



ONLINE FUNDRAISING AGREEMENT

**Everyday Hero Pty Ltd trading as JustGiving Australia
A.C.N. 117 080 430**

Level 12
680 George Street
Sydney NSW 2000

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AGREEMENT dated _____

PARTIES **Everyday Hero Pty Ltd trading as JustGiving Australia ACN 117 080 430.** of c/o - Level 12, 680 George Street, Sydney, New South Wales

JustGiving

AND The Party whose name, ABN, address and contact details are listed in Item 1 of Schedule 2

Donee

BACKGROUND

- A.** JustGiving operates Web Hosting Services (**Online Services**) on its website under the URL www.justgiving.com/ so that individuals and organisations may facilitate on-line fundraising.
- B.** The Donee has applied to JustGiving by completing a Registration Form requesting JustGiving to provide the Online Services to it on the terms and conditions of this Agreement.
- C.** JustGiving accepts the application on the terms and conditions set out in this Agreement.

AGREEMENT

1. TERM; TERMINATION

1.1 Term of Agreement

This agreement shall commence on the Commencement Date and shall continue for the period of twelve (12) months, unless otherwise terminated as provided in this agreement. The term of this agreement shall automatically renew for yearly periods, unless either party notifies the other in writing at least 90 days prior to the end of the then current term

1.2 Termination

- (a) **Default.** Either Party may terminate this Agreement if the other Party materially defaults in performing any of its obligations under this Agreement and the default remains uncured for at least ninety (90) days following receipt of written notice from the non-defaulting Party. Upon written notice from either Party, this Agreement shall also terminate upon (i) the making of an assignment for the benefit of creditors by a Party, or (ii) the dissolution of a Party.

- (b) **Effect of Termination.** Upon termination of this Agreement or termination of Online Services, JustGiving may immediately cease providing Online Services. If this Agreement is terminated for any reason, Donee shall nonetheless be obligated to pay JustGiving upon such termination any and all accrued and unpaid fees and expenses due and payable to JustGiving as of the date of termination. As soon as practicable following the date of termination JustGiving shall remove the Donee Information from the Website and refuse to accept donations on behalf of the Donee.

2. APPOINTMENT AS AN AGENT

- 2.1** Subject to the Donee satisfying the conditions in Schedule 1, JustGiving may accept or reject the appointment as the Donee's agent by notice to the Donee.
- 2.2** If JustGiving accepts the appointment as the Donee's agent by notice to the Donee, the Donee authorises and appoints JustGiving as the Donee's agent, in accordance with the terms and conditions of this Agreement, to request donations from the public and to authorise persons to conduct a Fundraising Appeal on behalf of the Donee.

3. PROVISION OF SERVICE

- 3.1** JustGiving shall provide the Donee with the Online Services by such means as JustGiving determines so as to enable Donors to make online donations to the Donee by Payment Card.
- 3.2** Subject to the right to suspend the Online Services as set out in clause 9, JustGiving shall provide the Online Services on a continuous basis during the Term of this Agreement. JustGiving will inform the Donee if the service is unavailable for access by the Donee or Donor due to maintenance or any other foreseeable factor.
- 3.3** JustGiving will generate and send an email acknowledgement to any Donor in respect of any donation made to the Donee on the Website promptly following submission of such donation.
- 3.4** Subject to the Donee's Authority, JustGiving will authorise persons to conduct a Fundraising Appeal on behalf of the Donee to the extent that it is limited to the creation and maintenance of a fundraising page on the Website.

4. JUSTGIVING'S AGENCY OBLIGATIONS

4.1 Management Accounts

JustGiving shall keep a separate management account for Donee showing:

- (a) all donations received on behalf of Donee;

- (b) the amount of Transaction Fees deducted, if any, in accordance with clause 4.4;
- (c) all payments made from the Donee's management account.

4.2 Bank Accounts

JustGiving shall open and maintain a Bank Account and pay all donations received through the Website for the Donee into the Bank Account.

4.3 Fees and Charges

- (a) **Taxes.** The fees are exclusive of GST.
- (b) In consideration for the provision of Online Services by JustGiving the Donee must pay the following fees to JustGiving:
 - (i) a fee for each transaction as determined in clause 4.4 (**Transaction Fee**).

4.4 Transaction Fee

- (a) JustGiving does not currently charge a **Transaction Fee**.

4.5 Donor Surcharge

- (a) Donor surcharge is an optional component of the Online Services through which a Donor is presented with the option to partially offset the **Transaction Fee (Donor Surcharge)**.
- (b) In the event a Donor agrees to pay the Donor Surcharge the Payment Amount will be the payment amount plus the Donor Surcharge amount.

4.6 Premium Events

- (a) JustGiving reserves the right to change the **Service Fee** under clause 4.4(a) for certain events promoted by third parties (**Premium Events**).
- (b) JustGiving will notify the Donee in advance of any **Premium Events** and of the relevant **Service Fee** for that event.
- (c) The Donee will have the option to participate in the **Premium Event**. If Donee chooses to participate, Donee shall pay the **Service Fee** notified to them by JustGiving pursuant to clause 4.6(b).

4.7 Net Payment Amount

Every fourteen (14) days, JustGiving shall pay to the Donee by electronic funds transfer the Payment Amount after the deduction of the Transaction Fee.

4.8 Fundraising Statute Requirements

- (a) JustGiving undertakes to comply with all applicable law, rules, regulations and conditions attached to the Donee's Authority.

- (b) If the Donee holds an Authority under a Fundraising Statute which requires payment to comply with any statutory provisions, JustGiving shall pay to Donee any donations received on behalf of the Donee within fourteen (14) days of receipt of the donation.
- (c) If the Donee holds an Authority under a Fundraising Statute which requires that this written Agreement when completed by the Parties be provided to the agency administering the Fundraising Statute, JustGiving will provide a copy of the signed Agreement to that agency.

4.9 Access to Information

JustGiving shall provide the Donee with all identification and log-in information and access to a secure, password-protected User Account on the Website to enable the Donee to access the following information:

- (a) the charity profile and contact information for the Donee;
- (b) the name and addresses, when supplied, of the Donors who have made donations to the Donee in the previous month; and
- (c) remittance advices for the previous period.

4.10 Receipts

- (a) JustGiving shall provide receipts on behalf of the Donee to the Donors whose addresses are complete and are in the States and Territories listed in the Donee Information as the States and Territories in which the Donee can collect or solicit donations.
- (b) Receipts shall include:
 - (i) a statement that the receipt is issued by JustGiving as agent of the Donee;
 - (ii) the name of the Donee and its ABN;
 - (iii) a statement that the receipt is for a gift;
 - (iv) the date the gift was made; and
 - (v) the amount of the gift.

5. DONEE OBLIGATIONS

The Donee shall:

- (a) comply with all conditions of its Authority and all applicable Fundraising Statutes and in particular the requirements set out in Schedule 3, if applicable;
- (b) advise JustGiving, as soon as practicable, of any changes to its Authority or to its tax status;
- (c) take out, and maintain until the termination of this Agreement, appropriate professional indemnity, worker's compensation and

public liability insurance to cover any liabilities it may incur under this agreement or in connection with its fundraising activities;

- (d) return any donations to the Donors with addresses in States or Territories in which the Donee is not legally entitled to collect or solicit donations: and
- (e) authorise each person who conducts a Fundraising Appeal in New South Wales using Online Services, to conduct that Fundraising Appeal on behalf of the Donee, unless the Donee wishes to decline to provide their authority to that person, or the Donee does not hold an Authority under a Fundraising Statute in New South Wales.

6. DONEE INFORMATION OBLIGATIONS

The Donee shall be responsible for using commercially reasonable practices to protect Donee Confidential Information it shares with JustGiving.

The Donee shall ensure that the Donee Information:

- (a) does not infringe any third party Intellectual Property Rights or other rights;
- (b) is in a format designated by JustGiving to enable publishing onto the Website;
- (c) does not breach any law, standards, content requirements or applicable laws of conduct;
- (d) does not, to its best endeavours, contain any material that is defamatory, pornographic, depicts acts of violence, sexual acts or which may perpetuate hatred against any person or group or have the likely effect of causing offensive harm;
- (e) does not contain any instructions which if implemented might cause damage or injury to any person or property;
- (f) does not contain any material that is Prohibited Content [as defined under the *Broadcasting Services Act 1992(Cth)*] if:
 - (i) the content has been classified RC or X 18+ by the Classification Board; or
 - (ii) the content has been classified R 18+ by the Classification Board and access to the content is not subject to a restricted access system; and
- (g) without limiting the generality of the above, will not expose JustGiving to the risk of any claim, legal or administrative action.

7. INDEMNIFICATION

7.1 Indemnity in favour of JustGiving

The Donee shall at all times release and indemnify JustGiving, its servants and agents from and against any Loss (including reasonable legal costs and expenses) incurred by JustGiving arising from any claim, demand, suit, action or proceeding by any person against JustGiving, its servants and agents where such Loss or liability arose out of, in connection with, or in respect of:

- (a) the Donee information (except to the extent such Loss is attributable to the negligence or deliberate act by JustGiving in the use of the Donee Information);
- (b) any breach by the Donee of an Authority or of a condition in any Authority;
- (c) any breach of any Fundraising Statute or other relevant Act or Regulation by the Donee;
- (d) any breach by the Donee of this Agreement; or
- (e) any information given or representation made to JustGiving prior to entering this Agreement or during or after its Term excluding any negligence or deliberate act by JustGiving in relation to such information or representation.

7.2 Indemnity in Favour of Donee

- (a) JustGiving shall indemnify and defend Donee against any third party claims that Online Services as made available to Donee infringe any Australian or New Zealand Intellectual Property Rights owned by such third party. JustGiving shall, in its reasonable judgment and at its option and expense:
 - (i) obtain for Donee the right to continue using the Online Services;
 - (ii) replace or modify the Online Services so that it becomes non-infringing while giving equivalent performance;
 - (iii) or if JustGiving cannot obtain the remedies in (i) or (ii), as its sole obligation, terminate the access to the Online Services and any pre-paid but unused fees related to such Online Services.
- (b) JustGiving shall have no liability to indemnify and defend Donee to the extent
 - (i) the alleged infringement is based on infringing information, data, software, applications, services, or programs created or furnished by or on behalf of Donee;
 - (ii) the alleged infringement is the result of a modification made by anyone other than JustGiving or its agents; or
 - (iii) Donee uses the Online Services other than in accordance with this Agreement.

- (c) This Section states the entire liability of JustGiving with respect to any type of infringement claim.

7.3 Mutual Indemnity

Each Party shall indemnify and defend the other Party against any third party claims arising from the indemnifying Party's gross negligence or wilful misconduct.

7.4 Indemnification procedures

The indemnified Party shall give the indemnifying Party prompt written notice of any claims for indemnification and the indemnified Party agrees to relinquish control of defending any such claim to the indemnifying Party, including the right to settle; provided however, that the indemnifying Party will not settle any such suit or claim without the indemnified Party's prior written consent if such settlement would be adverse to the indemnified Party's interests.

8. CONFIDENTIAL INFORMATION

- (a) **Ownership of Confidential Information.** Recipient shall not obtain any rights, title, or interest in any Confidential Information of Owner.
- (b) **Treatment of Confidential Information.**
 - (i) Recipient shall only (i) use Owner's Confidential Information to carry out the purposes of this Agreement; and (ii) disclose Owner's Confidential Information to those third parties operating under non-disclosure provisions no less restrictive than those set forth in this Section 8 and who have a justified business "need to know." Each Party shall protect the other Party's Confidential Information using the same degree of care it uses to protect its own confidential and proprietary information, but in any case not less than reasonable care, and shall protect the other Party's Confidential Information in accordance with applicable laws.
 - (ii) This Agreement imposes no obligation upon the Parties with respect to Confidential Information which either Party can establish by legally sufficient evidence: (a) was in the possession of, or was rightfully known by the Recipient without an obligation to maintain its confidentiality prior to receipt from Owner; (b) is or becomes generally known to the public without violation of this Agreement; (c) is obtained by Recipient in good faith from a third party having the right to disclose it without an obligation of confidentiality; (d) is independently developed by Recipient without the participation of individuals who have had access to any Confidential Information; or (e) is required to be disclosed by court order or applicable law, provided notice is promptly given to the Owner (to the extent legally permissible) and provided further that diligent efforts are undertaken to limit disclosure.

9. SUSPENSION OF SERVICE; MAINTENANCE

- (a) JustGiving shall have the right, at its absolute discretion, to suspend the Online Services in order to carry out essential maintenance work to the Website or any aspect of the Online Services, or upon the occurrence of an event beyond the reasonable control of JustGiving.
- (b) JustGiving shall use commercially reasonable efforts to ensure that any disruption to the Website or the Online Services is for as short a period as possible and JustGiving shall inform the Donee about the suspension of Online Services, should the period of disruption exceed two (2) consecutive hours in duration. In the event of such a suspension, JustGiving shall not be liable to the Donee for any direct or indirect Loss arising from this suspension of Online Services.
- (c) Schedule maintenance may be performed each Friday between 4am and 5am AEST. If additional scheduled maintenance is required JustGiving shall notify the Donee fourteen (14) days prior to such additional scheduled maintenance, via email.
- (d) In the event of a threatened breach by the Donee, JustGiving may suspend the Online Services and seek to resolve the dispute in accordance with clause 10.
- (e) JustGiving may suspend the provision of Online Services upon written notice to Donee (i) in response to Donee's failure to pay when due any undisputed invoices issued pursuant to this Agreement, provided that JustGiving has given Donee at least five (5) days prior notice of JustGiving's intention to suspend the services and Donee fails pay the undisputed invoice during that five (5) day period, or (ii) in response to a violation by Donee of this Agreement. JustGiving will lift any payment-related suspension promptly following Donee's payment of the undisputed invoice on which the suspension is based. When exercising its right to suspend the Online Services for a breach of this Agreement, JustGiving will respond in a manner proportionate to the severity of the violation. With respect to any suspension, JustGiving and Donee agree to work together in good faith to address the violation in a reasonable manner, to prevent similar violations in the future, and to reinstate the suspended Online Services as quickly as possible.

10. RESOLVING A DISPUTE; GOVERNING LAW

- 10.1** Disputes and claims arising out of this Agreement will first be submitted to senior management of both Parties for amicable resolution. If the Parties cannot settle the manner within a reasonable period of time, any controversy or claim arising out of or relating to this contract, or a breach thereof, shall be determined by arbitration conducted in accordance with the International Centre for Dispute Resolution rules.
- 10.2** Arbitration shall be in Sydney, New South Wales and the laws of the State of New South Wales shall be applied. Any decision in arbitration shall be final and binding on the Parties. Judgment may be entered thereon in any

court of competent jurisdiction. Notwithstanding the above, JustGiving may sue in any court for infringement of its proprietary or Intellectual Property Rights or to seek any injunctive relief and JustGiving may sue in any court to collect unpaid amounts.

10.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New South Wales.

10.4 Continuing Compliance. Notwithstanding this section 10, to the extent practicable, until the dispute is resolved in accordance with this clause 10, the Parties will continue to comply with their obligations under this Agreement. Notwithstanding the foregoing, in the event of a fee dispute the Donee shall pay all undisputed amounts in accordance with this Agreement but may withhold payment for the disputed amounts until resolution of the dispute.

11. COMPLAINTS

Any complaint arising in connection with this Agreement shall be in writing and submitted to JustGiving for resolution within 7 days from the date of receipt. At anytime the complaint is not resolved, it may be referred for consideration to the relevant state or territory regulatory body responsible for the administration of the Fundraising Statutes.

12. COMPLIANCE COMPLAINTS

Any complaint received by Donee relating to legislative compliance arising in connection with this Agreement shall be in writing and submitted to JustGiving for resolution within seven (7) days from the date of receipt. If the complaint cannot be resolved through the dispute resolution process in clause 10, it may be referred for consideration to the relevant state or territory regulatory body responsible for the administration of the Fundraising Statutes.

13. GENERAL

13.1 Warranties

Each Party represents and warrants that (i) it has the right and power to enter into this Agreement, (ii) an authorized representative has accepted this Agreement, and (iii) it shall comply with all applicable laws and regulations pertaining to performance of its obligations under this Agreement.

Disclaimer: EXCEPT FOR THE WARRANTIES SET FORTH IN THIS CLAUSE 12.1, JUSTGIVING EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY (BY ANY TERRITORY OR JURISDICTION) TO THE EXTENT PERMITTED BY LAW, AND FURTHER JUSTGIVING EXPRESSLY EXCLUDES ANY WARRANTY OF NON-INFRINGEMENT, TITLE, FITNESS FOR A PARTICULAR PURPOSE, OR MERCHANTABILITY.

13.2 Notices

All notices or other communications referenced under this Agreement shall be made in writing and, in the case of JustGiving, sent to the address designated above or as designated from time to time in writing by the Parties. All notices shall be deemed given to the other Party if delivered receipt confirmed using registered or certified first class mail, postage prepaid, or recognized courier delivery.

13.3 Variation

No variation of this Agreement nor consent to a departure by a Party from a provision, shall be of effect unless it is in writing, signed by the Parties or (in the case of a waiver) by the Party giving it. Any such variation or consent shall be effective only to the extent to or for which it may be made or given.

13.4 Assignment

Either Party may assign its rights or obligations under this Agreement with the non-assigning Party's written consent, such consent not to be unreasonably withheld, provided, however, that JustGiving may assign its rights and obligations in connection with a change of control without Donee's consent.

13.5 Waiver

No failure or delay in enforcing any term, exercising any option, or requiring performance shall be binding or construed as a waiver unless agreed to in writing by a duly authorized representative of each Party.

13.6 Severability

If any provision of this Agreement is held to be unenforceable, the other provisions shall remain in full force and effect.

13.7 Force Majeure

Neither Party shall be liable for any failure to perform its obligations under this Agreement if prevented from doing so by a cause or causes beyond its reasonable control ("Force Majeure"). Any delay in performance due to Force Majeure will be excused for the duration of the event of Force Majeure and the obligations of the Parties will resume immediately upon written notice from the non-performing Party that it is again able to perform.

13.8 Relationship

JustGiving performs its obligations under this Agreement as an independent contractor, not as an employee of Donee. Nothing in this Agreement is intended to construe the existence of a partnership, joint venture, or agency relationship between Donee and JustGiving .

13.9 Mutual Publicity

Except for disclosures required by law, each Party agrees not to issue a press release or public statement relating to this Agreement or its terms or use the other Party's name, logo, or other identifying information unless in each case the other Party has provided written consent, which shall not be unreasonably withheld. Any such disclosures or uses of name, logos, and identifying information shall be in good taste, shall not be disparaging and

shall uphold the professional standards and goodwill associated with the other Party.

13.10 Copyright

Online Services (i) contain trade secret and proprietary information owned by JustGiving or its third party licensors, and (ii) are protected by Australian, New Zealand, and international copyright laws and trade provisions. Donee agrees that all right, title, and interest in and to Online Services remains with JustGiving and its third party licensors.

13.11 Security

JustGiving uses commercially reasonable efforts to maintain database security for online financial transactions and Donee Confidential Information. JustGiving also employs industry standard network security techniques including firewalls, virus and intrusion detection, and authentication protocols. The portions of the Online Services related to donation processing shall be maintained in compliance with the Payment Card Industry Data Security Standard (PCIDSS). Donee understands that Online Services include sending email and publishing web-pages over the Internet using SMTP or HTTP protocols, and that these standard protocols do not support many enhanced data security protections. In no case will the use of the Internet in this manner be deemed to violate JustGiving's obligations under this Agreement. JustGiving reserves the right, in its sole discretion, to change or modify its data security program at any time, but at all times will maintain commercially reasonable database security. Donee shall take commercially reasonable security precautions to prevent unauthorized or fraudulent use of Online Services by Donee, Donee's employees, agents or any other third parties.

13.12 Limitation of Liability

EXCEPT FOR THE INDEMNIFICATION OBLIGATIONS SET FORTH IN CLAUSE 7 AND DONEE'S PAYMENT OBLIGATIONS, EACH PARTY'S MAXIMUM LIABILITY TO THE OTHER PARTY FOR ANY ACTION ARISING UNDER THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION AND WHETHER IN TORT OR CONTRACT, SHALL BE LIMITED TO THE AMOUNT OF FEES PAID OR PAYABLE BY DONEE FOR THE ONLINE SERVICES FROM WHICH THE CLAIM AROSE DURING THE SIX (6) MONTHS PRECEDING THE CLAIM. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE PARTIES AGREE TO THE ALLOCATION OF RISK SET FORTH HEREIN.

13.13 Ownership

- (a) **Donee Ownership and License.** Subject to the rights of JustGiving set forth below, Donee has all right, title, and interest in and to all Donee Confidential Information and all Donee-provided artwork, logos, trade names, and trademarks ("Donee Content"). Donee has sole responsibility for the accuracy and quality of, and right to use, Donee Confidential Information and Donee Content. Donee grants to JustGiving and its suppliers a non exclusive, fully paid-up license to use, reproduce, store, modify, and publicly display Donee Confidential Information and Donee Content, solely to the extent necessary for JustGiving and its agents to perform their obligations under this Agreement.

- (b) **JustGiving Ownership and License.** Subject to the rights of Donee set forth above, JustGiving has all right, title, and interest in and to any expressions and results of Online Services, the work, findings, analyses, conclusions, opinions, recommendations, ideas, techniques, know-how, designs, programs, tools, applications, interfaces, enhancements, other technical information, and all derivatives of the foregoing created in connection with this Agreement ("Work Product"). JustGiving grants to Donee a nonexclusive, fully paid-up license to use Work Product, solely to the extent necessary for Donee and its end users to use Online Services in accordance with this Agreement. If Donee provides any feedback, comments, suggestions, ideas, requests, or recommendations for modifications or improvements to JustGiving ("Feedback"), Donee hereby assigns all right, title, and interest in any such Feedback to JustGiving to be used for any purpose. All rights not expressly granted to Donee hereunder are reserved by JustGiving.
- (c) **Results.** Donee agrees that JustGiving may (a) aggregate benchmarking results of Donee's use of Online Services with results of other customers' use (collectively "Results"), and (b) use and disclose the Results for any purpose provided that the Results do not individually identify Donee, Donee's Confidential Information, or Donee's use of Online Services.

14. INTERPRETATION & DEFINITIONS

14.1 Interpretation

In the interpretation of this Agreement, unless the context or subject matter otherwise require:

- (a) singular includes plural and vice versa;
- (b) any gender includes every gender;
- (c) a reference to a person includes corporations, trusts, associations, partnerships, a government authority, and other legal entities, and where necessary, include successor bodies;
- (d) references to writing include printing, typing, facsimile and other means of representing or reproducing words, figures, drawings or symbols in a visible and tangible form, in English;
- (e) references to signature and signing include due execution of a document by a corporation or other relevant entity;
- (f) references to months mean calendar months;
- (g) references to statutes include statutes amending, consolidating or replacing the statutes referred to and all regulations, orders-in-council, rules, by-laws and ordinances made under those statutes;
- (h) references to sections of statutes or terms defined in statutes refer to corresponding sections or defined terms in amended, consolidated or replacement statutes;

- (i) headings and the table of contents are used for convenience only and are to be disregarded in the interpretation of this Agreement;
- (j) where any word or phrase is given a defined meaning, another grammatical form of that word or phrase has a corresponding meaning;
- (k) each paragraph or sub-paragraph in a list is to be read independently from the others in the list;
- (l) a reference to an agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time; and
- (m) a reference to a Party includes that Party's executors, administrators, substitutes, successors and permitted assigns.

14.2 Definitions

In this Agreement:

Authority means all necessary licences, consents, permissions, authorities, registrations and permits the Donee is required to have in order to request donations from the public and to authorise persons to conduct a Fundraising Appeal on behalf of the Donee, and appoint JustGiving as its agent for these purposes under the terms and conditions of this Agreement.

Bank Account means the interest bearing bank account opened and maintained by JustGiving, as agent for the Donee and for other Donees, for the receipt and holding of all money received by online donations to any of the donees listed on the Website, including the Donee.

Classification Board means that board which classifies Internet content as defined in the *Broadcasting Services Act 1992 (Cth)*.

Commencement Date means the date set out in item 2 of Schedule 2 of this Agreement.

Confidential Information means (i) all information disclosed by the Owner to the Recipient orally, electronically, visually or in a tangible form which is either (a) marked as "confidential" (or with a similar legend), (b) is identified at the time of disclosure as being confidential, or (c) should be reasonably understood to be confidential or proprietary; and (ii) the terms of this Agreement and any proposals or other documents that preceded this Agreement. Confidential Information includes pricing, trade secrets, computer programs, software, documentation, formulas, data, inventions, techniques, marketing plans, strategies, forecasts, Donee lists, donor, prospect, and donation information, employee information, financial information, confidential information concerning Owner's business or organisation, information concerning any of Owner's past, current, or possible future products or methods, including information about Owner's research, development, engineering, purchasing, manufacturing, accounting, marketing, selling, leasing, and software.

Content means any text, information, images, or audio or video material provided to or used by JustGiving on the Website.

Donor means an individual who makes a donation through the Website.

Donee Information means the information posted on the Website relating to the Donee and its request for fundraising and includes the States and Territories in which the Donee can collect or solicit donations in compliance with any applicable Fundraising Statutes.

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

Fundraising Appeal means when a person solicits or receives money or a benefit on the basis of a representation that the soliciting or receiving is not solely for the profit or commercial benefit of the person or any other person, cause or thing on whose behalf the person is soliciting or receiving the money or benefit.

Fundraising Statute and its derivatives means the statute or statutes referred to in Item 3 in Schedule 2.

GST means

- (a) the same as in the GST Law;
- (b) any other goods and services tax, or any tax applying to this Agreement in a similar way; and
- (c) any additional tax, penalty tax, fine, interest or other charge under a law of such a tax; and
- (d) where in each case "tax" means 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.

GST Law means the same as GST law in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

Information includes the details of every Donor's name, title and email address.

Intellectual property rights means all present and future rights conferred by statute, common law or equity in or in relation to any copyright, trade marks, designs, patents, circuit layouts, business and domain names, inventions, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields.

Internet means the world wide connection of computer networks providing for the transmittal of electronic mail, on-line information, information retrieval and file transfer protocol.

Loss means any damage, loss, liability, cost, charge, expense, outgoing or payment (whether direct, indirect, consequential or incidental).

Online Services means the JustGiving Content and the Website including its operation and maintenance by JustGiving.

Owner means the Party providing Confidential Information to the Recipient.

Party means JustGiving or Donee.

Parties means JustGiving and Donee collectively.

Payment Amount means the total of all donations received by JustGiving on behalf of the Donee during a fourteen day period.

Payment Card means a credit card, debit card, EFTPOS transaction, BPAY and any other bill payment service or payment mechanism which enables the holder to access funds in an account at an authorised deposit-taking institution.

Payment Processing Fee means the cost to access the necessary Payment Card infrastructure via a payment gateway or other electronic service to process payments on behalf of customers and banks.

Recipient means the Party receiving Confidential Information from the Owner.

Transaction Fee means the fee calculated in accordance with clause 4.4.

Website means the location accessible on the Internet through the World wide web which provides the Online Services and is operated and maintained by JustGiving at the URL www.justgiving.com/ or such other site as notified by JustGiving from time to time.

SCHEDULE 1

1. The Donee shall provide the following to JustGiving:
 - (a) a certificate of registration or incorporation as a company or an incorporated association or ACN, as applicable; or ACN provided on registration form; and
 - (b) the letter from the Australian Taxation Office advising of the endorsement of the Donee as a DGR, if applicable; or confirmation of DGR status on registration form; and
 - (c) any Authority held by the Donee, under any of the Fundraising Statutes, and, if none is held, the reason why the Donee is not required to hold an Authority; and
 - (d) a draft of the Donee Information which shall include details of the reason or purpose of the fundraising and the intended use of the funds raised and the States and Territories in which the Donee can legally collect or solicit donation - to be completed on the registration form.
2. JustGiving may request further information prior to accepting the appointment as an agent under this Agreement.
3. JustGiving may request amendments, additions, deletions or redrafting of the Donee Information.

SCHEDULE 2

Item 1: **Donee Name:**

ABN:

Address:

Fax:

Email:

Item 2: **Commencement Date
of this Agreement:**

Item 3: **Fundraising Statutes:** *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

SCHEDULE 3

Charitable Fundraising Act, 1991 (NSW)

If the Donee holds an Authority under the *Charitable Fundraising Act 1991* (NSW) the NSW Office of Liquor, Gaming and Racing requires that they receive within 28 days of this Agreement being signed, a letter from the Donee which includes the following:

- (a) as directed by section 14(1)(e) of the *Charitable Fundraising Regulation 2008*, advise the Department that JustGiving has been engaged non-exclusively as a trader for the Donee;
- (b) seek to waive the requirements of condition 6 of Schedule 1 of the *Charitable Fundraising Regulation 2008* that the title of the account shall include the name of the Authority holder and so request that the JustGiving Online Donations Agency Account is used to receive donations on behalf of the Authority holders;
- (c) seek to waive the requirements of condition 9 of Schedule 1 of the *Charitable Fundraising Regulation 2008* that the register of receipt is required and so request that based on clause 4.10 of this Agreement that JustGiving issues computerised receipts; and
- (d) seek to waive the requirements of condition 11(1) and 11(2) in relation to online appeals to enable JustGiving to issue authorities and/or identification badges to persons conducting or participating in a Fundraising Appeal on behalf of the Authority holder.

Schedule 4 contains the above mentioned letter for signature. Please leave in the Agreement. The Donee is required to forward the letter to the Office of Fair Trading NSW, with a copy of this Agreement as set out in clause 4.8 (c).

SCHEDULE 4

(charities fundraising in NSW)

NSW Fair Trading
Business Licensing
Locked Bag 5138
Parramatta NSW 2124

Dear Business Licensing Team

Everyday Hero Pty Ltd trading as JustGiving Australia

We wish to advise you in accordance with sections 14(1)(e) of the *Charitable Fundraising Regulation 2008* that we intend to engage Everyday Hero Pty Ltd trading as JustGiving Australia for the purpose of on-line fundraising. We enclose a copy of our agreement with them.

We should also like to apply for a modification of the requirements of Schedule 1 of the *Charitable Fundraising Regulations 2008* as follows:

- ◆ that condition 6 requiring that the title of the account include the name of the Authority holder be waived and that the JustGiving Australia Online Donations Agency Account be used to receive donations on behalf of the Authority holder;
- ◆ that the requirements of condition 9 that the register of receipt is required be waived and that JustGiving Australia issues computerised receipts based on clause 4.10 of the attached Agreement; and
- ◆ that the requirements of condition 11(1) and 11(2) in relation to online appeals be waived to enable JustGiving Australia to issue authorities and/or identification badges to persons conducting or participating in a Fundraising Appeal on behalf of the Authority holder.

Yours faithfully

Name

On behalf of _____

Charity Name

CFN: _____

SIGNED as an agreement

Please sign below under either 'Company' **OR** 'Association':

Signed by

Name of Company

in accordance with section 127 of the Corporations Act 2001 (Cth)

Secretary/Director

Director

Name (please print)

Name (please print)

OR

Signed by

Name of Association

in accordance with its Constitution

Authorised Representative

Authorised Representative

Name (please print)

Name (please print)

Signed by

Everyday Hero Pty Ltd trading as JustGiving Australia

in accordance with section 127 of the Corporations Act 2001 (Cth)

Secretary/Director

Director

Name (please print)

Name (please print)