
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
(Our Community Foundation)

Introduction:

- A.** Our Community Foundation offers an online donations facility through its Give Now Website for the sole purpose of collecting donations (supported by Westpac Bank) located at www.givenow.com.au ('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) a letter from the Australian Taxation Office advising of the endorsement of the Donee as an income tax exempt charity, if applicable;
- (3) the letter 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.

- (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 Donor to pass the donations and personal information onto the Donee;
- (c) Our Community Foundation will have information available on its website for the Donor as to the

collection and use of their donations 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 donations received through the Our Community Foundation Website (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) all payments made from the Bank Account; and

3.3 Return to Donee: Monthly Amount and Payment Amount

Our Community Foundation must, at the end of each month:

- (a) calculate the Monthly Amount of donations received through its 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;
- (c) pay the total Monthly Amount of donations minus the Credit Card Merchant Fees to an account nominated by the Donee ('the Payment Amount').

3.3A Limit to amount of expenses to be incurred by both parties:

To avoid any doubt, Our Community Foundation accepts all costs in the running and administration of the Website and the Donee will only be liable for the Credit Card Merchant

Fees incurred in the keeping of the donation, unless any fraudulent use of credit cards is undertaken.

3.4 Payment to Donee

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

3.5 Information

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

- (a) a copy of the Appeal Remittance Advice as a spreadsheet with donor details for the Donee;
- (b) the name and addresses of the Donors who have made donations 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 appeal, on behalf of the Donee to the Donors whose addresses are complete and are in the States and Territories listed in the Donee Information as the States and Territories in which the Donee can collect or solicit donations.

(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; and
- (3) a statement that the receipt is for a gift.

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 Donor Details

Information obtained from Donors is the property of the Donee. Our Community Foundation will not use this information other than as set out in this agreement or as required by law or as consented to by the Donee.

3.9 Donee Details

Our Community Foundation may share certain Donee details with the Pozible crowdfunding website. This includes the organisation name, which is shared with Pozible to allow GiveNow-registered organisations to receive automatic registration with Pozible. Other Donee details, including bank account details, confirmation of Authorities to Fundraise, DGR status and email address, are only shared with Pozible if an authorised Donee representative permits this through registering a crowdfunding project on Pozible.

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 or to its tax status;
- (c) return any donations to the Donors 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) refund donations at the request of the Donor if the donations have been remitted by Our Community Foundation to the Donee
- (f) not accept payments for goods, services or memberships through GiveNow. This service is for the receipt of donations only.

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.

5A. 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; and

- (h) the Donee has all necessary Authorities and has complied with all conditions.

8 Termination

8.1 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) 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.
- (c) Within 5 Business Days of the end of the month after Termination, Our Community Foundation must send
 - (1) the balance of any outstanding donations to the Donee less the Credit Card Merchant Fees referred to in clause 3.3(b). Our Community Foundation must send the Payment Amount; and
 - (2) the information referred to in clause 3.7.
- (d) 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

8.3 Termination for Breach:

Either party may terminate this Agreement immediately if:

- (a) 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

- (b) an Insolvency Event occurs in relation to the other party.

8A. Dispute Resolution - Donors

Our Community Foundation recognises that disputes in relation to the conduct of staff or volunteers, complaints from the public, errors in transactions or common mistakes may occur during the period of this Agreement. Our Community Foundation will appoint a dispute resolution officer to liaise with an appointed dispute resolutions officer with the Donee's organisation. It is agreed that:

- (a) the Donee will appoint a dispute officer and supply the contact details to Our Community Foundation, who will be given the details of the appointed Our Community Foundation dispute officer.
- (b) Notification of a change of dispute officer by either party must be provided to the other party within 5 working days.
- (c) Any complaint from the public that concerns the Donee will be brought to the Donee's dispute officer's attention in writing;
- (d) Our Community Foundation undertakes to treat all complaints seriously and sympathetically and to act promptly in an attempt to resolve the matter.

8B. 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) If the parties do not agree within 7 days of receipt of the Notice (or such further period as agreed in writing by them) as to:

- (1) the Dispute resolution technique and procedures to be adopted;
- (2) the timetable for all steps in those procedures; and
- (3) the selection and compensation of the independent person required for such technique,

the parties may mediate the Dispute or commence proceedings in accordance with the law of this Agreement.

9 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;

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.

Donor means an individual who makes a donation 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, 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) a liquidator or provisional liquidator is appointed to a party;
- (b) 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;
- (c) 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
- (d) 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 (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

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.

10 General

10.1 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.

10.2 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.

10.3 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.