



ONLINE FUNDRAISING AGREEMENT

Everyday Hero Pty Limited
A.C.N. 117 080 430

293 St Paul's Terrace
Fortitude Valley Qld 4006

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AGREEMENT dated _____

PARTIES **Everyday Hero Pty Limited ACN 117 080 430.** of c/- 293 St Paul's Terrace, Fortitude Valley, Brisbane, Queensland

Everyday Hero

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

Donee

BACKGROUND

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

AGREEMENT

1. TERM OF AGREEMENT

This Agreement shall commence on the Commencement Date and shall continue for a minimum of 30 days subject to the right of termination.

2. APPOINTMENT AS AN AGENT

- 2.1** Subject to the Donee satisfying the conditions in Schedule 1, Everyday Hero may accept or reject the appointment as the Donee's agent by notice to the Donee.
- 2.2** If Everyday Hero accepts the appointment as the Donee's agent by notice to the Donee, the Donee authorises and appoints Everyday Hero 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** Everyday Hero, in accordance with the terms and conditions of this Agreement, shall provide the Donee with the Online Services by such means as Everyday Hero 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 11, Everyday Hero shall provide the Online Services on a continuous basis during the Term of this Agreement. Everyday Hero 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** Everyday Hero shall provide the Donee with all identification and log-in information and access to a secure, password-protected User Account on the Website required for connection to the Online Services.
- 3.4** Everyday Hero acknowledges the Information it obtains from the Donors in connection with any donation to the Donee is the intellectual property of the Donee. Everyday Hero will secure, protect, and not use this Information other than as set out in this Agreement or as required by law [such as the *Privacy Act 1988 (Cth)*] or as consented to by the Donee.
- 3.5** Everyday Hero will generate and send immediately an email acknowledgement to any Donor in respect of any donation made to the Donee on the Website.
- 3.6** Subject to the Donee's Authority, Everyday Hero 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. EVERYDAY HERO'S AGENCY OBLIGATIONS

4.1 Management Accounts

Everyday Hero must keep a separate management account for each donee showing:

- (a) all donations received on behalf of that donee;
- (b) the amount of Transaction Fees deducted, if any, in accordance with clause 4.4;
- (c) all payments made from the relevant donee's management account.

4.2 Bank Accounts

Everyday Hero must 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

Everyday Hero will charge fees for its service by way of:

- (a) Following an introductory 3 month trial, a monthly subscription fee of \$30 plus GST payable in advance (by direct debit)
- (b) A Transaction Fee as described in clause 4.4

4.4 Transaction Fee

The Donee must pay the following Transaction Fee which is comprised of:

- (a) a Service Fee of 6.5% plus GST of the gross amount of funds raised for the Donee; and
- (b) a credit card processing fee at current market rate per transaction

4.5 Net Payment Amount

Everyday Hero must pay to the Donee by electronic funds transfer the Payment Amount after the deduction of the Transaction Fee and that this payment will be done every fourteen days.

4.6 Fundraising Statute Requirements

- (a) Everyday Hero 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, Everyday Hero must pay any donations received on behalf of the Donee within 14 days of receipt of the donation.

4.7 Access to Information

Everyday Hero 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 of the Donors who have made donations to the Donee in the previous month.
- (c) Remittance advices for the previous period

4.8 Receipts

- (a) Everyday Hero must 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 must include:
 - (i) a statement that the receipt is issued by Everyday Hero 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.

4.9 Records

- (a) Everyday Hero must keep full and proper books of accounts and records showing clearly all transactions relating to the agency established under this Agreement.
- (b) The Donee or its representative may, at all reasonable times and on at least 10 Business Days notice examine and take copies of the books, records and documents of Everyday Hero which relate to the Donee.
- (c) Everyday Hero is to provide an annual report from its external auditors that the auditors have examined the internal controls of that entity in the area of donation collections and that they are satisfied that all funds received on behalf of the Donee and all receipts issued on behalf of the Donee have been reflected in monthly reports and payment.

5. DONEE OBLIGATIONS

The Donee must:

- (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 Everyday Hero, 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, all necessary insurances including professional indemnity insurance, worker's compensation and public liability insurance; and
- (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.

6. DONEE INFORMATION OBLIGATIONS

The Donee must 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 Everyday Hero to enable publishing onto the Website;
- (c) does not breach any law, standards, content requirements or applicable laws of conduct;
- (d) does not 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 Everyday Hero to the risk of any claim, legal or administrative action.

7. LICENCE FROM THE DONEE

The Donee grants Everyday Hero a non-exclusive, royalty-free world-wide licence to use, copy, display, transmit, publish, reproduce, adapt and communicate to the public the Donee Information including using it by posting it on the Website or in publicity, marketing or internal documents for Everyday Hero.

8. INDEMNITY IN FAVOUR OF EVERYDAY HERO

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

- (a) the Donee information excluding any negligence or deliberate act by Everyday Hero 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 Everyday Hero prior to entering this Agreement or during or after its Term excluding any negligence or deliberate act by Everyday Hero in relation to such information or representation.

9. INDEMNITY IN FAVOUR OF DONEE

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

- (a) any breach by Everyday Hero of this Agreement; or
- (b) any information given or representation made to the Donee prior to entering this Agreement or during or after its Term.

10. CONFIDENTIAL INFORMATION

- (a) Everyday Hero and the Donee shall treat as confidential any and all information which is furnished or disclosed by one party (the Disclosing Party) to the other party (the Receiving Party) during the term of this Agreement which is acquired as a result of the use of the Website and the Online Services and which is not in the public domain.
- (b) The Receiving Party shall not disclose to any third party any such confidential information without the Disclosing Party's consent, except where required to do so by law.
- (c) The Receiving Party will notify the Disclosing Party promptly of any unauthorised use or disclosure of confidential information and cooperate with and assist the Disclosing Party in every reasonable way to stop or minimize such unauthorised use or disclosure. This section shall survive any expiration or termination of the Agreement.

11. SUSPENSION OF SERVICE

- (a) Everyday Hero 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 Everyday Hero.
- (b) Everyday Hero shall use its best endeavours to ensure that any disruption to the Website or the Online Services is for as short a period as possible and Everyday Hero shall inform the Donee about the suspension of Online Services, should the period of disruption exceed 2 consecutive hours in duration. In the event of such a suspension, Everyday Hero shall not be liable to the Donee for any direct or indirect loss arising from this suspension of Online Services.

12. COMPLAINTS

Any complaint arising in connection with this Agreement shall be in writing and submitted to Everyday Hero 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.

13. TERMINATION

- 13.1** For the purpose of this Agreement, the following are terminating events:
- (a) the breach or threatened breach by either party of any of its material obligations under this Agreement;
 - (b) any breach of an Authority or of a condition in any Authority;
 - (c) any breach of any Fundraising Statute or other relevant Act or Regulation by either party;
 - (d) the appointment of any type of insolvency administrator in respect of the property or affairs of either party;
 - (e) the entry or proposed entry by either party into any scheme, composition or arrangement with any of its creditors;
 - (f) the Donee has committed an act which if true, in the opinion of Everyday Hero, would adversely affect the reputation or business of Everyday Hero conducted on and from the Website; or
 - (g) Everyday Hero has committed any act which may have the effect of vilifying or bringing into disrepute the Donee.
- 13.2** Either Party may terminate this Agreement by giving at least 30 days notice or it may be terminated immediately on the happening of a terminating event at the option of the affected party.
- 13.3** Everyday Hero must remove the Donee Information from the Website and refuse to accept donations on behalf of the Donee, as soon as practicable, after termination.

14. GENERAL

14.1 Warranty of Authority

Each party signing this Agreement warrants to the other party, as at the date of signing, that the signatory has the full power and authority to execute this agreement on behalf of that party.

14.2 Notices

Any notice or other communication required or permitted to be made or given by either party pursuant to this Agreement must be in writing and either:

- (a) sent by post to the address as provided in this Agreement or to any later known address; or
- (b) Sent by email to the email address as provided in this Agreement, which for Everyday Hero is info@everydayhero.com or to any later known email address.

- (c) Notice will be deemed to have been received 5 days after the date of posting or, in the case of transmission of an email, 24 hours after the date of sending.

14.3 Jurisdiction

This Agreement is governed by and shall be construed in accordance with the laws from time to time in force in the State of Queensland and the parties submit to the non-exclusive jurisdiction of the Courts of Queensland.

14.4 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.

14.5 Assignment

A party may not assign its rights under this Agreement without the written consent of the other party which consent may be given or withheld, or given on conditions in the absolute discretion of the other party including a condition that the assignee comply with all applicable law, rules, regulations and conditions under the Fundraising Statutes.

14.6 Waiver

The non-exercise of or delay in exercising a right of a party shall not operate as a waiver of that right, nor does a single exercise of a right preclude another exercise of it or the exercise of other rights. A right may only be waived by notice, signed by the party (or its authorised representative) to be bound by the waiver.

Severability

This Agreement shall, so far as possible, be interpreted and construed so as not to be invalid, illegal or unenforceable in any respect, but if a provision, on its true interpretation or construction is held to be illegal, invalid or unenforceable:

- (a) that provision shall, so far as possible, be read down to the extent that it may be necessary to ensure that it is not illegal, invalid or unenforceable and as may be reasonable in all the circumstances so as to give it a valid operation; or
- (b) if the provision or part of it cannot effectively be read down, that provision or part of it shall be deemed to be void and severable and the remaining provisions of this Agreement shall not in any way be affected or impaired and shall continue notwithstanding that illegality, invalidity or unenforceability.

14.7 Force Majeure

Neither party shall be liable for any default or delay in performance of its obligation under this Agreement if and to the extent that such default delay is caused by elements of nature or acts of God or any other similar cause beyond the reasonable control of such party. In such circumstances

the non-performing party shall be excused from further performance or observance of the obligations so affected for long as such circumstances prevail and such party continues to use its best endeavours to recommence performance or observance without delay.

15. INTERPRETATION & DEFINITIONS

15.1 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.

15.2 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 Everyday Hero 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 Everyday Hero, 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;

Content means any text, information, images, or audio or video material provided to or used by Everyday Hero 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 Statutes means the 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.

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 Content and the Website including its operation and maintenance by Everyday Hero;

Payment Amount means the total of all donations received by Everyday Hero 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.

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 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 Everyday Hero at the URL www.everdayhero.com.au or such other site as notified by Everyday Hero from time to time.

SCHEDULE 1

1. The Donee must provide the following to Everyday Hero:
 - (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 must include details of the reason or purpose of the fundraising and the intended use of the funds raised and the States and Territories in which the Donee can legally collect or solicit donation - to be completed on the registration form.
2. Everyday Hero may request further information prior to accepting the appointment as an agent under this Agreement.
3. Everyday Hero 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**

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 Everyday Hero has been engaged non-exclusively as a trader for the Donee;
- (b) seek to waive the requirements of condition 5 of Schedule 1 of the *Charitable Fundraising Regulation 2008* that the title of the account must include the name of the authority holder and so request that the Everyday Hero Online Donations Agency Account is used to receive donations on behalf of the authority holders; and
- (c) seek to waive the requirements of condition 8 of Schedule 1 of the *Charitable Fundraising Regulation 2008* that the register of receipt is required and so request that based on clauses 4.7 and 4.8 of this Agreement that Everyday Hero issues computerised receipts.

Schedule 4 contains the above letter for signature. Please leave in the Agreement. Everyday Hero will forward to the NSW Office of Liquor, Gaming and Racing.

SCHEDULE 4
(charities fundraising in NSW)

Mr Steve Blackburn
Manager, Licensing
NSW Office of Liquor, Gaming and Racing
Office of Charities
GPO Box 7060
Sydney NSW 2001

Dear Mr Blackburn

Everyday Hero Pty Ltd

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 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 5 requiring that the title of the account include the name of the authority holder be waived and that the Everyday Hero Online Donations Agency Account be used to receive donations on behalf of the authority holder; and
- ◆ that the requirements of condition 8 that the register of receipt is required be waived and that Everyday Hero issues computerised receipts based on clauses 4.7 and 4.8 of the attached Agreement.

Yours faithfully

Name

On behalf of _____

Charity Name

CFN: _____

SIGNED as an agreement

(version 14)

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 Limited**

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

Secretary/Director

Director

Name (please print)

Name (please print)