

# Good2Give Charity Agreement

## PARTIES:

**Good2Give Community Fund**, a New Zealand charitable trust with a NZ charities registration number CC40255, care of Good2Give of Ground Floor, 12 Holtermann Street, Crows Nest NSW 2065 Australia ("Good2Give"), and the Charity.

By accepting this Agreement, Good2Give and the Charity agree to the provision of the Administrative Support Functions and the performance of the mutual obligations set out in this Agreement in accordance with the attached Schedule (**Terms**).

## Schedule 1 - Terms

### Introduction

A. This document sets out terms which apply to the Charity's use of the Good2Give platform and related software and services (the **Platform**). All capitalised terms in these Terms have the meanings set out in Attachment A.

### Terms

#### 1) Commencement and Duration

The Agreement commences on the date it is accepted by the Charity and continues until terminated in accordance with clause 10) below (**Term**).

#### 2) Good2Give Administrative Support Functions

Subject to the Charity complying with this Agreement, Good2Give will provide the Administrative Support Functions from the Commencement Date, namely:

- a) permit the Charity to use the Platform on the terms set out in this Agreement;
- b) receive, hold and remit to the Charity Funds Received from Individuals and/or Organisations using the Platform in accordance with this Agreement; and
- c) provide the Charity with contact and Donation details in respect of Individuals and/or Organisations who have agreed for such information to be released to the Charity.

#### 3) Charity Obligations

- a) The Charity represents and warrants that it is a registered charity, is an approved done organisation for IR purposes and has all necessary rights, licences, permissions, consents and other authorisations (including in relation to charitable fundraising) to enable Good2Give to lawfully provide the Administrative Support Functions to the Charity and pay Funds Received to the Charity in accordance with Good2Give's agreements with Individuals and/or Organisations.
- b) The Charity agrees to comply with all laws, regulations, rules, orders and guidelines relevant to the operation of a registered charity and/or a licensed fundraising organisation.
- c) The Charity agrees to provide all information reasonably required by Good2Give to facilitate the Administrative Support Functions. Such information includes details of the Charity's registration in accordance with applicable charity and fundraising laws, bank account details including visual confirmation, Charity logos and trademarks, images and other media for use on the Platform. The Charity must immediately inform Good2Give of any changes to its charitable status, donee status and/or fundraising licensing terms, and promptly provide Good2Give with any other information and content required to keep the Charity's listing on the Platform accurate and up to date.

- d) The Charity also acknowledges and agrees that, whilst Individuals and/or Organisations generally agree to pay Administration Costs for Donations, where Individuals and/or Organisations do not agree to pay Administration Costs for donations, Good2Give will deduct such Administration Costs from the Funds Received before they are remitted to the Charity as described in clause 4)a) below.
- e) If there is a dispute regarding a Donation (**Donation Dispute**), the Charity agrees to provide all reasonable assistance and information required to help Good2Give and any affected Individual and/or Organisation to resolve the Donation Dispute.

#### 4) Funds

- a) Good2Give will:
  - i) receive Donations from Individuals and/or Organisations using the Platform (**Funds Received**);
  - ii) retain a percentage of the Funds Received (where such charges are not covered by Individuals and/or Organisations), which may be amended from time to time, before paying any amounts to the Charity (**Net Funds**); and
  - iii) pay the Net Funds in a given month, to the Charity promptly and within 30 days of the end of the month in which the Funds Received were received in full by Good2Give, or as otherwise required by IR.
- b) The Charity understands Good2Give will hold all Funds Received in its trust accounts prior to passing to the Charity and that Good2Give may exercise its rights and discharge its responsibilities as set out in the Trust Deed with respect to those funds.
- c) The Charity acknowledges and agrees that, in the event that this Agreement is terminated or the Charity is deregistered or closed, Good2Give is not under an absolute obligation to transfer any amount in respect of Net Funds to the Charity, but may, at its election either: (a) pay the amount to the Charity if the Charity still exists and has not materially breached the Agreement, provided it is reasonably practicable to do so, or (b) pay the amount to an alternate charity (selected by the Individual, Organisation or Good2Give) in accordance with Good2Give's Charitable Purposes within a reasonable period of time.
- d) Charge a once-off Registration Charge of \$275 + GST is payable by a Charity if the Charity has not been nominated by an Individual and/or Organisation to receive a Donation.

#### 5) Use of the Platform

- a) The Charity agrees that the Platform may only be used by its Authorised Users. The Charity shall ensure that each Authorised User keeps their password secure and shall use reasonable endeavours to prevent any unauthorised access to, or use of, the Platform and notify Good2Give promptly of any such unauthorised access or use.
- b) The Charity agrees that Authorised Users are not permitted to share access to, or passwords for, the Platform. Should the Charity require additional Authorised Users or to amend or remove access to the Platform for existing Authorised Users, then it must provide Good2Give with a completed Authorised Users request form. Only after receiving a fully completed Authorised Users request form will Good2Give provide the additional access or amend or remove existing access for Authorised Users.
- c) The Charity shall not store, distribute or transmit any material on or via the Platform that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities.
- d) Subject to any non-excludable rights the Charity may have to do so under any applicable law, the Charity shall not:
  - i) use the Platform for any other purpose than the Purpose; and

- ii) upload to, or send via, the Platform, or do anything in relation to the Platform, which is false, misleading, deceptive, or inaccurate.

## 6) Intellectual Property

- a) The Charity grants Good2Give a non-exclusive, royalty free, sub-licensable licence to use its Charity Content which includes logos and trademarks, hero images, mission statements, charity and charity project descriptions, links to the Charity's websites and Charity Communications and any other content or information supplied by the Charity via the Platform on, in relation to, and for the purpose of operating, the Platform and its associated Administrative Support Functions.
- b) In addition to the licence granted under 6(a), the Charity grants Good2Give a non-exclusive, royalty free, sub-licensable licence to use its Charity Content in relation to the Platform on third party websites and other third party marketing materials, including in relation to an Organisation's participation in the Platform.
- c) Good2Give grants to the Charity on and subject to the terms and conditions of this Agreement a non-exclusive, non-transferable, limited licence during the Term of this Agreement to use the Platform solely for the Purpose of performing its obligations and exercising its rights under this Agreement.
- d) All Intellectual Property Rights in or to, or arising out of or in connection with, the Administrative Support Functions and the Platform are and shall be owned by Good2Give or its licensors. The Charity agrees that it is solely responsible for obtaining any permissions, licences or consents required to send or upload any third party Intellectual Property Rights via or to the Platform or in any Charity Communications.

## 7) Privacy, Charity Communications and Data

- a) Good2Give and the Charity shall, at all times, comply with applicable Privacy Legislation in relation to all Personal Information that it collects, handles or receives in the course of performing their respective obligations and exercising their respective rights under the Agreement.
- b) The Platform provides functionality to enable the Charity to send messages to Individuals and/or Organisations in respect of their past or future Donations and/or Charity fundraising campaigns (**Charity Communications**). The Charity may send Charity Communications via the Platform provided that:
  - i) It complies at all times with all applicable legislation, including the Unsolicited Electronic Messages Act 2007;
  - ii) The Charity Communications comply with requirements outlined in Clause 5(c);
  - iii) Good2Give shall be entitled, but not required, to vet all such Charity Communications prior to transmission via the Platform, and may reject such Charity Communications for any reason in its sole discretion, including for failure to comply with Clause 5(c);
  - iv) the parties acknowledge and agree that, to the extent permitted by law, such the Charity is solely responsible for Charity Communications and their content and Good2Give assumes no responsibility for them; and
  - v) Charity Communications must only contain information relating to the Charity's fundraising activities and/or charitable objects and must not be used to promote the products or services of any third party, or for any other purpose not specifically permitted by this Agreement.
- c) The Charity shall promptly notify Good2Give if it becomes aware that it has breached the terms of this clause 7) or of any unauthorised, accidental or unlawful loss, misuse, interference, access, damage or destruction of any Personal Information disclosed by Good2Give to the Charity via the Platform. The Charity shall use commercially reasonable endeavours to minimise the impact of such event and prevent such events recurring. Good2Give may provide the Charity with Personal Information including the contact details of Individuals and/or Organisations if the Individuals and/or Organisations have agreed to that information being provided to the Charity and on condition that the Charity complies with all applicable privacy laws.

- d) The Charity acknowledges and agrees that Good2Give uses third party service providers to host, support and maintain the Platform and that Charity Content may be stored in platforms managed by those third parties. The Charity shall own all rights, title and interest in and to all of the Charity Content and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Charity Content.

## **8) Exclusions and Limitations of Liability**

- a) Certain legislation, including the Consumer Guarantees Act 1993 may impose or imply warranties, conditions, guarantees or other obligations which cannot be excluded, restricted or modified except to a limited extent. This Agreement must be read subject to those statutory provisions. If those statutory provisions apply, notwithstanding any other provision of this Agreement, to the extent to which Good2Give is entitled to do so, Good2Give limits its liability in respect of any claim to:
  - i) in the case of goods, at Good2Give 's option:
    - (1) the replacement of the goods or the supply of equivalent goods;
    - (2) the repair of the goods;
    - (3) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
    - (4) the payment of having the goods repaired, and
  - ii) in the case of services, at Good2Give 's option:
    - (1) the supply of the services again; or
    - (2) the payment of the cost of having the services supplied again.
- b) To the full extent permitted by law and subject to a) above, Good2Give shall not under any circumstances be liable to the Charity in respect of:
  - i) any claim for any: loss of profit, revenue, goodwill or business; loss or corruption of, or damage to data; interruption to business, failure to realise anticipated savings; loss of reputation; or indirect, consequential, special, punitive or incidental loss or damage; or
  - ii) any loss, costs or damages arising from the negligence, wilful misconduct or fraud of the Charity.
- c) To the full extent permitted by law and subject to a) above, Good2Give's total liability to the Charity in respect of all losses, claims, costs or expenses arising under or in connection with the Agreement, howsoever arising, shall not exceed the aggregate amount of Administration Costs paid by the Charity during the Term of this Agreement.
- d) Both parties warrant and represent that they have full capacity and authority to enter into and perform this Agreement. Otherwise, to the full extent permitted by law and subject to a) above, Good2Give excludes all representations, warranties, guarantees, terms and conditions, whether express or implied (and including those implied or imposed by statute, custom, law or otherwise), except as expressly set out in this this Agreement.
- e) The Charity acknowledges and agrees that access to the Platform and the Administrative Support Functions is provided on an "as is", "as available" basis (which amongst other things depends on the availability of sufficient internet bandwidth and functioning network connections) and, accordingly, Good2Give does not warrant or guarantee that the Platform will be error-free or available at all times.
- f) Nothing in this Agreement operates to exclude or restrict a party's liability for fraud.
- g) Nothing in this Agreement operates to represent that Good2Give is a collection agent on behalf of the Charity.
- h) Neither party will be liable for any delay in performing or failure to perform any of our obligations under this Agreement to the extent that such delay or failure is due to a Force Majeure Event. A party affected by a Force Majeure Event will be temporarily excused from performing its obligations for the resulting period of delay, provided that the delaying party promptly notifies the other party in writing of the reasons for the delay or failure to perform those obligations.

## 9) Indemnity

- a) The Charity must at all times indemnify and hold harmless Good2Give, Good2Give's Related Companies and any fund, trust or other body that Good2Give is trustee for, and each of their officers, employees and agents (**Indemnified Parties**) from and against:
  - i) any claim made against an Indemnified Party by a third party arising out of any wilful misconduct or any negligent, unlawful or fraudulent act or omission of the Charity, under or in connection with this Agreement;
  - ii) any claim arising out of or in connection with any content uploaded to or sent via the Platform by the Charity (including Charity Content); and
  - iii) any claim arising out of or in connection with any content uploaded to a third party's website (including Charity Content).
- b) Good2Give will promptly notify the Charity of any claim referred to in clause a) above of which it is aware and agrees not to make any admissions in relation to the claim without the prior written consent of the Charity. Good2Give, at the Charity's request and expense, will allow the Charity to control the conduct and settlement of all negotiations and litigation resulting from the claim.

## 10) Suspension and Termination

- a) In the event that the Charity fails to comply with any of its obligations under this Agreement, Good2Give may suspend any or all of the Administrative Support Functions, until such time as the Charity rectifies such failure to Good2Give's reasonable satisfaction.
- b) Either party may terminate the Agreement:
  - i) with effect from the end of a calendar month by serving not less than three months' written notice on the other party.
  - ii) with immediate effect on giving notice to the other party (or with effect from such later date as may be specified in the notice) if the other party commits a material breach of the Agreement:
    - (1) which is capable of remedy and such breach has not been remedied within 30 days after receipt of notice from the non-defaulting party requiring such remedy, or
    - (2) which is not capable of remedy.
- c) Good2Give may by notice to the Charity terminate the Agreement with immediate effect (or with effect from such later date as may be specified in the notice) if:
  - i) the Charity ceases to be registered as a Charity;
  - ii) the Charity suffers an Insolvency Event;
  - iii) the Charity fails to comply with clauses 3)b) or 7); or in Good2Give's reasonable opinion, the Charity or one or more of the Charity Communications brings Good2Give into disrepute.

## 11) GST

- a) Capitalised terms used in this clause but not defined in this Agreement have the meaning given to them in the GST Act. All sums payable or rates quoted under this Agreement do not include GST. Where GST applies, such amounts must be increased, on account of GST payable under this clause and the recipient of the taxable supply must pay the GST Amount to the Supplier at the same time and in the same manner as the original amount is required to be paid pursuant to this Agreement. The Supplier must provide the recipient of the GST Amount with a tax invoice or a document that the Commissioner will treat as a tax invoice. Amounts recoverable on account of GST under this clause will include any fines, penalties, interest and other charges incurred as a consequence of late payment or other default by the recipient under this clause.

## 12) Notices

- a) All notices must be in legible writing, in English, signed by the party or its authorised representative, and addressed and sent to the recipient at the following addresses:

- i) for notices to Good2Give, the physical address of Ground Floor, 12 Holtermann Street, Crows Nest NSW 2065 Australia or PO Box 556, Crows Nest NSW 2065 Australia or email (workplacegiving@good2give.ngo); and
- ii) for notices to the Charity, the physical or email address included in the registration process,

or such other address as may be notified by a party from time to time in accordance with this clause. Notices must be signed by the party, or where the sender is a company by an authorised officer of that company or under the common seal of that company. Notices must be sent to the recipient by hand, prepaid post (airmail if to or from a place outside New Zealand) or email. A notice is served on a day which is not a Business Day or after 5:00pm (recipient's local time) on a Business Day is deemed to be duly received by the recipient at 9:00am (recipient's local time) on the first Business Day after that day.

### **13) General Provisions**

- a) This Agreement is governed by the laws of New Zealand. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New Zealand. Each party waives any right it has to object to an action being brought in those courts to claim that the action has been brought in an inconvenient forum or to claim that those courts do not have jurisdiction.
- b) This Agreement may be amended by Good2Give at any time and such amendment shall be effective immediately upon notification to the Charity, which may be given by posting the amended Agreement on the Platform or via email or any other means as appropriate. The Charity's continued use of the Platform shall be deemed to be its conclusive acceptance of the amended Agreement.
- c) The Charity must not assign, transfer or encumber any of its rights or obligations under this Agreement without Good2Give's prior written consent.
- d) On termination of this Agreement, the parties' respective rights and obligations shall cease except those in clauses 3)f), 4), 6)c), 7)a), c) and d), 8), 9), 11), 12), and 13) or any other rights or obligations that, by their nature, survive termination. Each party retains the rights and claims it has against any other party for any past breach of the Agreement.
- e) This Agreement constitutes the entire agreement of the parties about its subject matter and supersedes all other representations, negotiations, arrangements, understandings or agreements and all other communications. No party has entered into this Agreement relying on any representations made by or on behalf of the other, other than those expressly made in this Agreement.
- f) If a provision of this Agreement is invalid or unenforceable in a jurisdiction it is to be read down or severed in that jurisdiction to the extent of the invalidity or unenforceability, and that fact does not affect the validity or enforceability of that provision in another jurisdiction or the remaining provisions.
- g) The rights, remedies and powers of the parties under this Agreement are cumulative and do not exclude any other rights, remedies or powers.

## Attachment A - Definitions and Interpretation

The following definitions and rules of interpretation apply in this agreement.

### 1.1 Definitions

"Administrative Support Functions"	means the functions to be performed by Good2Give pursuant to this Agreement as set out in clause 2).
"Agreement"	means the attachments and schedule(s) and these terms and conditions under cover of the Agreement's cover page.
"Authorised Users"	means the users of the Charity Giving Centre who have been notified by the Charity to Good2Give on an Authorised Users request form or initial Charity registration form (which will be provided by Good2Give).
"Business Day"	means a day that is not a Saturday, Sunday or a public holiday in Wellington, New Zealand.
"Charity Communications"	are communications created using content provided by the Charity which are sent to Individuals and/or Organisations by the Charity via email or the Platform.
"Charitable Purposes"	shall have the meaning given to it in the general law applicable to the Agreement.
"Charity Content"	means data uploaded to the Platform by the Charity in connection with Good2Give's provision of the Administrative Support Functions.
"Charity Giving Centre"	means the Platform interface which may be used by the Charity to set up and update its Charity profile, monitor Donations pledged or collected from Individuals and/or Organisations, upload Charity Communications, and run reports and analytics using the information stored in the Platform relating to the Charity.
"Commencement Date"	means the date that the charity registration is completed.
"Deed of Trust"	means the deed of trust dated 7 March 2005 between the original trustees named in the deed and Good2Give as new trustee, as varied by the deed of trust variation of trust dated 25 May 2012 made by CAF Community Fund Limited (the previous trustee) and any other variation entered into from time to time.
"Donation"	means a donation of monies made by an Individual and/or Organisation.
"Donation Dispute"	means a scenario where an Individual and/or Organisation has disputed a Donation and has subsequently raised the dispute with Good2Give.
"Individual and/or Organisation"	means each Individual and/or Organisation who has agreed to use Good2Give for provision of a Workplace Giving Program using the Platform.
"Force Majeure Event"	means any cause beyond a party's reasonable control including without limitation, acts of God, war, fire, flood or other accident, strike, lockouts, delays in transport, material shortages, restrictions or prohibitions of any governmental, judicial or other competent authority.
"Funds Received"	means the total Donations which Good2Give receives in relation to or for the Charity made via the Platform.



"GST Act"	means the Goods and Services Tax Act 1985.
"GST Amount"	means the amount calculated by multiplying the monetary consideration payable by the recipient (excluding the amount payable as GST) for the relevant taxable supply by the prevailing GST rate.
"Individual"	means a person who makes a donation to the Charity via the Platform.
"IR"	means the New Zealand Inland Revenue.
"IR Payroll Giving Scheme Guidance"	means guidance published or made available from time to time by IR giving guidance to employers in relation to payroll giving schemes, including the Workplace Giving Program.
"Insolvency Event"	<p>means, for any person that is a body corporate, the happening of one or more of the following events:</p> <ul style="list-style-type: none"> <li>(a) a controller, statutory manager, administrator, liquidator, provisional liquidator, trustee in bankruptcy or similar person is appointed to the other party or to any of its property or any step is taken to do so (other than for the purposes of a corporate reorganisation or solvent restructure);</li> <li>(b) the other party resolves to enter into, or enters into, any moratorium, arrangement, compromise or composition with any of its creditors, other than in the ordinary course of its business;</li> <li>(c) the other party is or is presumed to be insolvent, applies to be deregistered or commits an act of bankruptcy;</li> <li>(d) any distress, attachment, execution or other court process or judgment is levied or enforced on or against the other party or any of its assets or revenues and is not fully stayed, set aside or satisfied within 10 Business Days;</li> <li>(e) anything having a substantially similar effect to any of the events specified in paragraphs (a) to (d) above, inclusive, of this definition happens to the other party under the law of any jurisdiction.</li> </ul>
"Intellectual Property Rights"	means all rights throughout the world in patents, trademarks (whether registered or not and including without limitation any rights in get up or trade dress), brand names, and service marks , designs, trade or business names, copyrights (including without limitation future copyright and rights in the nature of or analogous to copyright), databases, trade secrets, domain names, inventions, designs, and circuit layouts, and any other intellectual property rights arising by operation of law, contract, license or otherwise, whether or not now existing and whether or not registered or registrable and includes any right to apply for the registration of such rights and includes all renewals, revivals and extensions 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, including all renewals, extensions and revivals of, and all rights to apply for, any of the foregoing rights.
"Net Funds"	means Funds Received less a percentage of the Funds Received (where such charges are not covered by Individuals and/or Organisations).



"Organisations"	Third parties including employers and non-employer participants, service providers and others to assist Good2Give with its Charitable Purposes.
"Platform"	means the software and infrastructure owned and operated by Good2Give, via which the Administrative Support Functions are provided.
"Personal Information"	has the meaning given in the Privacy Act 1993
"Privacy Legislation"	means all New Zealand privacy laws applicable to the provision of the Administrative Support Functions by Good2Give and receipt of the Administrative Support Functions by the Charity (which includes the Privacy Act 1993.
"Purpose"	means the participation by Charity in various Giving Programs run by Individuals and/or Organisations and fundraising for the Charity's Charitable Purposes.
"Related Company"	has the meaning set out in section 2 of the Companies Act 1993, as if it applied to companies or other bodies corporate whenever incorporated.
"Workplace Giving Program"	means the withholding of salary from Individuals by employers through the payroll process and in accordance with the IR Payroll Giving Scheme Guidance and forwarding those monies according to the Donor's instruction to a Charity.

1.2 Unless the context otherwise requires, a reference to:

- (a) a party means a party to this Agreement;
- (b) a document (including this Agreement) is a reference to that document (including any Schedules and Annexures) as amended, consolidated, supplemented, novated or replace;
- (c) an item, Recital, clause, Schedule or Annexure is to an item, Recital, clause, Schedule or Annexure of or to the Agreement;
- (d) the singular includes the plural and vice versa;
- (e) a person (including a party) includes an individual, company, other body corporate, association, partnership, firm, joint venture, trust or Government Agency and the person's successors, permitted assigns, substitutes, executors and administrators;
- (f) a law includes any legislation, judgment, rule of common law or equity or rule of any applicable stock exchange, and is a reference to that law as amended, consolidated, supplemented or replaced and includes a reference to any regulation, by-law or other subordinate legislation;
- (g) the words "including" or "includes" means "including, but not limited to", or "includes, without limitation" respectively; and
- (h) headings are for convenience only and do not affect interpretation of this Agreement.