

Terms & Conditions

1. Definitions

In these Terms:

Applicable Collections Law means any applicable Law relating to collecting donations to charities.

Business Day means a day on which banks are open for business in Brisbane excluding a Saturday, Sunday or public holiday in that city.

Charity Background Intellectual Property Rights means all Intellectual Property Rights owned or used by the Charity prior to the date of these Terms.

Collections Regulator means any government body or agency responsible for administration of an Applicable Collections Law.

Commencement Date means the date set out on the front page.

Confidential Information means:

- (a) these Terms; and
- (b) all information, know-how, ideas, concepts, technology, industrial, marketing and commercial knowledge of a confidential nature (whether in tangible or intangible form) relating to or developed in connection with or in support of the business of a party or a Related Body Corporate of a party which is disclosed, communicated or delivered to, learnt by, or which otherwise comes to the knowledge of or into the possession of the other party under or in connection with these Terms,

but does not include:

- (c) information which is or becomes generally available in the public domain (other than through any breach of confidence);

- (d) information rightfully received by the other party from a third person who is under no obligation of confidentiality in relation to the information and who has not obtained that information either directly or indirectly as a result of a breach of any duty of confidence owed to the first party; or

- (e) information which has been independently developed by the other party.

Contract Representative means each party's representative for administering these Terms as appointed by a party from time to time.

Corporations Act means the *Corporations Act 2001* (Cth).

Disclosing Party has the meaning given in clause 15.2.

Dispute has the meaning given in clause 18.1(a).

Dispute Notice has the meaning given in clause 18.1(a).

Devices means the devices developed by Tap Tins to enable people to make electronic donation payments to charities.

Fees means the price for the Services payable by the Charity to Tap Tins as specified in these Terms.

Force Majeure Event means:

- (a) an act of God;
- (b) war;
- (c) revolution;
- (d) any unlawful act against public order or authority;
- (e) a national or state-wide strike or industrial dispute; or

Terms & Conditions

(f) a government restraint.

Government Agency means a government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity and includes any self-regulatory organisation established under statute or any stock exchange.

GST means goods and services tax and any replacement or similar tax.

GST Law means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Insolvency Event means the happening of any of these events:

(a) where a party is a natural person, the person becomes bankrupt, files or is served with a petition in bankruptcy or is served with a bankruptcy notice, the person is unable to pay his/her debts as and when they become due and payable or a creditor's meeting in relation to the person is called;

(b) an application is made to a court for an order or an order is made that a body corporate be wound up, and the application is not withdrawn, stayed or dismissed within 21 days of being made;

(c) appointment of a liquidator, provisional liquidator, administrator, receiver, receiver and manager or controller in respect of a body corporate or its assets;

(d) except to reconstruct or amalgamate while solvent, a body corporate enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them;

(e) a body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent or is otherwise wound up or dissolved;

(f) a body corporate is or states that it is insolvent;

(g) as a result of the operation of section 459F(1) of the *Corporations Act 2001*, a body corporate is taken to have failed to comply with a statutory demand;

(h) a body corporate is or makes a statement from which it may be reasonably deduced that the body corporate is the subject of an event described in section 459C(2)(b) or section 585 of the *Corporations Act 2001*;

(i) a body corporate takes any step to obtain protection or is granted protection from its creditors under any applicable law;

(j) a body corporate ceases to carry on business; or

(k) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

Intellectual Property Rights means:

(a) inventions, discoveries and novel designs, whether or not registered or registrable as patents or designs, including developments or improvements of equipment, products, technology, processes, methods or techniques;

(b) copyright (including future copyright) throughout the world in all literary works, artistic works, computer software and any other works or subject matter in which copyright subsists and may in the future subsist;

Tap Tins Pty Ltd ACN 615 314 791

Terms & Conditions

- (c) confidential information and trade secrets;
- (d) trade and service marks (whether registered or unregistered), business names, trade names, domain names, logos and get-up; and
- (e) proprietary rights under the *Circuit Layouts Act 1989* (Cth);
- (b) processing of electronic donation payments to the Charity using the Devices; and
- (c) other services specified in these Terms.

Sites mean the sites in the Territory agreed by the parties at which the Devices are placed and used.

Tap Tins Background Intellectual

Property Rights means all Intellectual Property Rights owned or used by Tap Tins prior to the date of these Terms.

Term is the period from the Commencement Date until termination in accordance with these Terms.

Termination Event means any event specified in clause 10.1.

Territory means the state/territory provided upon signup.

Law means:

- (a) legislation, ordinances, regulations, by-laws, orders, awards, proclamations, directions and practice notes of the Commonwealth, a State or Territory or any government agency;
- (b) certificates, licences, consents, permits, approvals, qualifications, registrations, standards and requirements of organisations having jurisdiction in connection with the carrying out of the Services under these Terms; and
- (c) all other laws from which legal rights and obligations may arise.

Policies means the policies or procedures of the Charity relevant to the Services as notified by the Charity to Tap Tins from time to time (if any).

Related Body Corporate has the meaning given to it in section 9 of the Corporations Act.

Representatives mean officers, employees, agents, representatives, contractors or subcontractors of the relevant party.

Services means the supply of the Devices and services to enable people to make electronic donation payments to the Charity including:

- (a) provision of the Devices at the Sites;

2. Services & Donation Payments

2.1 Provision of Services

Tap Tins will provide the Services to the Charity for the Term in accordance with these Terms.

2.2 Donation Payments

The parties acknowledge and agree that:

- (a) a person may make a donation payment to the Charity by tapping their debit or credit card on the Device;
- (b) the Charity authorises Tap Tins to act as the Charity's agent in accepting donation payments made to the Charity using the Devices;
- (c) the donor may enter a mobile number to receive a receipt for the

Tap Tins Pty Ltd ACN 615 314 791

Terms & Conditions

donation (by SMS) with the receipt displaying the Charity 's name and ABN and the words "processed by Tap Tins" ;

- (d) the donation payments will be visible to the Charity online on Tap Tins portal in real-time;
- (e) the donation payment is processed through Tap Tins' PayPal account (with Tap Tins to pay all PayPal fees and charges) ;
- (f) Tap Tins draws down each week a bulk payout from PayPal of all donation payments made to the Charity using the Devices;
- (g) Tap Tins pays each week a bulk payout to the Charity of all donation payments made to the Charity using the Devices less its Fee as provided below;
- (h) the Charity will be responsible for any complaints by any donors or third parties regarding any activities associated with these Terms; and
- (i) a sample of any printed advertising material regarding making donation payments to the Charity using the Devices will be forwarded to the Charity for prior approval.

2.3 Other terms and conditions not applicable

The provisions of these Terms apply to all Services performed by Tap Tins (and any other services provided by Tap Tins related to or provided in connection with the Services for which no written contract has been executed by the parties) and override any invoices or other documentation exchanged between the parties unless any such document expressly provides that it overrides these Terms by name. If there is any inconsistency between any purchase order, invoices or other documentation and

these Terms, the provisions of these Terms prevail to the extent of any inconsistency.

2.4 Non-exclusive arrangement

This contract does not prevent the Charity from entering into arrangements or agreements with third parties for the provision of services equivalent or similar to the Services.

3. Services standards

3.1 Service standards generally

Tap Tins will provide the Services:

- (a) with due care and skill;
- (b) in a proper, efficient and cost-effective manner using that standard of skill, diligence, prudence and foresight that would reasonably be expected from a prudent, expert and experienced provider of services which are similar to the Services in Australia;
- (c) in compliance with:
 - (i) all Laws relevant to the provision of the Services;
 - (ii) the Policies; and
 - (iii) the reasonable directions of the Charity; and
- (d) to the reasonable satisfaction of the Charity.

4. Sites

4.1 Site facilities

- (a) The parties will co-operate to enable the Devices to be placed

Terms & Conditions

- and used at the Sites during the Term.
- (b) Except as specified in these Terms, Tap Tins will provide all other things necessary to provide the Services.

- (a) will at all times remain the property of Tap Tins; and
- (b) must be returned to Tap Tins at the end of the Term.

4.2 Site agreements

Tap Tins will enter into agreements with the controller of the Site in relation to placing the Devices at the Sites during the Term and gaining access to the Sites on terms acceptable to Tap Tins.

5. Devices

5.1 Provision of Devices

At the Sites and during the times agreed by the parties:

- (a) Tap Tins will supply, at its own expense, the Devices; and
- (b) the Charity name and campaign will be displayed on the Devices; and
- (c) the Charity may inspect the Devices.

5.2 Obligations in respect of Devices

Any Devices supplied by Tap Tins as part of the Services will be:

- (a) of acceptable quality;
- (b) fit for the purpose for which the Devices are used; and
- (c) maintained by Tap Tins and kept in good condition.

5.3 Tap Tins property

The Devices:

6. Warranties

6.1 Tap Tins warranties

Tap Tins warrants to the Charity that:

- (a) the Services will be in conformity with the service standards specified in these Terms; and
- (b) the provision of the Services by Tap Tins to the Charity will not infringe any right of any third party (including any Intellectual Property Right) or Law.

6.2 Charity warranties

The Charity warrants to Tap Tins that:

- (a) it will comply with all Laws relevant to the provision of the Services and the making of electronic donation payments to the Charity under these Terms including any Applicable Collections Law;
- (b) it has had a reasonable opportunity to obtain legal advice before signing this document.

6.3 Mutual warranties

Each party warrants to the other party that it has the power to execute, deliver and perform its obligations under these Terms and all necessary corporate and other action has been taken to authorise that execution, delivery and performance.

Terms & Conditions

7. Calculation of Fees

7.1 Fees

Subject to clause 7.2(c), the Fees payable by the Charity to Tap Tins are:

- (a) \$10 per week for each Device on which electronic donation payments may be made to the Charity; and
- (b) 20% of each electronic donation payment made to the Charity using a Device (subject to a minimum \$0.50 per electronic donation payment).

7.2 Components & Variation of the Fees

- (a) Unless otherwise stated in these Terms, the Fees are inclusive of all costs incurred by Tap Tins in providing the Services, including the PayPal's fees and charges and the cost of all labour necessary to provide the Services.
- (b) The Fees include GST.
- (c) Tap Tins may vary the Fees by giving at least 60 days prior written notice to the Charity. If the proposed variation is not acceptable, the Charity may elect to terminate these Terms by giving at least 60 days prior written notice to Tap Tins.

8. Payment of Fees

8.1 Payment

Tap Tins will deduct its Fees from each weekly bulk payment of donations to the Charity as specified in clause 2.2.

8.2 Invoicing

At the time it makes each weekly bulk payment of donations to the Charity as specified in these Terms, Tap Tins will submit an invoice for Services performed each week during which the Services were performed.

8.3 Audit rights

Tap Tins will, on the Charity's reasonable request and at its own cost, provide access to, and copies of, its records and any other information reasonably required by the Charity to enable the Charity to verify any submitted invoice for Services. The Charity may exercise its rights under this clause at any time before, and up to 6 months after, the end of the Term.

9. Term

These Terms are effective from the Commencement Date until termination under these Terms.

10. Termination

10.1 Termination by Notice

Either party may terminate these Terms by 60 days notice to the other party.

10.2 Termination Events

It is a Termination Event if:

- (a) a party breaches a material obligation in these Terms and, in the other party's reasonable opinion, the breach:
 - (i) cannot be remedied; or

Terms & Conditions

- (ii) can be remedied, but is not remedied by the relevant party within 10 Business Days after the other party gives the party notice of the breach;
- (b) an Insolvency Event occurs in respect of a party; or
- (c) the Charity fails to pay the Fees for the Services as required by these Terms.

10.3 Effect of Termination Event

If a Termination Event occurs, the other party may:

- (a) terminate this agreement immediately by notice to the party subject to the Termination Event; and
- (b) exercise its rights as if it had accepted a repudiation of this agreement by the other party.

10.4 Consequences of termination or expiry

When these Terms expire, or if these Terms are terminated prior to expiry:

- (a) these Terms continues to bind the parties in connection with all transactions relating to the Services entered into before expiry or termination;
- (b) each party must return to the other party within five Business Days after the date of expiry or termination, the other party's Confidential Information; and
- (c) any accrued rights and obligations of the parties as at the date of termination are unaffected.

11. Force majeure

11.1 Suspension of obligations

An obligation of a party under these Terms (other than the obligation to make any payment) is suspended for the time and to the extent that that party is prevented from or delayed in complying with that obligation by a Force Majeure Event.

11.2 No relief

The occurrence of a Force Majeure Event does not relieve the affected party from performing its obligations:

- (a) if the delay or failure by the affected party in the performance or the occurrence of a Force Majeure Event could have been prevented by reasonable precautions taken by the affected party; or
- (b) if the Force Majeure Event results from any intentional act or omission on the part of the affected party, except to the extent such fault was itself caused by a Force Majeure Event.

11.3 Responsibilities

On the occurrence of a Force Majeure Event, the affected party must promptly:

- (a) notify the other party and describe in reasonable detail the nature of the Force Majeure Event and its likely effect on the ability of the affected party to perform its obligations under these Terms;
- (b) use all reasonable endeavours to avoid or remove the cause of the Force Majeure Event and perform its obligations under these Terms as soon as possible; and

Terms & Conditions

- (c) take all reasonable steps to mitigate any losses caused to the other party. and other registered protection in Tap Tins' name.

11.4 Termination

Either party may by 20 Business Days notice to the other party, terminate these Terms if a Force Majeure Event continues for at least two months.

12. Intellectual Property Rights

12.1 Tap Tins Background Intellectual Property Rights

- (a) Tap Tins remains the owner or licensee (as the case may be) of all Tap Tins Background Intellectual Property Rights.
- (b) Tap Tins grants or must procure the granting to the Charity of a non-exclusive, royalty-free licence to use Tap Tins Background Intellectual Property Rights for the purpose of the Services.

12.2 The Charity Background Intellectual Property Rights

The Charity remains the owner or licensee (as the case may be) of all the Charity Background Intellectual Property Rights.

12.3 Contract specific Intellectual Property Rights

Any Intellectual Property Rights developed by Tap Tins in relation to the Services, the Devices or these Terms are owned by Tap Tins. The Charity assigns all right, title and interest in such Intellectual Property Rights to Tap Tins. The Charity must provide Tap Tins with all reasonable assistance, at Tap Tins' cost, to protect such Intellectual Property Rights, including obtaining patents

13. Records & Audit

13.1 Records keeping

Tap Tins must maintain accurate and complete records in relation to the Services provided to the Charity including:

- (a) the donation payments made to the Charity using the Devices;
- (b) receipts issued to donors on behalf of the Charity; and
- (c) calculation and payment of the Fees.

13.2 Audit of records

- (a) Tap Tins must permit the Charity, the Collections Regulator, or any third party appointed by the Charity to audit the records of Tap Tins and the performance of the Services against these Terms.
- (b) Tap Tins must provide the Charity or the Collections Regulator or the third party (as the case may be) with all reasonable assistance, including the provision of any information reasonably requested by the Charity or the Collections Regulator or the third party (as the case may be) in relation to such an audit.

14. Reporting

Tap Tins must comply with any reporting obligations reasonably set by the Charity to enable the Charity to comply with its obligations under any Applicable Collections Law.

Terms & Conditions

15. Confidentiality

15.1 No disclosure

Other than as permitted under clause 15.2, neither party may disclose to any person the Confidential Information.

15.2 Permitted disclosures

A party (**Disclosing Party**) may disclose the Confidential Information:

- (a) to its Related Bodies Corporate, its Representative and/or a Representative of its Related Bodies Corporate who needs to know the Confidential Information for the purposes of these Terms subject to the Disclosing Party taking reasonable steps to ensure that any such Related Bodies Corporate and/or Representative (as applicable) is fully aware of the confidential nature of the Confidential Information before the disclosure is made;
- (b) which is required to be disclosed by law, provided that the Disclosing Party has:
 - (i) given the other party prior notice where practicable; and
 - (ii) provided all assistance and co-operation which the other party reasonably considers necessary for that purpose; and
- (c) to professional advisers of a party or to potential buyers of the party or the party's business, provided that the recipients of such Confidential Information are subject to obligations of confidentiality.

15.3 Representatives undertaking

Each party must ensure that its Related Bodies Corporate and Representatives who have or may have access to the Confidential Information are aware of the confidential nature of the Confidential Information and treat the Confidential Information accordingly and must procure that any such Related Bodies Corporate and/or Representatives keep such information confidential.

15.4 Duration of obligations

The obligations under this clause will continue for a period of three years after the expiry or termination of these Terms.

15.5 Benefit

The Disclosing Party holds the benefit of this clause for itself and for each of its Related Bodies Corporate.

16. Privacy

Tap Tins must comply with the provisions of the *Privacy Act 1988* (Cth) in relation to any Personal Information (as defined in the Privacy Act) provided to Tap Tins.

17. Notices

17.1 Notice requirements

Any notice, demand, approval, consent or other communication under these Terms (**Notice**) must be in writing and must be delivered:

- (a) personally;
- (b) by email or facsimile; or
- (c) by prepaid registered post,

Terms & Conditions

to a party at:

- (d) the address of the party set out on the front page of this document (**Nominated Contact Details**); or
- (e) such other contact details as the party may from time to time notify to the other party for the purposes of, and in accordance with, this clause.

17.2 When Notices considered given and received

A Notice given in accordance with this clause takes effect when received (or such later time as specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, two Business Days after the date of posting (or five Business Days after the date of posting if posted to or from outside Australia); or
- (c) if sent by email or facsimile, when the sender's system generates a message confirming successful transmission of the total number of pages of the Notice, unless within four business hours (being a period of time between 9:00 am and 5:00 pm on a Business Day) after the transmission, the recipient informs the sender that it has not received the entire Notice,

but if the delivery, receipt or transmission is not on a Business Day or is after 5:00 pm on a Business Day, the Notice is taken to be received at 9:00 am on the Business Day after that delivery, receipt or transmission.

18. Disputes

18.1 Dispute Notice

- (a) If any party to these Terms claims that a dispute has arisen under or in connection with these Terms (**Dispute**), that party must give notice of the Dispute (**Dispute Notice**) to the other party.
- (b) The Dispute cannot be the subject of litigation until the provisions of clauses 18.2, 18.3 and 18.4 have been complied with (except where a party seeks urgent equitable relief from a court, in which case that party does not need to comply with clauses 18.2, 18.3 and 18.4 before seeking such relief).

18.2 Resolution by Contract Representatives

Within 10 Business Days of the date of the Dispute Notice (or such other period as agreed between the parties), the Contract Representatives of each of the parties must meet to negotiate in good faith and seek to resolve the Dispute.

18.3 Resolution by senior executives

If the Dispute is not resolved under clause 18.2 within 10 Business Days (or such other period agreed between the parties to the Dispute) after the date of the Dispute Notice, the Dispute must be referred to the senior executives of each of the parties to the Dispute, who must meet to negotiate in good faith and seek to resolve the Dispute.

18.4 Mediation

If the Dispute is not resolved under clause 18.3 within 15 Business Days (or such other period agreed between the parties) after the date of the Dispute Notice,

Terms & Conditions

the Dispute must be referred to mediation administered by the Australian Commercial Disputes Centre (ACDC) before having recourse to litigation.

18.5 ACDC Mediation Guidelines

- (a) The mediation under clause 18.4 must be conducted in accordance with ACDC Mediation Guidelines which set out the procedures to be adopted for the mediation, the process of selection of the mediator and the costs involved.
- (b) The terms of the ACDC Mediation Guidelines are deemed to be incorporated into these Terms.

18.6 Litigation

If the Dispute is not resolved under clause 18.4 within 40 Business Days after the date of the Dispute Notice, either party may commence litigation proceedings.

18.7 Survival

This clause 18 will survive termination of these Terms.

19. Administration of contract

19.1 Contract Representatives

- (a) Each party must appoint a Contract Representative with responsibility for administering the contract.
- (b) Each party must promptly advise the other party in writing of any changes to the identity of its Contract Representative.

19.2 Directions by the Charity

The Contract Representative of the Charity may issue reasonable directions to Tap

Tins in relation to the Services or any term of these Terms (including a direction requiring Tap Tins to replace a Representative carrying out any Services).

20. General

20.1 Governing law and jurisdiction

- (a) This contract is governed by and is to be construed under the laws in force in Queensland.
- (b) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Queensland and courts of appeal from them in respect of any proceedings arising out of or in connection with these Terms. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

20.2 Further assurances

Each party must, at its own expense, do all things and execute all further documents necessary to give full effect to these Terms and the transactions contemplated by it.

20.3 Remedies cumulative

Except as provided in these Terms and permitted by law, the rights, powers and remedies provided in these Terms are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of these Terms.

20.4 Exercise of rights

- (a) Unless expressly required by the terms of these Terms a party is not required to act reasonably in giving or withholding any consent or

Tap Tins Pty Ltd ACN 615 314 791

Terms & Conditions

approval or exercising any other right, power, authority, discretion or remedy, under or in connection with these Terms.

- (b) A party may (without any requirement to act reasonably) impose conditions on the grant by it of any consent or approval, or any waiver of any right, power, authority, discretion or remedy, under or in connection with these Terms. Any conditions must be complied with by the party relying on the consent, approval or waiver.

20.5 Relationship of parties

- (a) The parties are not and are not to be taken to be in a partnership, joint venture, or employment relationship.
- (b) Except as specified in these Terms, a party is not authorised to bind any other party in any way.

20.6 No reliance

Neither party has relied on any statement by the other party which has not been expressly included in these Terms.

20.7 Entire agreement

These Terms state all of the express terms of the agreement between the parties in respect of its subject matter. It supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.

20.8 Waiver

A party may not rely on the words or conduct (including a delay in the exercise, a non-exercise or a partial exercise of a right) of any other party as a waiver of any right arising under or in connection with this agreement (including a right to rely on this

clause) unless the waiver is in writing and signed by the party granting the waiver.

20.9 Variation

Tap Tins may vary these Terms by giving at least 60 days prior written notice to the Charity. If the proposed variation is not acceptable, the Charity may elect to terminate these Terms by giving at least 60 days prior written notice to Tap Tins.

20.10 Severance

- (a) If a provision in these Terms is wholly or partly void, illegal or unenforceable in any relevant jurisdiction that provision or part must, to that extent, be treated as deleted from these Terms for the purposes of that jurisdiction. This does not affect the validity or enforceability of the remainder of the provision or any other provision of these Terms.
- (b) Clause 20.10(a) does not apply and has no effect if severance of the provision of these Terms in accordance with clause 20.10(a) materially affects or alters the nature or effect of the parties' obligations under these Terms.

20.11 Set off

Tap Tins may set off from any amounts it owes the Charity any amounts the Charity owes to Tap Tins including the Fees.

20.12 Assignment

- (a) A party may not assign (other than to a Related Body Corporate) any of its rights under these Terms, without the prior written consent of the other party, which consent must not be unreasonably withheld or delayed).

Terms & Conditions

- (b) An assignment in breach of clause 20.12(a) is intended by the parties to be void and of no force and effect.
- (c) A breach of clause 20.12(a) by a party entitles the other *party* to terminate these Terms.
- (d) Clause 20.12(c) does not affect the construction of any other part of these Terms.

20.13 Subcontracting

- (a) Tap Tins may not subcontract any of its obligations under these Terms without the prior written consent of the Charity, which consent must not be unreasonably withheld or delayed.
- (b) Tap Tins is not as a result of any subcontracting arrangement relieved from the performance of any obligation under these Term

Tap Tins Pty Ltd ACN 615 314 791

Terms & Conditions