



ourcommunity.com.au

Where not-for-profits go for help



GiveNow Terms and Conditions

This online donations agreement is between your organisation (the Donee) and

Our Community Proprietary Limited

ABN 24 094 608 705

of 51 Stanley Street

West Melbourne, Victoria, 3003

Introduction:

A. Our Community Pty Ltd offers an online donations facility through its GiveNow Website located at 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 Pty Ltd has agreed to provide an online donations facility to the Donee 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 Donee must provide copies of the following to Our Community Pty Ltd:

(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 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 Donee or Crowdraiser 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 donations on behalf

of the Donee;

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

(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 donations and pay all funds received through the Website for the Donee into the Bank Account.

3.2 Bank Account records

Our Community Pty Ltd 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 Platform Fee 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 Pty Ltd 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;
- (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 Platform Fee as specified in Schedule 1 of this agreement which includes the Credit Card Merchant Fees;
- (c) pay the Monthly Amount minus the Platform Fee to an account nominated by the Donee ('the Service Payment Amount').

3.4 Payment to Donee

Our Community Pty Ltd 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 Pty Ltd 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 Pty Ltd 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 Pty Ltd, 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 Pty Ltd 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 Pty Ltd which relate to the Donee.

3.8 User Details

Information obtained from Users will be disclosed by Our Community Pty Ltd to the Donee 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 Donee, 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 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 Pty Ltd), Our Community Pty Ltd will notify the organisation within 3 business days. After 3 attempts, or 6 months, whichever is greater, the Our Community Pty Ltd 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 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 Donee is not legally entitled to collect or solicit donations should the Donee 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) 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) use GiveNow for a maximum of only three (3) active causes at any point in time. The number of other services used is not limited.

(g) if the Donee is an overseas aid fund, comply with the Australian Council for International Development Code of Conduct.

(h) 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.

(i) 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 Pty Ltd 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 Pty Ltd 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 Pty Ltd 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 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 Donee

(a) The Donee grants Our Community Pty Ltd 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 Pty Ltd.

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

7 Donee's Representations

The Donee represents and warrants to Our Community Pty Ltd 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 Pty Ltd;
- (f) the Donee has the rights necessary to grant the licence in clause 6;
- (g) the use by Our Community Pty Ltd 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 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 Donee.

The Donee 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 Donee

(a) Either Our Community Pty Ltd 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 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 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 Pty Ltd must send

(1) the balance of any outstanding donations to the Donee 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 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 Pty Ltd 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 Pty Ltd, 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.
- **Crowdraiser** is a member of the public that is a Donee supporter who wants to promote eligible fundraising activities of the Donee(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 Donee.
- **Crowdfunding** is a service that provides members of the public with a customisable page to request for a specific Donee(s).
- **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:
 - 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;
- **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 Donee. 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 Crowdfunding 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;
- **User** means an individual who makes a donation or uses the information provided through the Website.

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

28 Feb 2018	Service description	Merchant Fees	Platform Fee
Donations	Providing community organisations with access to a quality transaction solution to collect donations via www.givenow.com.au	<ul style="list-style-type: none"> - Average Rate of Total Merchant Service Fees per scheme per month from Visa & Mastercard is to be confirmed within 3 business days of the next month*. - 1.43% AMEX - 0% Bank direct debit transfer 	0%
Service: 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
Service: Crowdfunding	Organisation supporters raise funds for an established GiveNow cause. This is achieved by the supporter creating a GiveNow fundraiser page.	All inclusive total Platform Fee of 3.8%, which includes all bank and credit card Merchant Fees.	

*Approximate fee range:

- Between 0.30 – 0.39% for organisations with Deductible Gift Recipient status.
- Between 0.60 – 0.99% for organisations without Deductible Gift Recipient status.