any Intellectual Property Rights of any other person;
- (h) the Donee has all necessary Authorities and has complied with all conditions; and
- (i) the Donee adheres to the Anti-Money Laundering and Counter-Terrorism Financing Act 2006.

## **8 Intellectual Property**

Our Community Foundation 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 Foundation by the Donee.

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

## 9 Termination

### 9.1 Termination by Our Community Foundation or the Donee

(a) Either Our Community Foundation or the Donee 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 7 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 Foundation can immediately terminate the agreement if any cause or appeal is seen by the Our Community Foundation to incite hatred, vilification or marginalise individuals or causes.

### 9.2 Effect of Termination

(a) Our Community Foundation must remove the Donee Information from the Website and refuse to accept donations on behalf of the Donee, as soon as practicable, after termination.

(b) Within 5 Business Days of the end of the month in which this Agreement was terminated, Our Community Foundation must send

- (1) the balance of any outstanding donations to the Donee less the Credit Card Merchant Fees and any applicable Commission 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 Foundation or the Donee 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 7 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 7 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 Donee is required to have in order to request donations from the public and appoint Our Community Foundation as its agent for collection of donations 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 Foundation, as agent for the Donee and for other Donees, for the receipt and holding of all money received by online donations to any of the donees listed on the Website, including the Donee;
- **Credit Card Merchant Fees** are the processing fees charged to the donee group by the credit card companies. We have negotiated a reduced charge for most major credit cards.
- **User** means an individual who makes a donation or uses the information provided through the Website;
- **Donee Information** means the information posted on the Website relating to the Donee and its request for fundraising and includes the States and Territories in which the Donee 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 trade marks, 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:
  - o a liquidator or provisional liquidator is appointed to a party;
  - o 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;
  - o 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
  - o 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;
- **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.*
- **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, fees and commissions

1 September 2017	Service Description	Transaction Fees	Commission
Donations	Providing community organisations with access to a quality transaction solution to collect donations via <a href="http://www.givenow.com.au">www.givenow.com.au</a>	<ul style="list-style-type: none"><li>• Average Rate of Total Fees per scheme per month from Visa &amp; MasterCard is to be confirmed by 4 October, 2017*</li><li>• 1.43% AMEX</li><li>• 0% Bank direct debit transfer</li></ul>	0%
Other Ways to Give	Providing community organisations with a platform to identify a place for Australians to take unwanted goods as an alternative form of giving to donations.	Not applicable	Not applicable

\*Approximate fees are expected to be:

- Between 0.30 – 0.35% for organisations with Deductible Gift Recipient status.
- Between 0.60 – 0.80% for organisations without Deductible Gift Recipient status.