

Please read this entire Agreement before completing Schedule 1 on page 10 and faxing it back to us on (03) 9509 6072.

This agreement (**Agreement**) is between

Online Giving Foundation Ltd (ABN 39 143 731 131) of 11 Winter Street, Malvern, Victoria 3144
(**Online Giving**)

and

The charity or not-for-profit whose details are provided in Schedule 1 (**The Organisation**)

1. BACKGROUND

- 1.1. Online Giving provides online payment and administrative services to charities and not-for-profit organisations as well as community groups to assist them in raising money.
- 1.2. The Organisation wishes to engage Online Giving to provide them with those services.
- 1.3. This Agreement sets out the terms and conditions on which Online Giving will provide those services to the Organisation.

2. PRE-CONDITIONS TO THIS AGREEMENT

- 2.1. A condition precedent for this Agreement to take effect, and to enable Online Giving to provide the Services, is that the Organisation must have already provided Online Giving with copies of the following:
 - 2.1.1. All Organisation Information requested on the Registration Form on the Online Giving Web Site; and
 - 2.1.2. Whether any Authority is held by the Organisation, or if none is held, the reasons why such an Authority is not required.
- 2.2. Online Giving, in its discretion, may request amendments, additions, deletions or redrafting of the Organisation Information before registering the Organisation and providing the Services. Online Giving will confirm acceptance or rejection of the appointment as the Organisation's agent, and of the commencement of this Agreement, by written notice to the Organisation.

3. TERM

- 3.1. This Agreement will apply from the date of confirmation of registration and will continue until terminated in accordance with clause 21.

4. ONLINE GIVING'S GENERAL OBLIGATIONS

- 4.1. During the term of this Agreement, Online Giving will:
 - 4.1.1. Allow individuals who agree to Online Giving's Terms of Use to create a personalised fundraising page in order to promote Donations to be made to the Organisation;
 - 4.1.2. Host fundraisers' personalised fundraising page(s) on the Web Site;
 - 4.1.3. Allow individuals who agree to Online Giving's Terms of Use to donate directly to the Organisation through the Web Site;
 - 4.1.4. Allow the Organisation to view the total balance of the Donations received for the Organisation by using its username and password to access Online Giving's secure database; and
 - 4.1.5. Use reasonable endeavours to provide continuous service of the Web Site and its Services, to enable Donors to make Donations to the Organisation.

5. BANK ACCOUNTS

- 5.1. Online Giving will maintain a bank account for the purposes of:
 - 5.1.1. Holding Donations received through the Web Site on trust for the Organisation; and
 - 5.1.2. Paying the Donations to the Organisation in accordance with clause 8.1.

6. MANAGEMENT ACCOUNTS

- 6.1. Online Giving will maintain records to operate as a management account for the Organisation which will detail:
 - 6.1.1. All Donations received on behalf of the Organisation;
 - 6.1.2. The amount of credit card and bank fees attributable to the Donations and deducted in accordance with clause 8.1;
 - 6.1.3. The amount of Transaction Fees charged by Online Giving and deducted in accordance with clause 8.1; and
 - 6.1.4. All payments made from the Online Giving bank account to the Organisation.
- 6.2. Within 10 business days of the end of each Reporting Period, Online Giving will send to the Organisation:
 - 6.2.1. A copy of their management account record showing the Donations collected for the Organisation and due to be paid by Online Giving for the previous Reporting Period;
 - 6.2.2. The names of Donors and amounts of Donations; and
 - 6.2.3. The contact details of Donors who have consented to their personal information being provided to the Organisation for marketing purposes.

7. TRANSACTION FEES

- 7.1. In consideration of the provision of the Services under this Agreement, the Organisation will pay the Transaction Fees to Online Giving, as per clause 8.1.
- 7.2. Within 10 business days of the end of each Reporting Period, Online Giving will provide the Organisation with a tax invoice, which shows the sum of Transaction Fees calculated by Online Giving as payable, including a breakdown of calculation of the Transaction Fees.
- 7.3. The Organisation acknowledges and agrees that the Transaction Fees payable to Online Giving are not refundable. Online Giving may change the Transaction Fees by giving the Organisation 30 days' written notice.

8. PAYMENTS TO ORGANISATION

- 8.1. At the end of each Reporting Period, Online Giving will:
 - 8.1.1. Calculate the Donations received on behalf of that Organisation;
 - 8.1.2. Deduct the bank and credit card fees incurred by Online Giving on behalf of the Organisation which relate to the number and amount of transactions;
 - 8.1.3. Deduct the Transaction Fees incurred in providing the Services; and
 - 8.1.4. Electronically transfer the Payment Amount to the Organisation's Nominated Donation Account within 10 business days from the end of the Reporting Period.
- 8.2. If a Donor contacts Online Giving to advise that they have mistakenly made a Donation to the Organisation, the Organisation agrees that Online Giving may return the Donation to the Donor provided that the amount has not already been paid to the Organisation in accordance with clause 8.1.4. If the mistaken amount has already been paid to the Organisation, the amount

will not be returned to the Donor through Online Giving. The Organisation may refund any monies directly to Donors at its discretion.

9. GST

- 9.1. The amounts payable by the Organisation under this Agreement (as expressed in the management account) are expressed as a GST exclusive amount.
- 9.2. If, in providing the Services, Online Giving makes a taxable supply to the Organisation:
 - 9.2.1. The Organisation must pay Online Giving the GST payable in respect of that supply;
 - 9.2.2. The GST will be paid at the same time and in the same way as it is required to pay the consideration for the taxable supply (i.e. through Online Giving making a deduction to the Payment Amount); and
 - 9.2.3. Online Giving will provide the Organisation a valid Tax Invoice, which will separately list the Transaction Fees, and provide a total GST amount payable.
- 9.3. Online Giving must issue an adjustment note for any adjustments that arise in relation to a Taxable Supply as and when required to do so by the GST Act.

10. RECEIPTS

- 10.1. If the Organisation holds Deductible Gift Recipient status it acknowledges that it or its authorised agent is required to issue a tax-deductible Receipt to the Donor. In the event the Organisation has obtained Deductible Gift Recipient status:
 - 10.1.1. it acknowledges and agrees that by executing this Agreement it appoints Online Giving as its agent for the purposes of issuing a tax-deductible Receipt to the Donor; and
 - 10.1.2. it will advise Online Giving within 3 business days of any changes to its Authority or to its Deductible Gift Recipient status.
- 10.2. Once a Donation has been received, Online Giving will provide all Donors with an email acknowledgment of their Donation on behalf of the Organisation.
- 10.3. The email to the Donor will include:
 - 10.3.1. A statement that the donation acknowledgement is issued by Online Giving, on behalf of the Organisation;
 - 10.3.2. The name of the Organisation and its ABN; and
 - 10.3.3. A statement that the donation acknowledgement also constitutes a receipt for taxation purposes (but only in the event that the Organisation has Deductible Gift Recipient status).

11. RECORDS

- 11.1. Online Giving will keep full and proper records showing clearly all transactions relating to the Organisation established under this Agreement.
- 11.2. Online Giving will obtain an annual report from independent external auditors examining its internal processes concerning donation collections. Following a written request from the Organisation, Online Giving will, at the Organisation's cost, provide a copy of Online Giving's most recent independent audit report.
- 11.3. If the Organisation makes a reasonable request for copies of the books, records and documents of Online Giving that directly relate to the Organisation's fundraising activities, Online Giving will provide copies of such records within 20 business days. The Organisation acknowledges and agrees that it may not make such a request more than two times a year, and that it will be charged a fee for providing those documents.

12. WARRANTIES

- 12.1. Both parties represent and warrant to the other on a continuing basis that:
- 12.1.1. It has full corporate power to enter into and give effect to this Agreement and to complete the transactions contemplated by this Agreement;
 - 12.1.2. It has taken all necessary action to authorise the execution, delivery and performance of this Agreement;
 - 12.1.3. By executing and performing this Agreement it does not contravene any other contractual, legal or other obligations;
 - 12.1.4. Upon confirmation of commencement of this Agreement, the obligations under this Agreement will be valid, binding and enforceable; and
 - 12.1.5. Unless otherwise stated, it does not enter this Agreement as trustee of any trust.
- 12.2. Online Giving represents and warrants that:
- 12.2.1. It has validly obtained any registrations, permits, licences, consents or permissions that the Organisation is required to hold under the Fundraising Statutes in order for Online Giving to request and accept Donations on behalf of the Organisation; and
 - 12.2.2. It has the authority to grant the licences under clause 17 and be bound by these warranties.
- 12.3. The Organisation represents and warrants on a continuing basis that:
- 12.3.1. It has validly obtained and complied with all conditions of any registrations, permits, licences, consents, authorities and permissions that the Organisation is required to hold to comply with all conditions and validly request and accept donations, and to have Online Giving request and accept donations on its behalf under this Agreement;
 - 12.3.2. It complies with all conditions of any of its Authorities, all applicable Fundraising Statutes, the constituent documents of the Organisation and all applicable laws;
 - 12.3.3. All information given by the Organisation to Online Giving is true and correct, and is not misleading, false, or deceptive;
 - 12.3.4. The Organisation Information is not misleading, false, deceptive, defamatory or obscene and may be lawfully published on the Online Giving Web Site;
 - 12.3.5. The use by Online Giving of the Organisation Information will not infringe any Intellectual Property rights of any other person;
 - 12.3.6. It has the authority to grant the licences under clause 18 and be bound by the warranties contained in this Agreement; and
 - 12.3.7. All information, which is material to an agent for it to collect donations on behalf of the Organisation, has been fully disclosed to Online Giving.

13. OBLIGATIONS OF THE ORGANISATION

- 13.1. The Organisation will not amend or propose any amendment to its aims, mission, objectives, constituent documents, reason or purpose for the fundraising without prior written consent of Online Giving, which shall not be unreasonably withheld.
- 13.2. The Organisation will return any donations to the Donors with addresses in States and Territories in which the Organisation is not legally entitled to collect or solicit donations.
- 13.3. The Organisation will provide written consent to Online Giving detailing the Donor's contact details and Donation amounts if it wishes to refund Donations.
- 13.4. The Organisation agrees to abide by the Terms of Use and Privacy Policy on the Web Site.

14. NSW SPECIFIC OBLIGATIONS

- 14.1. If the Organisation holds an Authority under the Charitable Fundraising Act 1991 (NSW) (referred to within this clause as 'the Act') the NSW Department of Gaming and Racing requires that they receive within 28 days of this Agreement being signed, a letter from the Organisation which includes the following:
- 14.1.1. As directed by section 2 and 13 of the Act, advise the Department that Online Giving has been engaged non-exclusively as a trader for the Organisation;
 - 14.1.2. Seek to waive the requirements of condition 6 of the Act that the title of the account must include the name of the authority holder and so request that the Online Giving bank account is used to receive donations on behalf of the authority holders; and
 - 14.1.3. Seek to waive the requirements of condition 9 of the Act that the register of receipt books is required and so request that based on section 10 of this Agreement that Online Giving issues computerised donation receipts.

15. INDEMNITY

- 15.1. Online Giving indemnifies and keeps the Organisation indemnified against any Loss arising directly in relation to a breach of obligation to make a payment in accordance with clause 8.1.
- 15.2. The Organisation indemnifies and keeps Online Giving indemnified against any Loss arising directly or indirectly from or in relation to:
- 15.2.1. A breach by the Organisation of any Authority or of a condition in any Authority, any Fundraising Statute or other Act or Regulation by the Organisation, any term of this Agreement, any Representation, or any of the warranties in clauses 12.1 and 12.3;
 - 15.2.2. Publication of the Organisation Information on the Online Giving Web Site;
 - 15.2.3. Any information given or representation made to Online Giving prior to entering this Agreement or during or after its Term;
 - 15.2.4. Any information given or representation made to any Donor by the Organisation, or by Online Giving, where it is based on information given or a representation made by the Organisation; and
 - 15.2.5. Any dispute, claim or action alleging infringement of any Intellectual Property Rights of any person on grounds in any way related to the Organisation Information, except to the extent that the Loss is directly attributable to the negligence or wrongful act or omission of Online Giving.

16. LIMITATION OF LIABILITY

- 16.1. The liability of Online Giving for a breach of this Agreement, statutory cause of action, common law or tort (including negligence) in any way is limited as follows:
- 16.1.1. Online Giving's liability for any claim of liability to the Organisation for all other proven loss and damage is limited, for an aggregate of all claims, to the amounts paid or payable by the Organisation to Online Giving under this Agreement; and
 - 16.1.2. Notwithstanding any other provisions of this Agreement, Online Giving will not be liable for indirect or consequential loss or damage.

17. LICENCE TO ONLINE GIVING

- 17.1. The Organisation grants Online Giving a non-exclusive, royalty free licence to use the Organisation's trademark in connection with the Online Giving Web Site and the provision of Services. This licence will automatically terminate 30 days after the expiry or termination of this Agreement.

- 17.2. The Organisation grants Online Giving a non-exclusive, royalty free licence to use, reproduce, adapt and communicate information provided by the Organisation for the purposes of posting it on the Online Giving Web Site or in publicity, marketing or internal documents for Online Giving. This licence will automatically terminate 30 days after the expiry or termination of this Agreement.

18. LICENCE TO THE ORGANISATION

- 18.1. Online Giving grants the Organisation a non-exclusive, royalty free licence to use Online Giving's trademark in connection with the promotion of methods of donating to the Organisation or in connection with a particular fundraising activity.
- 18.2. Online Giving's prior written consent is required for use for any reason other than those outlined in this clause.
- 18.3. This licence will automatically terminate upon the expiry or termination of this Agreement.

19. PRIVACY

- 19.1. Online Giving will handle all personal information in accordance with its privacy policy, which can be viewed at www.onlinegiving.com.au. Online Giving will not use any personal information except as set out in its Privacy Policy, this Agreement, as consented to by the Donor or otherwise required by law.
- 19.2. The Organisation agrees that it will treat all personal information collected through Online Giving in accordance with the National Privacy Principles as per the Privacy Act.

20. CONFIDENTIALITY

- 20.1. Where a party receives Confidential Information from the other party, the party receiving the information must keep the information confidential and not use, disclose or reproduce the Confidential Information for any purpose other than the purposes under this Agreement.
- 20.2. Notwithstanding clause 20.1, either party may use the Confidential Information:
- 20.2.1. To the extent necessary to comply with any law or binding directive of a regulator or a court order;
 - 20.2.2. To disclose to employees, legal advisers, auditors and other consultants requiring the information for the purposes of meeting its obligations under this Agreement (but only on the same terms of confidentiality);
 - 20.2.3. If the information is prior to the execution of this Agreement lawfully in the possession of the recipient through sources other than the party who supplied the information;
 - 20.2.4. If the information is or becomes generally and publicly available other than through the default of a party who divulges the information; or
 - 20.2.5. With the consent of the party who supplied the information.
- 20.3. The provisions of this clause continue in full force and effect for a period of 3 years after the termination of this Agreement.

21. TERMINATION.

- 21.1. Either party may terminate this Agreement without cause by providing 30 days' written notice to the other party.
- 21.2. Either party may immediately terminate this Agreement following a material breach of this Agreement by the other party or in the event the other party is connected with any occurrences of bankruptcy, dissolution, receivership or insolvency of the other party.

- 21.3. Online Giving may immediately terminate this Agreement if the Organisation:
- 21.3.1. Loses its charitable or not-for-profit status;
 - 21.3.2. Breaches a warranty under this Agreement (including in relation to its charitable or not-for-profit status); or
 - 21.3.3. Engages in conduct that Online Giving, in its discretion, considers is harmful to Online Giving's reputation.
- 21.4. If the Agreement is terminated Online Giving will within a reasonable timeframe:
- 21.4.1. Remove the Organisation Information from the Web Site;
 - 21.4.2. Cease accepting donations on behalf of the Organisation; and
 - 21.4.3. Subject to clause 21.5, send the balance of funds held on trust for the Organisation to the Organisation less the Transaction Fees referred to in clause 7.
- 21.5. If the Agreement has been terminated due to clause 21.3 and Online Giving determines that the Organisation has acted fraudulently or conducted unlawful behaviour in seeking Donations, Online Giving will, at the cost of the Organisation, return all Donations to the original Donor.

22. MISCELLANEOUS

- 22.1. Any alteration, modification, change or variation of any term or condition of this Agreement must be made in writing, executed by both parties.
- 22.2. 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.
- 22.3. This Agreement is governed by and is to be construed in accordance with the laws in the State of Victoria, Australia and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria.
- 22.4. This Agreement, the Online Giving Privacy Policy, and the Terms of Use on the Online Giving Website constitute the entire Agreement between the parties concerning the subject matter. There are no other oral undertakings, warranties or agreements between the parties relating to the subject matter of this document.
- 22.5. This Agreement is properly executed if each party executes either this document or an identical document. In the latter case, this Agreement takes effect when the separately executed documents are exchanged between the parties.

23. INTERPRETATION

- 23.1. In this Agreement, unless the context otherwise requires:
- 23.1.1. All references to dollars or "\$" are references to Australian currency and all amounts payable under this Agreement are payable in Australian dollars;
 - 23.1.2. A reference to any law or legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
 - 23.1.3. A reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time;
 - 23.1.4. A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement unless otherwise stated;
 - 23.1.5. A reference to a business day means a day on which all banks are open for business in both Melbourne and Sydney, other than a Saturday, Sunday or public holiday;

- 23.1.6. If the day on which any act, matter or thing is to be done under this Agreement is not a business day, that act, matter or thing may be done on the next business day;
- 23.1.7. A covenant or agreement on the part of two or more persons binds them jointly and severally; and
- 23.1.8. The schedules and attachments form part of this Agreement.

24. DEFINITIONS

Authority means all necessary licences, consents, permissions, authorities, registrations and permits the Organisation is required to have obtained in order to request donations from the public and appoint Online Giving as its agent for collection of donations under the terms in this Agreement.

Bank Account means the bank account maintained by Online Giving, as agent for the Organisation and for other Organisations, used for the receipt and holding of all money received by online donations to any of the Organisations listed on the Web Site, including the Organisation.

Confidential Information means all confidential business information, documents, records, financial information, reports technical information and forecasts which relate to either party's business, without limitation, any trade secrets, or operations know-how.

Donations means the payments made by donors through the Web Site into the Online Giving bank account.

Donor means an individual who makes a donation through the Web Site.

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

Fundraising Statutes means the statutes referred to below or other applicable Acts or Regulations (State or Federal), which are applicable for raising funds for charities or not-for-profit organisations:

- Charitable Fundraising Act (NSW) 1991
- Fundraising Appeals Act (Vic) 1998
- Collections Act (Qld) 1966
- Collections for Charitable Purposes Act (SA) 1939
- Charitable Collections Act (WA) 1946
- Collection for Charities Act (TAS) 2001

GST means the Goods and Services Tax levied under the GST Act or any other goods and services tax, value added tax, consumption tax or tax of similar effect levied from time to time.

GST Act means the A New Tax System (Goods and Services Tax) Act 1999 (Commonwealth) (as amended). Words and phrases that are defined in the GST Act have the same meaning when used in this Agreement.

Intellectual Property means all present and future rights, title and interests in and to inventions, know-how, patents, patent applications, registered and unregistered trade marks, service marks, registered and unregistered designs, copyrights, circuit layouts, domain names, internet addresses, computer programs, confidential information, trade secrets, trade / business names and brand names.

Loss means any loss including any damage, liability, cost, charge, expense (including legal costs on a full indemnity basis), claim, proceeding, action, demand, outgoing or payment (whether direct, indirect, consequential or incidental).

Organisation means the entity referred to in Schedule 1, which is a registered Australian charity or not-for-profit organisation.

Organisation Information means the name, logo, description and any other text posted on the Web Site relating to the Organisation and its request for fundraising, which includes the States and Territories in which the Organisation can collect or solicit donations in compliance with any applicable Fundraising Statutes. This includes the necessary information and contact details to permit a donor to make a donation.

Organisation Nominated Donation Account means the bank account registered by the Organisation for accepting donations on behalf of the Organisation.

Payment Amount means the amount of donations on behalf of that Organisation for that Reporting Period net of Transaction Fees.

Privacy Act means Privacy Act 1988 (Cth).

Receipt means a receipt for a tax-deductible donation.

Reporting Period means a monthly basis, unless otherwise agreed in writing between the parties.

Services mean the promotion of the Organisation on the Online Giving Web Site, Donation collection through the Online Giving Web Site, distribution to the Organisation, Donation acknowledgement to the Donor, and any other services as agreed between the parties in writing.

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.

Transaction Fees means those fees charged by Online Giving (which currently amount to 5% of the Donation), plus GST, plus the associated bank and credit card fees directly attributable to the donations for that Organisation, as outlined on the Web Site.

Web Site means the Online Giving Web Site located at www.onlinegiving.com.au

SCHEDULE 1

Note to Charities / Not-For-Profit Organisations:

- Please read this entire Charity Agreement before completing the details under Schedule 1 below and signing it on behalf of your Organisation
- **Fax this completed page to Online Giving on (03) 9509 6072.** Alternatively, you can mail it to us at: Online Giving Charities Department, 11 Winter Street, Malvern, VIC 3144
- We will email you to let you know when you are live on our site to start accepting donations once we have verified your Organisation meets our charity partner requirements
- If you have any questions during the registration process, please email us at busdev@onlinegiving.com.au

Organisation Name: _____

Organisation ABN: _____

Organisation Address: _____

Organisation Fax: _____

Contact Person: _____

Contact Phone No.: _____

Contact Email: _____

Executed as an agreement:

Signed for Organisation by its authorised representative:

Name **Position**

Signature **Date**

Signed for Online Giving Foundation Ltd by its authorised representative:

Name **Position**

Signature **Date**