

Agreement

Our Community Pty Ltd (ABN 24 094 608 705)

Version 10

Last updated October 2024

This Agreement has been finessed over ten years with input from over 400 governments (local, state, federal), businesses, not-for-profits and philanthropic organisations. More importantly it has had over 600 separate suggestions and requests from legal counsel over the course of us offering our services (many contradicting each other; the beauty of legal advice). And finally, we have had one of Australia's leading clear language legal advisors decontaminate the legalese. As such, this Agreement is final.

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1 Agreement

- 1.1 These terms form a binding agreement (**Agreement**) between the Customer (**you, your**) and Our Community Pty Ltd (ABN 24 094 608 705) (**we, us, our**) for the supply and use of SmartyGrants.
- 1.2 This Agreement should be read in conjunction with the SmartyGrants Support and Maintenance Policy, the Our Community Terms of Use, and the Our Community Privacy Policy.

2 Our obligations to you

- 2.1 We will supply SmartyGrants to you according to the terms of this Agreement, for the period from the Contract Start Date until this Agreement is terminated in accordance with clause 9. This period is the **Term** of this Agreement.
- 2.2 We provide access to SmartyGrants to you for your use only.
- 2.3 We will:
 - (a) give you a username and password;
 - (b) apply the look and feel of your website at the Contract Start Date to your Applicant Site (i.e. those sections of SmartyGrants that are publicly accessible);
 - (c) provide training in accordance with our training fees as per the attached rate card (also available on the SmartyGrants Help Hub) or as otherwise agreed;
 - (d) provide support and maintenance in accordance with our Support and Maintenance Policy; and
 - (e) otherwise administer and provide access to SmartyGrants in accordance with this Agreement.

3 Your obligations to us

- 3.1 You will pay the Annual Access Fee annually in advance, within 30 days of the issue date of our invoice.
- 3.2 You will:
 - (a) only access and use SmartyGrants strictly in accordance with this Agreement and make sure that your employees, officers and agents do the same; and
 - (b) do your best to prevent unauthorised access to or use of SmartyGrants; and
 - (c) notify us immediately if you become aware of any unauthorised access to or use of SmartyGrants.
- 3.3 You will comply with all obligations, duties or responsibilities imposed on you under the terms of the SmartyGrants Support and Maintenance Policy, the Our Community Terms of Use, and the Our Community Privacy Policy, in each case as amended from time to time.
- 3.4 If you need to contact us, you will do so through the Customer Support channels listed in the SmartyGrants Support & Maintenance Policy.
- 3.5 You will notify us in writing (by email or post) if there are changes to the

Primary Contact or Billing Contact for your organisation. (Our contact details are provided in the SmartyGrants Support and Maintenance Policy.)

- 3.6 At the end of each annual subscription period, we will ask for confirmation of disbursement amounts for the previous year as well as anticipated disbursement for the upcoming year to determine the appropriate Annual Access Fee. If the amount disbursed over the previous year exceeds the level of distribution that was anticipated, and the additional disbursement pushes you into a higher fee category, you are obligated to pay the difference in Annual Access Fee within 30 days of notification, in addition to the following year's access fee.
- 3.7 New Zealand based customers warrant that they are currently registered for GST in New Zealand and will use SmartyGrants and any associated support and training services exclusively as part of the customer's taxable activity in New Zealand; and that the customer will notify Our Community should these circumstances change.
- 3.8 Annual Access Fees may be varied each year. We will notify you of the change in Annual Access Fees in writing 60 days before the change in the Annual Access Fee. Where we notify you of a change in fees and you do not agree to the change, acting reasonably, you may terminate your subscription on 30 days written notice at no cost.
- 3.9 You agree that we may suspend or reduce access to SmartyGrants if you do not comply with clause 3.1. We will give you 7 days written notice before we suspend or reduce your access to SmartyGrants.

4 Modifications to SmartyGrants

- 4.1 We provide updates and upgrades to SmartyGrants as part of your Annual Access Fee.
- 4.2 We may add, update or remove features and functionality (**modify SmartyGrants**) at any time. Refer to the SmartyGrants Support and Maintenance Policy for more information about product upgrades, release management and notifications.
- 4.3 Where any features or functionality of SmartyGrants are added, updated or removed and the modification deprives you of the benefit of this Agreement, you may terminate this Agreement on 30 days' written notice. We may ask you to substantiate this request, acting reasonably.

5 Intellectual property

- 5.1 We have a worldwide, exclusive licence to use and sub-licence the use of SmartyGrants.
- 5.2 We grant you during the Term a non-exclusive, non-transferrable licence to use SmartyGrants for the purpose of managing your grant program(s) in accordance with this Agreement.
- 5.3 All Intellectual Property Rights relating to SmartyGrants, including any developments, modifications or improvements to them, remain our property (or our licensors' property).
- 5.4 All Intellectual Property Rights arising in the Customer Data produced as a result of this Agreement become your property upon their creation (in the case of form content filled out by Applicants, it becomes your property when the form is submitted).
- 5.5 To the extent necessary to apply the look and feel of your website to your

Applicant Site, you grant us a non-exclusive, non-transferable, royalty-free, fully-paid-up licence for the duration of the Term to use your trademarks, logos and other Intellectual Property Rights.

6 Customer Data and security

- 6.1 If we collect, handle and disclose Personal Information, we will do so in accordance with Privacy Legislation and our Privacy Policy.
- 6.2 In addition, we do our best to ensure that Customer Data is:
- (a) stored, transferred and disposed of according to best-practice industry guidelines; and
 - (b) not disclosed to third parties (except as set out in this Agreement and our Privacy Policy); and
 - (c) password-protected, with access only to authorised employees, officers or agents; and
 - (d) protected from misuse, interference or loss.
- 6.3 If we become aware of unauthorised access to or loss of Customer Data, we will promptly:
- (a) notify you;
 - (b) investigate the cause;
 - (c) do our best to remedy any consequences; and
 - (d) tell you what steps we have taken to prevent a reoccurrence.
- 6.4 If an Applicant asks us for access to Customer Data which is Personal Information relating to the Applicant that you have collected via SmartyGrants, we will forward the request on to you for action, unless the law requires us to give them access to it.
- 6.5 Unless otherwise agreed in writing, at the end of the Term we will make all Customer Data we hold available to you for downloading through SmartyGrants for a further 30 days. We will then de-identify the Customer Data. On request we will permanently delete the Customer Data.
- 6.6 You may ask us to retain all Customer Data in full for an additional period after that 30-day period. However, if we do so, it may be subject to additional fees and separate terms and conditions.
- 6.7 We are not responsible for the accuracy or completeness of information sourced from third parties and displayed in SmartyGrants (for example, lookups to business or charity registers, maps).
- 6.8 We may access, aggregate and use Customer Data as input into our Data Science activities. However, we do not disclose information that identifies any individuals or organisations unless we have their express consent. (Refer to our Privacy Policy for more information.)

7 Confidentiality

- 7.1 This clause sets out each party's obligations in relation to the other party's Confidential Information. This clause survives the termination or expiry of this Agreement.
- 7.2 Each party must:

- (a) use, disclose or copy the other party's Confidential Information solely for the purposes of fulfilling its obligations under this Agreement; and
 - (b) keep the other party's Confidential Information confidential and not disclose it to a non-party, except as requested by a party or as required by law; and
 - (c) notify the other party immediately it becomes aware that the law requires its disclosure.
- 7.3 If you receive a request to disclose any Confidential Information concerning us, you will give us reasonable notice before complying with the request.
- 7.4 If you are subject to information requests under Australian Commonwealth, State, Territory or New Zealand Freedom of Information laws, as well as Right to Information laws, we will do what is necessary on our part to enable you to comply with your disclosure requirements.
- 7.5 We may cite your organisation name in our customer list. However, we will promptly remove it from the list if you ask us to, by contacting Customer support services by email or phone. (Our contact details are provided in the SmartyGrants Support and Maintenance Policy.)

8 Liability

- 8.1 To the maximum extent permitted by law (including under Consumer Legislation), we exclude all of the following:
- (a) all warranties in relation to the provision of SmartyGrants, and any other services we provide you under this Agreement, unless this Agreement expressly states otherwise;
 - (b) all liability for indirect and consequential loss arising out of or in connection with the subject matter of this Agreement. This includes, without limitation, loss of profit, loss of business, loss of opportunity, business interruption, waste of management time, and loss or corruption of data, in all cases whether foreseeable or not;
 - (c) all liability for loss to the extent that it is caused, or contributed to by you or a third party, or by circumstances outside of our control.
- 8.2 Notwithstanding clause 8.1, nothing in the Agreement is intended to either limit or exclude any liability of a party that cannot be excluded or limited by law.
- 8.3 Each party's total aggregate liability for any loss arising out of or in connection with this Agreement is limited to the amount of the current year's Annual Access Fee. Any liability shall be reduced proportionately to the extent that a party's negligent or wrongful act or omission contributed to the damages suffered or incurred.
- 8.4 The limitation of amount under clause 8.3 does not apply to the extent that loss arises directly from any of the following:
- (a) personal injury (including sickness and death);
 - (b) loss of or damage to tangible property;
 - (c) infringement of a third party's Intellectual Property Rights;
 - (d) unlawful, wilful or illegal acts;
 - (e) a breach of our privacy or confidentiality obligations under this Agreement.

9 Termination of Agreement

- 9.1 You may terminate this Agreement by giving us 30 days' written notice.
- 9.2 We may terminate this Agreement by giving you 90 days' written notice.
- 9.3 Also, either party may immediately terminate this Agreement, by written notice, if the other party:
- (a) breaches a material clause of this Agreement, and fails to remedy the breach within 14 days of receiving notice of the breach; or
 - (b) breaches a material clause of this Agreement, and the breach is not capable of being remedied; or
 - (c) becomes Insolvent.
- 9.4 We are not obliged to refund any part of the Annual Access Fee if:
- (a) you terminate this Agreement under clause 9.1; or
 - (b) we terminate it under clause 9.3 for your breach.
- 9.5 We must refund the Annual Access Fee on a pro rata basis if:
- (a) we terminate this agreement under clause 9.2; or
 - (b) you terminate it under clause 9.3 for our breach; or
 - (c) you terminate it under clause 9.4.
- 9.6 Termination of this Agreement does not affect the parties' rights and obligations accrued up to the end of the Term.

10 Notices

- 10.1 A notice given under this Agreement is ineffective unless in writing and served by email or by post to the address last indicated by the party to be notified.
- 10.2 A notice is deemed served:
- (a) if served by post – 2 Business Days after posting;
 - (b) if served by email – at the time the email leaves the sender's email system, unless the sender receives notification that the recipient did not receive the email;
 - (c) if received after 5.00pm in the place of receipt, or on a day which is not a Business Day – at 9.00am on the next Business Day (Australian Eastern Standard Time).

11 General

- 11.1 This Agreement, along with the supporting policies and terms listed in clause 1.2, contains the entire understanding between the parties as to the subject matter.
- (a) All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting the subject matter are superseded by this Agreement and have no effect.
 - (b) In the event of any inconsistency between this Agreement and supporting policies or terms listed in clause 1.2, the provisions of this Agreement prevail.
- 11.2 Clause 11.1 does not apply to any previous false, misleading or deceptive

statements or misrepresentations.

- 11.3 To the fullest extent permitted by law, the Customer acknowledges that in entering into this Agreement the Customer has not relied on any representations made by us (or our agents or employees) other than matters expressly set out in this Agreement.
- 11.4 We may vary the terms of this Agreement from time to time by giving you 30 days written notice through email to your Primary Contact (Variation Notice). Your continued use of SmartyGrants constitutes acceptance of the amended terms. You may object to any variations by giving us written notice within ten Business Days of receiving a Variation Notice and you must stop using SmartyGrants. If you are adversely affected by the amended terms, you may cancel this Agreement by written notice without penalty. We may ask you to substantiate a request to terminate under these circumstances, acting reasonably.
- 11.5 Failure to exercise a right under this Agreement does not waive that right or prevent the exercise of any other right.
- 11.6 Neither party may assign or transfer your rights or obligations under this Agreement without the other party's prior written consent which must not be unreasonably withheld or delayed.
- 11.7 You acknowledge and agree that nothing in this Agreement prevents us from changing our third party service providers from time to time.
- 11.8 If any part of this Agreement is found to be invalid or unenforceable, that part is replaced with a provision which, as far as possible, accomplishes the original purpose of the replaced part. The remainder of this Agreement continues to bind the parties.
- 11.9 This Agreement is governed by the laws of Victoria, Australia. The parties agree to submit to the exclusive jurisdiction of the Victorian courts.

12 Definitions

Agreement	means this Agreement between you and Our Community consisting of clauses 1 to 12.
Annual Access Fee	means the amount payable annually as per the attached rate card (also available on the SmartyGrants Help Hub) or as otherwise agreed.
Applicant Site	means the public-facing SmartyGrants portal used by Applicants. (We set up the URL for your Applicant Site when your SmartyGrants account is created.)
Applicants	means members of the public who use your Applicant Site to enter data or submit forms to you.
Billing Contact	means the Customer representative we should contact regarding invoicing and payments.
Business Day	means a day that is not a Saturday, Sunday, or public holiday in Australia.

Confidential Information	<p>means any written or oral information of a technical, business or financial nature relating to the parties, their business affairs, their goods or services, or their clients (including customer lists and databases), even if acquired in connection with this Agreement or under any prior arrangements between the parties. It also includes Personal Information for the purposes of the Privacy Legislation. However, it does not include:</p> <ul style="list-style-type: none"> a) information in the public domain, unless disclosed contrary to this Agreement; b) information lawfully received from a person who had the unrestricted legal right to disclose it free from any obligation of confidentiality.
Consumer Legislation	means Schedule 2 of the <i>Competition and Consumer Act 2010</i> (Cth), or the <i>Consumer Guarantees Act 1993</i> (NZ), as applicable.
Contract Start Date	means the date recorded on the first invoice as the date on which your SmartyGrants subscription begins, or if not recorded, the date on which SmartyGrants is made available to you.
Customer	means the party recorded as such in the invoice, or if not recorded, the entity to which we provide SmartyGrants, and includes the Customer's agents, officers or representatives.
Customer Data	means data, including email, that has been provided, generated, transmitted or displayed via SmartyGrants by Manage Users or Applicants.
Data Science	means the application of scientific methods, processes and systems to extract meaning from structured or unstructured data.
Documentation	means the guidance and explanation pages found at help.smartygrants.com.au (for grantmakers) and applicanthelp.smartygrants.com.au (for grantseekers) that set out how SmartyGrants should be used.
Insolvent	<p>means, in relation to a legal person, when the person:</p> <ul style="list-style-type: none"> (a) is: <ul style="list-style-type: none"> I. insolvent as that term is defined in the Corporations Act 2001 (Cth) or the Companies Act 1993 (NZ) as applicable; or II. the subject of an event described in sections 459C(2) (a) to (f) or section 585 of the Corporations Act (or it makes a statement from which another party to this Agreement may reasonably deduce it is so subject); or III. an insolvent under administration, or suffers the appointment of a controller, administrator, liquidator or provisional

	<p>liquidator as those terms are defined in section 9 of the Corporations Act or Part 16 of the Companies Act (NZ); or</p> <p>IV. dissolved; other than to carry out an amalgamation or reconstruction while solvent; or</p> <p>(b) is otherwise unable to pay its debts as and when they become due and payable; or</p> <p>(c) being a natural person, commits or suffers an act of bankruptcy; or</p> <p>(d) takes or suffers a similar act under the law of any jurisdiction.</p>
Intellectual Property Rights	<p>means any one or more of the following:</p> <p>(a) industrial and intellectual property rights throughout the world (including all copyright and analogous rights),</p> <p>(b) rights in relation to inventions or discoveries (including patent rights, designs, circuit layouts),</p> <p>(c) trade names, brand names, and registered or unregistered trademarks (including service marks),</p> <p>(d) moral rights.</p>
Manage Users	<p>means the Customer's representatives who use SmartyGrants, for example: grant managers, heads of department, administrative staff, external assessors and board/council members.</p>
Manage Site	<p>means the SmartyGrants portal used by Manage Users at: manage.smartygrants.com.au</p>
Personal Information	<p>has the same meaning as in the relevant Privacy Legislation.</p>
Primary Contact	<p>means the Customer representative we should contact regarding SmartyGrants implementation, Variation Notices, or if we need to get in touch with your organisation in regards to your SmartyGrants account or Applicants.</p>
Privacy Legislation	<p>means, as applicable, the <i>Privacy Act 1988</i> (Cth), Australian state or territory privacy laws, the <i>Privacy Act 2020</i> (NZ) or any legislation that replaces those laws.</p>
Privacy Policy	<p>means the Our Community Privacy Policy (as amended from time to time) available at www.smartygrants.com/privacy.</p>
SaaS	<p>means Software as a Service.</p>
SmartyGrants	<p>means the following online services:</p> <p>a) the "Software as a Service" online grants management system (including modifications as set out in clause 4.2) including the Manage Site and Applicant Site;</p> <p>b) the Documentation; and</p>

- c) the Websites, located at www.smartygrants.com,
www.smartygrants.com.au, www.smartygrants.co.uk
and www.smartygrants.co.nz

Term has the meaning given in clause 2.1.

Users means Manage Users and Applicants collectively.

Variation Notice has the meaning given in clause 11.2.

SIGNED for and on behalf of **OUR COMMUNITY PTY LTD (ABN 24 094 608 705)** by its:

Authorised Officer: Denis Moriarty

Name of Authorised Officer



Signature of Authorised Officer

Signed on:

Date

SIGNED for and
on behalf of:

Organisation Name

Organisation ABN/NZBN

by its Authorised
Officer:

Authorised Officer Name

Signature of Authorised Officer

Signed on:

Date

CONTACT DETAILS for Our Community:

Our contact details are provided in the SmartyGrants Support and Maintenance Policy.

CONTACT DETAILS for the Customer:

Primary contact:

Primary email address:

Primary phone:

Billing contact:

Billing email address:

Billing address:

Billing phone:
