



## Online Fundraising Service Agreement

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## The parties agree

### 1 Definitions & Interpretation

- 1.1 In this Agreement, unless the context requires another meaning, capitalised terms have the definitions given to them in Schedule 1.
- 1.2 This Agreement will be interpreted by reference to the rules in Schedule 1.

### 2 Engagement to Provide Services

- 2.1 The Beneficiary engages GoFundraise to perform, and GoFundraise agrees to perform, the Services during the term of the Agreement in accordance with the following terms and conditions.
- 2.2 The Beneficiary must disclose to GoFundraise on or before the date of this Agreement any licence, authorisation, consent, permission or registration held by it under a Charitable Fundraising Statute (**Authorisation**).
- 2.3 GoFundraise will perform the Services with all the care, skill and diligence of a reasonably prudent operator of hosted online applications in a manner that:
  - (a) complies with all applicable laws, rules and regulations; and
  - (b) is consistent with any Authorisation.

#### No warranty of continuous performance

- 2.4 Despite clause 2.1, Gofundraise does not warrant that the Platform will operate wholly without error or interruption. The Beneficiary releases GoFundraise and holds GoFundraise harmless from and against any claim, loss, damage, cost or expense accruing to the Beneficiary or any person claiming through the Beneficiary in connection with the performance levels or the continuity of operation of the Platform.

#### Term of this Agreement

- 2.5 This Agreement will commence on the Commencement Date and will continue for 12 months unless terminated under clause 10.1 (**Initial Term**). On expiry of the Initial Term this Agreement will automatically continue for successive periods of 12 months (**Subsequent Term**) unless terminated by either party not less than 30 days in advance of the expiry date of the Initial Term or any Subsequent Term.

### 3 Payment for Services

- 3.1 In consideration for the Services and any Additional Services, the Beneficiary must pay the Fees to GoFundraise.

**GoFundraise authorised to deduct Fees from Gross Receipts**

- 3.2 The Beneficiary authorises and instructs GoFundraise to deduct all applicable Fees from the Gross Receipts and to account to the Beneficiary for the balance.
- 3.3 Subject to clause 3.2, GoFundraise will pay the balance of the Gross Receipts to the Beneficiary fortnightly by electronic funds transfer to an Australian bank account nominated by the Beneficiary.

**Changes to Fees**

- 3.4 GoFundraise may amend the Fees from time to time (***other than the Transaction Fees***) by written notice to the Beneficiary served 30 days in advance of the effective amendment date, in which event the Beneficiary may either:
- (a) pay the Fees as amended on and from the effective amendment date; or
  - (b) provide written notice to GoFundraise as provided for in clause 13.1, in which event the provisions of clause 12.2 will apply.

Notwithstanding clause 3.4, GoFundraise may amend the Transaction Fees from time to time to reflect then-current market rates charged by comparable providers of similar online fundraising services. Such amendments will take effect automatically, without prior notice, and will not be subject to clauses 3.4(a) or (b).

**Annual Subscription Fee non-refundable**

- 3.5 Despite termination of this Agreement by:

- (a) the Beneficiary under clause 2.5; or
- (b) either party under clause 10.1,

when the Initial Term or any Subsequent Term has partially elapsed, the proportional balance of any Annual Subscription Fee paid or payable at the commencement of that term will not be refunded to the Beneficiary.

**Additional Products or Services**

- 3.6 GoFundraise may from time to time deliver Additional Services to or on behalf of the Beneficiary at the request of the Beneficiary, in which event:
- (a) the parties must agree in writing prior to commencement of the supply of such services by GoFundraise, the specification, delivery schedule and price of the products or services to be supplied to the Beneficiary; and
  - (b) The Beneficiary must pay GoFundraise the agreed Additional Service fee within 14 days of delivery of an invoice for the relevant Additional Service.

- (c) Where a Beneficiary enters into a separate additional agreement, including license agreements or requests Additional Services, those commitments are in addition to this Agreement and are payable even if early termination of this Online Fundraising Services Agreement

## 4 Status of the Beneficiary

### 4.1 The Beneficiary represents and warrants that it:

- (a) is an Authorised Fundraising Organisation, where applicable; and
- (b) complies entirely with all applicable legislation in the conduct of its fundraising activities.

### 4.2 The Beneficiary must:

- (a) comply with the conditions of any licence, authorisation, consent, permission or registration held by the Beneficiary under a relevant Charitable Fundraising Statutes;
- (b) advise GoFundraise, as soon as is practicable, of any change to its status under a Charitable Fundraising Statute; and
- (c) obtain and maintain all insurance policies that a prudent organisation of the nature of, and conducting activities similar to those conducted by, the Beneficiary would obtain and maintain.

### Information to be provided to GoFundraise

### 4.3 The Beneficiary agrees to provide GoFundraise with the following, prior to the delivery by GoFundraise of any relevant Services:

- (a) A copy of its certificate of registration or ACN;
- (b) Where applicable, written confirmation of its status as a Deductible Gift Recipient;
- (c) A copy of any authority held by it in accordance with relevant Charitable Fundraising Statutes; and
- (d) Written confirmation as to the States and Territories in which the Beneficiary is lawfully entitled to collect or solicit donations.

### 4.4 The Beneficiary will provide GoFundraise with such further information and documentation as GoFundraise reasonably requires for the performance of the Services.

### Authorised representative of the Beneficiary

### 4.5 The Beneficiary must, within seven days of the date of this Agreement, provide GoFundraise with written notice of its choice of an authorised representative to act on behalf of the Beneficiary in all matters in connection with this Agreement (**authorised beneficiary**), and must provide written notice of any change to the identity of its authorised representative.

### 4.6 The Beneficiary authorises and instructs GoFundraise to act in accordance with the instructions of its authorised beneficiary and indemnifies GoFundraise from any liability incurred by GoFundraise in lawfully

performing its obligations under this Agreement in accordance with the instructions of the authorised beneficiary.

#### **Variation of relevant legislation**

- 4.7 Any addition, variation or deletion to the legislation of the State or Territory under which the Beneficiary accepts donations from Donors pursuant to this agreement must be notified to GoFundraise by the Beneficiary at its earliest opportunity, following which GoFundraise will ensure that it complies with the authority as so added to, varied or deleted.

## **5 Platform access**

- 5.1 On commencement of this Agreement, GoFundraise will provide the Beneficiary with access to the Platform via the public Internet. Access is effected by use of login information unique to the Beneficiary (**login information**). GoFundraise will provide additional login information to the Beneficiary only on the written instructions of the authorised representative of the Beneficiary.
- 5.2 The Beneficiary must keep its login information safe, private and secure at all times, pursuant to which obligation it must not, without limiting the ways in which its login information must be secured:
- (a) allow any other person to use login information or hold themselves out as the Beneficiary;
  - (b) not disclose the login information to any person that is not authorised by the Beneficiary to obtain access to the Platform; and
  - (c) regularly update any passwords or other unique identifiers used in conjunction with the login process to minimise the chance of misuse of login information.

#### **Indemnity for misuse of Beneficiary login information**

- 5.3 The Beneficiary indemnifies GoFundraise from any costs, expenses or damages suffered, incurred or paid by GoFundraise in connection with:
- (a) the Beneficiary's breach of clause 5.2; or
  - (b) the actions of any person obtaining access to the Platform by use of the Beneficiary's login information.

## **6 Beneficiary Fundraisers**

#### **Authority**

- 6.1 By operation of law and this Agreement, the Beneficiary appoints GoFundraise as its agent with authority only to supply the machinery by which the Beneficiary may solicit and collect charitable donations from the general public and all matters ancillary to that agency, pursuant to which:
- (a) Fundraisers have the facility to and will create Internet web pages to solicit donations from Donors; and

- (b) Fundraisers must be authorised by the Beneficiary to conduct fundraising activities through the agency of the GoFundraise Platform.

#### **Exclusion of liability for Fundraiser actions**

- 6.2 The Beneficiary remains at all times responsible for the actions of its authorised Beneficiaries, whether during the term of this Agreement or following its termination.
- 6.3 The Beneficiary acknowledges and accepts that, to the extent permitted by law, GoFundraise will be under no liability to the Beneficiary whatsoever, whether in contract or tort including without limitation, negligence, breach of statute, or any other legal or equitable obligation in respect of any loss or damage howsoever caused that may be:
  - (a) suffered or incurred or that may arise directly or indirectly in respect of any infringement by a Fundraiser of the Intellectual Property Rights of the Beneficiary or any other person in or in relation to Beneficiary Materials; or
  - (b) caused directly or indirectly by any act or omission of any Fundraiser accessing, using or otherwise dealing with the Platform,

except to the extent that GoFundraise has express notice of, or has authorised or otherwise caused or permitted such infringement, act or omission.

## **7 Management of information**

#### **Licence of Beneficiary Materials**

- 7.1 For the purposes of this Agreement and for no other purpose, the Beneficiary grants GoFundraise a non-exclusive, world wide, royalty free license during the term of this Agreement to:
  - (a) reproduce the Beneficiary Materials on the Platform; and
  - (b) display the Beneficiary Materials to users of the Platform.
- 7.2 The Beneficiary warrants that any Beneficiary Materials provided by it or by its agents:
  - (a) are formatted for use by GoFundraise in accordance with publishing requirements for [www.gofundraise.com.au](http://www.gofundraise.com.au) (*see registration documents, supplied separately, for clarification on what to supply*);
  - (b) are not defamatory, obscene, false, misleading or deceptive;
  - (c) do not infringe upon any applicable law, community standards or the Intellectual Property Rights of any person.

#### **GoFundraise acquires no rights in materials**

- 7.3 GoFundraise acknowledges and accepts that it will not, as a result of entering into this Agreement, acquire any Intellectual Property Rights in the Beneficiary Materials or any copies or derivations of them.

### **Beneficiary obligation to inform relevant authorities**

- 7.4 Where the functionality of the Platform provided to the Beneficiary pursuant to the Services permits the Beneficiary to edit Beneficiary Materials displayed to the public through the Platform, including without limitation the Beneficiary's '*Charity Message*', the Beneficiary must inform the relevant State or Territory authorities if required to do so under the relevant Charitable Fundraising Statute.

### **GoFundraise obligations**

- 7.5 GoFundraise undertakes to:
- (a) deal with all personal information received by it in the delivery of the Services in accordance with the National Privacy Principles and GoFundraise's own Privacy Policy (*located at [www.gofundraise.com.au](http://www.gofundraise.com.au)*);
  - (b) obtain and maintain all insurance that a prudent organisation of the nature of, and conducting activities similar to those conducted by, GoFundraise would obtain and maintain;
  - (c) comply with all applicable legislation of the States and Territories in which it is engaged to deliver Services under this agreement; and
  - (d) comply with any subsequent addition, variation or deletion to the legislation of the States and Territories in which it is engaged to perform Services under this Agreement of which it becomes aware or as is notified to it by the Beneficiary;
  - (e) notify the Beneficiary of any addition, variation or deletion to legislation to the delivery of the Services to the Beneficiary of which it becomes aware; and
  - (f) comply with the *Privacy Act 1988* (Cth) as amended from time to time.

## **8 Data**

- 8.1 Any Personal Information acquired by GoFundraise in the performance of this Agreement, including all Donor Personal Information (**Donor database**), will be delivered to the Beneficiary..
- 8.2 Subject to clause 8.3, GoFundraise will:
- (a) provide to the Beneficiary access to the Participant and Donor Databases through a secure administration area of the Platform, and as a transferable report in the form of a Microsoft-compatible data medium and in a commonly used data format;
  - (b) not give, sell, or otherwise deal with Personal Information comprised in the Participant and Donor Database unless any such dealing is within the terms and intent of the *Privacy Act 1988* (Cth) and any other relevant legislation;
  - (c) store the Beneficiary's confidential banking information and data in a secure hosting environment that may be accessed by select GoFundraise employees directly involved in the ongoing management and operations of the Beneficiary's events.



- 8.3 Clause 8.2 will not apply if the Beneficiary has chosen to not receive the real-time reporting functionality offered through the Platform.
- 8.4 The Beneficiary acknowledges that Donors and Participants will be provided with the facility to opt to receive marketing and other communications from GoFundraise in the course of registration with the Platform or otherwise during the conduct of business through the Platform should they so choose, and in accordance with the *Privacy Act 1988* (Cth).

## 9 Confidential Information

### Obligation of confidentiality

- 9.1 Subject to clause 9.2, a Party that receives Confidential Information (**Recipient**) from another Party (**Provider**) must:
- (a) keep the Confidential Information confidential;
  - (b) not, without the Provider's prior written consent, make public or disclose Confidential Information of another Party to any third party;
  - (c) only use the Confidential Information for purposes relevant to this Agreement;
  - (d) establish and maintain effective security measures to safeguard the Confidential Information from unauthorised access, disclosure or use;
  - (e) not use or exploit the Confidential Information to the competitive disadvantage of the Provider; and
  - (f) not make or allow to be made copies or extracts of all or any part of the Confidential Information except for the purposes of this Agreement.

### Permitted disclosure

- 9.2 Confidential Information may be disclosed:
- (a) as required by any applicable law (including any rule of a stock exchange) or a judgement;
  - (b) to any relevant Government agency to the extent that such disclosure is required for the proper performance of this Agreement;
  - (c) to a Representative or Related Body Corporate but only where the Representative or Related Body Corporate has been required to keep the information confidential on terms no less stringent than this Agreement; or
  - (d) where the Provider has approved the disclosure in writing.
- 9.3 Disclosure must not be made unless prior to such disclosure all reasonable steps in the circumstances are taken to protect against the misuse or unauthorised disclosure of the Confidential Information, including where appropriate, requiring the third party to provide a written undertaking of confidentiality.

9.4 The Recipient must promptly comply with any request by the Provider to return or destroy any or all copies of the Confidential Information.

9.5 This clause will survive the expiry or termination of this Agreement.

## 10 Termination and suspension

10.1 Either Party has the right, but not the obligation, to terminate this Agreement with immediate effect by service of a written notice on the other Party (**Defaulting Party**) if any of the following occurs:

- (a) The Defaulting Party breaches or threatens to breach this Agreement and fails to remedy the breach within 14 days of notice by the other Party;
- (b) A representation or warranty made by the Defaulting Party under this Agreement is or becomes materially false or misleading;
- (c) An Insolvency Event occurs with respect to the Defaulting Party; or
- (d) The Defaulting Party commits an act that may have the effect of bringing the non-Defaulting Party into disrepute;
- (e) The Parties fail to resolve a dispute to which clause 13 applies.
- (f) Anytime within the trial period with 14 day's written notice.

10.2 Either party can terminate this agreement with 30 day's writtent notice at any time, however a re-registration fee of \$300 may apply if terminated by the Beneficiary.

10.3 For clarity, this Agreement sets out the terms of participation on the GoFundraise Platform. Any separate licence agreements (e.g. Select Licence, Event Creator Plus, or other premium licences) and any Additional Services agreed in writing are binding in addition to this Agreement. The termination provisions in this clause do not waive or reduce any obligations under such separate licence agreements or Additional Services, which will continue to apply in accordance with their own terms.

10.4 In the event of termination under clause 10.1 or 10.2, GoFundraise will as soon as is reasonably practicable, remove any information relating or referring to the Beneficiary from its Platform and all related websites under its control.

### Suspension

10.5 GoFundriase reserves the right to suspend the delivery of the Services and any Additional Services for so long as it considers reasonably necessary, if, with respect to the Beneficiary, any of the circumstances in clause 10.1 occur and while those circumstances subsist.

## 11 Force Majeure

11.1 If a Party (**Affected Party**) is, or anticipates that it will be, unable to perform an obligation under this Agreement due to the occurrence of a Force Majeure Event, it will promptly serve the other Party (**Non-**

**Affected Party**) a written notice providing full details of the Force Majeure Event (**Force Majeure Event Notice**); and

- 11.2 The Affected Party must take all reasonable steps to remove or mitigate the relevant effects of a Force Majeure Event.

#### **Effect of Force Majeure Event**

- 11.3 If the Affected Party is unable to perform an obligation under this Agreement due to the occurrence of a Force Majeure Event, such non-performance (and any corresponding or related performance obligation of the other party):
- (a) will be excused during the time and to the extent that performance is prevented, wholly or in part, by the Force Majeure Event; and
  - (b) will not give rise to any liability to the Non-Affected Party for any losses or damages arising out of, or in any way connected with, such non-performance.
- 11.4 If by reason of a Force Majeure Event the Affected Party is unable to perform any obligation under this Agreement for 180 days, either Party may terminate this Agreement with immediate effect by serving written notice on the other Party.

## **12 Indemnity & Limitation of Liability**

#### **Mutual Indemnity**

- 12.1 Each party (**the indemnifying party**) indemnifies and will keep indemnified the other party from and against all proceedings, actions, claims, demands, losses, liabilities, damages, costs and expenses which may be made or brought against or suffered or incurred by the other party, and arising directly or indirectly out of or in connection with any breach of this Agreement by the indemnifying party, except to the extent that the loss or damage is caused by the fault of the other party.

#### **Mutual Limitation of Liability**

- 12.2 Other than in respect of injury, death or damage to physical property caused directly through negligence or wrongful acts committed by either party, the liability of a Party under this Agreement for any loss or damages incurred by either party is limited to the aggregate of all amounts paid or payable to either party under this Agreement in the six months immediately prior to the event giving rise to the liability.

## **13 Dispute Resolution**

#### **Notification of Dispute**

- 13.1 All disputes or differences arising out of or in respect to this Agreement must be resolved in accordance with this clause 13. The parties must continue with their respective obligations under this Agreement until the dispute is settled in accordance with this clause.

### **Third party mediation**

- 13.2 Any disputes arising from or in connection with this Agreement must be notified in writing to the other Party (**Dispute Notice**).
- 13.3 On service of a Dispute Notice, the Parties must within 15 Business Days meet and negotiate in good faith in order to:
- (a) identify the subject matter of the dispute;
  - (b) identify the provisions of this Agreement relevant to the dispute;
  - (c) discuss each other's position in relation to the dispute; and
  - (d) resolve the dispute by mutual agreement.
- 13.4 If Parties fail to settle the dispute within the period and the process provided for in clause 13.3, either party may give notice of termination as provided for in clause 10 of this Agreement.
- 13.5 Any information or documents disclosed by a Party to the other Party under this clause 13 must be kept confidential and may not be used for any purpose except to aid in the resolution of the dispute under this clause.
- 13.6 Nothing in this clause 11 restricts a party from obtaining urgent equitable relief before an appropriate court.

## **14 Consumer Complaints**

- 14.1 Any consumer complaint received by the Beneficiary in connection with this Agreement must be in writing and submitted to GoFundraise for resolution by it within 14 days of the date of receipt of the complaint by GoFundraise. If the complaint is not resolved by GoFundraise within 10 business days, it may be referred for consideration to the relevant State or Territory regulatory body responsible for the administration of the Charitable Fundraising Statute applicable in the jurisdiction of the complaint. If the complaint is specific to a Beneficiary, GoFundraise will notify that Beneficiary as to the outcome of the procedures referred to in this clause 14.

## **15 Notices**

### **Requirements**

- 15.1 Notices must be:
- (a) in writing, in English;
  - (b) addressed to the recipient at the address or fax number set out at the head of this Agreement or to any other address or facsimile number or email address that a party may notify to the other;
  - (c) signed by the Party or, where the sender is a company, by an officer or under the common seal of the sender; and

- (d) sent to the recipient by hand, prepaid post, facsimile or email.

#### **Receipt**

15.2 Without limiting the means by which a Party may be able to prove that a notice has been received by the other Party, a notice will be considered to have been received:

- (a) if sent by hand, when left at the address of the recipient;
- (b) if sent by prepaid post, 3 days (if posted within Australia to an address in Australia) or 10 days (if posted from one country to another) after the date of posting; or
- (c) if sent by facsimile, on receipt by the sender of an acknowledgment or transmission report generated by the sender's machine indicating that the whole facsimile was sent to the recipient's facsimile number; and
- (d) if sent by email, on receipt by the sender of a confirmation of receipt by the recipient,

but if a notice is served by hand, or is received by the recipient's facsimile or email on a day that is not a Business Day where the recipient is located, or after 5:00 PM (recipient's local time) on a Business Day, the notice will be considered to have been received by the recipient at 9.00 AM (recipient's local time) on the next Business Day.

## **16 General Provisions**

#### **Entire Agreement**

16.1 This Agreement:

- (a) embodies the entire understanding of the Parties in relation to its subject matter;
- (b) constitutes all of the terms agreed upon between the Parties; and
- (c) supersedes any prior agreement or representations (whether or not in writing) between the Parties.

#### **Invalid or unenforceable provisions**

16.2 If a provision of this Agreement is invalid or unenforceable in a jurisdiction:

- (a) it is to be read down or severed for that jurisdiction to the extent of the invalidity or unenforceability; and
- (b) its invalidity or unenforceability does not affect the validity or enforceability of that provision in another jurisdiction or of the remaining provisions.

#### **Waiver and exercise of rights**

16.3A provision or a right under this Agreement may not be waived or varied except in writing signed by the person to be bound.

**Assignment and novation**

- 16.4 The Parties acknowledge and agree Charitable Fundraising Statutes regulate their rights and obligations under this Agreement in addition to the terms of the Agreement and that it is incumbent upon GoFundraise to establish to its reasonable satisfaction, the status of the Beneficiary under the relevant legislation as well as the Beneficiary's suitability for supply of the Services. Accordingly, neither party may assign or novate this Agreement to another person without the written consent of the other Party, which consent may not be unreasonably withheld, but may be given subject to such terms as the non-assigning Party reasonably considers necessary.

**Counterparts**

- 16.5 This Agreement may be signed in counterparts and all counterparts taken together constitute one document.

**Rights Cumulative**

- 16.6 The rights, remedies and powers of the parties under this Agreement are cumulative and do not exclude any other rights, remedies or powers.

**Governing Law**

- 16.7 This agreement is governed by the laws of New South Wales and the Parties submit to the non-exclusive jurisdiction of the courts of New South Wales. The Parties waive any claim or objection to this choice of law based on the convenience of the forum.

## Schedule 1 - Definitions and interpretation

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### Definitions

In this Agreement, unless the context requires a different meaning, capitalised terms have the following meanings:

**Additional Service** means the supply of services by GoFundraise to the beneficiary additional to the Services, and includes without limitation:

- (a) Service Upgrades
- (b) graphic design and website development services; and
- (c) marketing related services such as promotions, rebates and incentives.

**Agreement** means this Online Fundraising Services Agreement.

**Annual Subscription Fee** means the fee set out in Item 3 payable by the Beneficiary to GoFundraise.

**Authorised Fundraising Organisation** in relation to a fundraising appeal means a person or organisation holding an authority to conduct the appeal.

**Bank** means an authorised deposit-taking institution authorised to carry on banking business under the *Banking Act 1959* (Cth).

**Beneficiary** means the charitable organisation engaging GoFundraise for provision of services in accordance with this Agreement.

**Beneficiary Materials** means photographs, trademarks, text, musical works cinematographic films and other intellectual property:

- (a) supplied to GoFundraise by the Beneficiary for the delivery of the Services, or for any reason; or
- (b) added to a Platform webpage by a Fundraiser.

**Business Day** means any weekday except a public holiday.

**Charitable Fundraising Statute** means:

- (a) *Charitable Fundraising Act 1991* (NSW);
- (b) *Fundraising Appeals Act 1998* (Vic);
- (c) *Collections Act 1966* (Qld);
- (d) *Collections for Charitable Purpose Act 1939* (SA);
- (e) *Charitable Collections Act 1946* (WA);
- (f) *Collections for Charities Act 2001* (TAS); and/or
- (g) *Charitable Collections Act 2003* (ACT).

**Commencement Date** means the date in Item 1 of the Reference Table.

**Confidential Information** means any information which, by its nature or the circumstances surrounding its disclosure, is or could reasonably be expected to be regarded as confidential to the disclosing party; but does not include information that:

- (a) The recipient can prove was already known to it at the time of disclosure by the provider;
- (b) The recipient acquires from a third party entitled to disclose it on a non-confidential basis; or
- (c) that is in or becomes part of the public domain other than by reason of a breach of this Agreement or any other obligation of confidentiality owed by the recipient to the provider.

**Deductible Gift Receipt (DGR)** means an entity endorsed as a deductible gift recipient under Subdivision 30-BA of the *Income Tax Assessment Act 1997*.

**Donor** means a person or organisation that makes a donation to the Beneficiary through the GoFundraise Platform.

**Donor Database** is a structured collection of donor records or data that is securely stored in the Platform and encrypted and certified with 256bit SSL certificates.

**Event Creator Plus package** means additional functionality available through the Platform and supplied to Beneficiaries on purchase of an Event Creator Plus Licence.

**Fees means** as applicable:

- (a) the Annual Subscription Fee;
- (b) the Service Fee;
- (c) the Transaction Fees;
- (d) any applicable Additional Service fees; and
- (e) GST.

**Financial Management Account** means an account created and maintained specifically for the purpose of holding funds raised for and on behalf of the Beneficiary.

**Financial Institution Fees** means the fees and charges administered by applicable financial institutions, including without limitation banks.

**Force Majeure Event** means any unexpected and unpreventable act beyond the reasonable control of the Parties (acting in a reasonable commercial manner) which makes performance of an obligation under this Agreement impossible, including, but not limited to an act of God, peril of the sea, war, riot, insurrection, civil commotion, martial law, flood, earthquake, epidemic, quarantine, radiation or radioactive contamination or terrorism.

**Fundraiser** means a person creating a webpage on the Platform to solicit donations from Donors.

**Gross Receipts** means the gross amounts of money received from Donors to the account of the Beneficiary from time to time pursuant to this Agreement



**GST** means any amount payable as GST as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), or any like tax imposed on the supply of Services by GoFundraise to the Beneficiary, subject to any applicable exceptions or exemptions.

**Intellectual Property Rights** means all rights in any patent, copyright, database rights, registered design or other design right, utility model, trade mark (whether registered or not and including any rights in get up or trade dress), brand name, service mark, trade name, eligible layout right, chip topography right and any other rights of a proprietary nature in or to the results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields, whether registrable or not and wherever existing in the world, including all renewals, extensions and revivals of, and all rights to apply for any of the foregoing rights owned, used, or intended to be used by the relevant Party whether or not registered, registrable or patentable.

**Insolvency Event** means, in respect of a Party, the occurrence of one or more of the following events:

- (a) a liquidator, provisional liquidator, administrator or similar officer is appointed to that Party;
- (b) any application (not being an application withdrawn or dismissed within five Business Days) is made to a court or other regulatory body for an order, or an order is made, or a resolution is passed, or any other proceedings occur under applicable law for the purpose of:
  - (i) appointing a liquidator, provisional liquidator, administrator or similar officer to that Party; or
  - (ii) winding up that Party;
- (c) any event or conduct occurs in respect of that Party which would enable a court to grant a petition, or an order is made for the bankruptcy of that Party;
- (d) that Party becomes, or admits in writing that it is, or is declared or deemed under any applicable law to be insolvent or unable to pay its debts; or
- (e) any material adverse change occurs in the financial standing or creditworthiness of that Party which, in the reasonable opinion of the other Party affects that Party's ability to perform its obligations under this Agreement and which is not remedied by provision of a bank guarantee, letter of credit or other security in a form acceptable to the other Party.

**Item** means an item listed in the Reference Table.

**Landing Page** means the personalised webpage set up by GoFundraise for the Beneficiary containing, but not limited to, their logo and information about the Beneficiary and active links to facilitate sponsorship and/or donations.

**Participant** means a person who participates in an event or fundraising initiative by means of or as initiated through the GoFundraise Platform to raise funds for the Beneficiary.

**Participant Database** is a structured collection of fundraiser records or data stored in the Platform and encrypted and certified with 256bit SSL certificates.

**Party** means GoFundraise or the Beneficiary as the context requires and **Parties** means both of them.

**Platform** means the hosted computer application suite maintained by GoFundraise and accessible via the public Internet and used for the collection and administration of charitable donations.

**Personal Information** means information or an opinion about an identified individual, or an individual who is reasonably identifiable;

**Related Body Corporate** of a Party means any firm, company, **business** entity or other organisation:

- (a) which is directly or indirectly controlled by the relevant Party;
- (b) which directly or indirectly controls the relevant Party;
- (c) which is directly or indirectly controlled by a third party who also directly or indirectly controls the relevant Party;
- (d) of which the relevant Party or any Related Body Corporate is a partner; or  
of which the relevant Party or any Related Body Corporate owns or has a beneficial interest (whether directly or indirectly) in 20% or more of the issued share capital or 20% or more of the capital assets.

**Representative** means any shareholder, director, officer, employee, adviser, partner, consultant, joint venturer, contractor or sub-contractor of a Recipient or a Provider provided that the person is directly and necessarily concerned with considering, evaluating, advising on or furthering the negotiations or purposes of this Agreement and whose knowledge of the Confidential Information is essential for that purpose.

**Service Fee** means the fee set out in Item 4 payable by the Beneficiary to GoFundraise in consideration of the Services.

**Services** means the services specified in Schedule 2.

**Service Upgrades** means the supply by GoFundraise of Platform functionality additional to the basic Platform services available and supplied to the Beneficiary in delivery of the Services and includes without limitation the additional functions and services available to the Beneficiary on purchase of the Event Creator Plus package.

**Trade Marks** means the trade marks, service marks, brand names, or rights about the get up or trade dress of any product, packaging or outlet, logos, slogans and similar rights owned, used or licensed for use by the Beneficiary in connection with the goods and/or services made available by the Beneficiary whether or not registered and whether within or outside Australia.

**Transaction Fees** means transaction and accounting fees charged by a financial institution, including without limitation Financial Institution Fees and credit or debit card payment processing fees paid or payable in connection with payments to or from GoFundraise in the delivery of Services to the Beneficiary as set out in Item 5.

## Interpretation

In this Agreement, unless the context otherwise requires:

- (d) A reference to the singular includes the plural and vice versa;
- (e) A reference to a gender includes all genders;
- (f) A reference to a document (including this Agreement) means that document (including any schedules and annexes), as amended, consolidated, supplemented, novated or replaced;
- (g) A reference to a recital, clause, schedule, annexe or item means a recital, clause, schedule, annexe or item of this Agreement;
- (h) A reference to a notice means a notice, approval, demand, request, nomination or other communication given or served by one Party to another under or in connection with this Agreement;
- (i) A reference to a person (including a Party) includes:
  - i. An individual, company, other body corporate, association, partnership, firm, joint venture, trust or Government Agency; and
  - ii. The person's successors, permitted assigns, substitutes, executors and administrators;
- (j) A reference to a law:
  - i. means that law as amended, consolidated, supplemented or replaced; and
  - ii. Includes any regulation, rule, statutory instrument, proclamation, by-law or other subordinate legislation made under that law;
- (k) A reference to *including* or *includes* means including or includes (as the case may be) without limitation; and
- (l) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (m) Where an obligation, warranty, representation or covenant is assumed or given by more than one person, it will bind them jointly and severally;
- (n) Where a payment or other act must be made or done on a day that is not a Business Day, then it must be made or done on the next Business Day; and
- (o) This Agreement must not be construed adversely to a Party only because that Party was responsible for preparing it.

## Schedule 2 - Services

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### Online Services

- 1 GoFundraise will act as a fundraising agent for the Beneficiary by providing the Platform to facilitate sponsorship for the benefit of, and make sponsorship payments to, the Beneficiary by credit card or debit card in a secure online transaction.

GoFundraise will enable Donors and Participants to commit funds to the Beneficiary via secure online transaction on the basis of understanding and being in agreement with GoFundraise's Terms and Conditions of use as disclosed on [www.gofundraise.com.au](http://www.gofundraise.com.au) subject to approval of the Fundraiser's fundraising appeal by the relevant Beneficiary.

GoFundraise will construct for the Beneficiary a Landing Page containing the Beneficiary's logo and a short description of the charity and its work. The Landing Page will be accessible via the public Internet 24 hours per day, 7 days per week, subject to short-term site maintenance or Internet service disruption.

For Beneficiaries with an Authority to Fundraise in NSW, GoFundraise will issue computerised authority on behalf of the authority holder for both face-to-face or other than face-to-face collectors. The computerised and printable authority letters and identification badge will include the information listed at 10(1)(a) through to (f) and 10(2) of this Schedule 2 and will be executed by GoFundraise as a delegate of the authorised fundraiser.

### Authority to Fundraise

A fundraising appeal may be established by Fundraisers on the Platform by creating a fundraising page. Such an appeal is limited by the Platform to;

- (a) the establishment and maintenance of the webpage;
- (b) the Fundraiser emailing the fundraising page to contacts, at the discretion of the Fundraiser; and
- (c) assigning the webpage to listed event options.

Where a Fundraiser creates a fundraising appeal on the Platform as described in 5 above, the Fundraiser requires approval and authority from the Beneficiary. An email will automatically be sent from GoFundraise to the Beneficiary providing the Beneficiary with the required information. The email will contain a link to the Fundraising page and the contact details of the page's author.

### Refunds

All payments submitted through the Platform are final and non-refundable. Terms and conditions covering card payments are subject to relevant payment gateway policies.

GoFundraise is not responsible for donations collected by Fundraisers for the Beneficiary from sponsors in unauthorised States or Territories. The Beneficiary is to be responsible for all refunds and claims involved in accordance with the Beneficiary's legal obligations.

## Administrative Services

GoFundraise will issue a receipt on behalf of the Beneficiary for each transaction to any person making a sponsorship donation whose details are complete and who is in a State or Territory in which the Beneficiary is authorised to operate as a registered charitable organisation, subject to the following, an automated point of sale receipt will be issued via email.

Deductible Gift Receipts will be issued by GoFundraise for all transactions over AUD \$2.00 made to a Beneficiary with DGR status in all States and Territories and these will include:

- (a) An acknowledgment that the receipt is issued by GoFundraise as a representative for fundraising on behalf of the Beneficiary;
- (b) The ABN of the Beneficiary;
- (c) A statement attesting to the Donor's payment amount in full and that it is a gift;
- (d) The date on which the gift was made;
- (e) The full details of the Donor, including the names and addresses supplied to GoFundraise.

## Record-Keeping Services

GoFundraise will keep at its offices for a period of no less than seven years records relating to all financial transactions relevant to the relationship between GoFundraise and the Beneficiary.

GoFundraise will engage a qualified external auditor to undertake an annual audit. GoFundraise will require the auditor to provide a certificate attesting that all accounts and associated records show a true and fair view of the financial dealings between GoFundraise and the Beneficiary.

GoFundraise will provide the Beneficiary access to such records within 21 days of a written request from the Beneficiary or the Beneficiary's nominee.

## Account-Keeping Services

A separate company Financial Management Account will be kept and maintained by GoFundraise, and all donations received through the Platform will be paid into GoFundraise's Financial Management Account.

GoFundraise will pay the Beneficiary by Electronic Funds Transfer every 14 days the net amount payable to the Beneficiary after the deduction of the Fees as provided for in Section 3 of this Agreement.

At the time of payment GoFundraise must provide a statement for each Beneficiary showing;

- (a) Donations made to the Beneficiary by Donors;
- (b) A listed amount detailing Transaction Fees deducted from the Gross Receipts;
- (c) A tax invoice detailing the Fees payable to GoFundraise; and
- (d) A receipt detailing all Fees paid by the Beneficiary.

Each account record is to be held for no less than five years and is to disclose;

- (a) Donations made to the Beneficiary by Donors; and
- (b) A listed amount detailing Transaction Fees deducted in accordance with this Agreement.

GoFundraise will issue the Beneficiary with a tax invoice statement at the end of each calendar month detailing;

- (a) donations made to the Beneficiary by Donors;
- (b) A listed amount detailing Financial Institution Fees deducted in accordance with this Agreement.

NSW Fair Trading  
Business Licensing  
Locked bag 5138  
Parramatta NSW, 2124

Email: [charity.inquiries@finance.nsw.gov.au](mailto:charity.inquiries@finance.nsw.gov.au)

To whom it may concern,  
**GoFundraise Pty Ltd**

In accordance with section 14(1)(e) of the *Charitable Fundraising Regulation 2008* we advise the Department that we intend to engage GoFundraise Pty Ltd as an agent for the purpose of online fundraising. We enclose a copy of our Online Fundraising Service Agreement (**Trader Agreement**) with GoFundraise Pty Ltd.

In accordance with Schedule 3 of the attached Trader Agreement, we wish to apply for the following amendments to the Authority Conditions:

That the requirements of Condition 5(1) that the title of the account include the name of the authority holder be waived and that the GoFundraise's Transaction account be used to receive donations on behalf of the authority holder.

The requirements of condition 8 with respect to the register of receipts is to be waived and that GoFundraise issue computerised receipts based on the relevant clauses of the Trader Agreement, including those in Schedule 2.

The requirement of condition 10(1) requiring that authorisation be given by the authorised fundraiser to a member, employee or agent who conducts or participates in a fundraising appeal *otherwise than as a face-to-face collector* be waived, and that GoFundraise issue computerised authority on behalf of the authority holder. The computerised authority will include points 10(1)(a) through to (f) of the Act and will be signed by GoFundraise as a delegate of the authorised fundraiser.

The requirement of condition 10(2) requiring that authorisation be given by the authorised fundraiser to a member, employee or agent who conducts or participates in a fundraising appeal *as a face-to-face collector* be waived, and that GoFundraise issue computerised and printable identification badges. The computerised identification cards will include points 10(2)(a) through to (h) of the Act and will be signed by GoFundraise as a delegate of the authorised fundraiser.

Sincerely,

**GoFundraise Pty Ltd**

Suite 8, 17 Thurlow Street

Redfern, NSW 2016

Australia

Telephone: 1300 889 272

Facsimile: +61 2 8456 6046

Email: [info@gofundraise.com.au](mailto:info@gofundraise.com.au)

**LETTER OF AUTHORITY**

This Letter of Authority is made by and between GoFundraise Pty Ltd. And the Beneficiary in accordance with:

*Charitable Fundraising Act (NSW) 1991*

*Fundraising Appeals Act (Vic) 1998*

*Collections Act (Qld) 1966*

*Collections for Charitable Purpose Act (SA) 1939*

*Charitable Collections Act (WA) 1946*

*Collections for Charities Act (TAS) 2001*

*Charitable Collections Act (ACT) 2003*

This Letter of Authority sets forth that the Beneficiary wishes to enter into an agreement appointing GoFundraise Pty Ltd. as an official, non-exclusive fundraising agent as per the signed Online Fundraising Service Agreement.

It is therefore agreed that GoFundraise Pty Ltd. is authorised to conduct fundraising on behalf of the Beneficiary and that the Beneficiary will supply GoFundraise with information such as a logo and information blurb for publication on [www.gofundraise.com.au](http://www.gofundraise.com.au)

Accordingly, GoFundraise will accept donations for and on behalf of the Beneficiary as per mutually agreed to and signed.

All funds raised will be transferred into the account nominated on the registration form less the 6% administrative fees for services provided by GoFundraise Pty Ltd. as well as relevant bank transaction processing fees.

Furthermore, subject to applicability, the Beneficiary agrees to enable GoFundraise to issue tax Deductible Gift Receipts to Donors for and on behalf of the Beneficiary for the full-donated amount.

The duly authorised parties designated below hereby signify their Agreement with the terms and conditions contained herein through execution of this Letter of Authority by signing as indicated below,