

GiveSmart Pay-As-You-Go Product Terms

Momentive Software, Inc. / GiveSmart

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PLEASE READ THESE PAY-AS-YOU-GO PRODUCT TERMS CAREFULLY. TOGETHER WITH THE ORDER FORM AND THE TERMS AND CONDITIONS, THEY FORM A BINDING AGREEMENT THAT INCLUDES A CLASS ACTION WAIVER (SEE SECTION 6).

1. SCOPE, INCORPORATION, AND DEFINITIONS

1.1 Application. These GiveSmart Pay-As-You-Go Product Terms (“Product Terms”) govern the purchase and use of the GiveSmart software-as-a-service fundraising platform (the “Platform” or “Technology”), the SMS Services (defined below), and related Support Services (collectively, the “GiveSmart Products”) under the Pay-As-You-Go pricing model (the “Pay-As-You-Go Pricing Model”) by the legal entity identified as “Customer” on the applicable order form, quote, or similar ordering document (the “Order Form”) that has selected the Pay-As-You-Go Pricing Model, from Momentive Software, Inc. and its brand affiliate, GiveSmart (collectively, “Provider” or “GiveSmart”).

1.2 Incorporation. These Product Terms are incorporated by reference into the Order Form and form part of the Agreement (as defined in the Order Form) together with the Order Form and the Momentive Software Terms and Conditions (the “Terms and Conditions”).

1.3 Terminology. For purposes of the Terms and Conditions, “Customer” is the “Licensee” and “Provider” is the “Licensor.” Capitalized terms used but not defined in these Product Terms have the meanings given in the Order Form or the Terms and Conditions. “Applicable Law” means all applicable local, state, federal, and foreign laws, rules, regulations, and guidance from courts and governmental authorities. “Term,” “Initial Term,” “Renewal Term,” and “Pay-As-You-Go Rate” have the meanings given in the Order Form.

1.4 Order of Precedence. In the event of a conflict, the following order of precedence applies, solely with respect to the subject matter of the conflict: (a) the Order Form; (b) these Product Terms; and (c) the Terms and Conditions. For purposes of the Terms and Conditions, these Product Terms form part of the Order Form.

1.5 Version. The version of these Product Terms in effect on the date Customer executes the Order Form governs the Initial Term. The version in effect on the first day of any Renewal Term governs that Renewal Term.

2. TECHNOLOGY SUBSCRIPTION

2.1 Included Services. Under the Pay-As-You-Go Pricing Model, Customer’s access to the Platform is funded through the Pay-As-You-Go Rate applied to each transaction processed

through the Platform, in lieu of an upfront subscription fee. In exchange, Provider will provide Customer the following software-as-a-service features (collectively, the “Technology Subscription”):

- (a) Access to the Platform for an unlimited number of fundraising campaigns.
- (b) Access to Provider’s text-messaging functionality (the “SMS Services”), subject to the Order Form and Sections 2.2 and 2.3.
- (c) Access to an assigned Customer Success Manager for account information.
- (d) Technical support access via the Help/Knowledge Center related to site modifications, campaign settings, item management, and ticket/user management (if applicable).
- (e) Administrative access for site setup, item and guest management, electronic receipts/invoices, and reports.
- (f) A license to utilize secure customized URLs for each campaign.
- (g) A license to utilize secure credit card processing, based on approval of Customer’s merchant account application with Provider’s approved payment processor.
- (h) Logo recognition for host and sponsor organizations as configured by Customer.

2.2 SMS Services – Additional Requirements. In addition to the SMS terms and usage limits set forth in the Order Form, Customer’s use of the SMS Services must comply with carrier requirements and industry standards, including the messaging policies of Provider’s SMS messaging service provider, Twilio (including Twilio’s Messaging Policy, available at <https://www.twilio.com/en-us/legal/messaging-policy>, as updated by Twilio from time to time). Customer may not use the SMS Services to send messages related to products or services that are illegal in the jurisdiction where the message recipient is located, and Customer is solely responsible for determining whether its messages, campaigns, products, services, and recipients comply with Applicable Law and carrier requirements.

2.3 Acceptable Use Policy; Suspension; Indemnity. Customer’s use of the SMS Services is also subject to Provider’s Acceptable Use Policy, the current version of which is available upon request. Provider reserves the right to suspend or terminate Customer’s access to the SMS Services if Customer’s messaging activities violate the Twilio terms or messaging policies referenced above, Provider’s Acceptable Use Policy, or Applicable Law. Customer shall indemnify Provider for any fines, penalties, carrier surcharges, losses, liabilities, claims, costs, or expenses arising from or relating to Customer’s non-compliant messaging.

3. ACCEPTED PAYMENT METHODS

3.1 Accepted Payment Methods. Unless otherwise specified in the Order Form, the Platform processes credit and debit card transactions only. ACH bank transfer payments are not accepted through the Platform unless otherwise approved by Provider in writing. Cash and check payments are not accepted or processed through the Platform, and the Pay-As-You-Go Rate applies only to card transactions processed through the Platform.

4. PAY-AS-YOU-GO FEES, SETTLEMENT, AND TERM

4.1 Deduction of Fees; Settlement. Fees under the Pay-As-You-Go Pricing Model are deducted by Provider from each transaction at the time of processing. Net proceeds (the gross transaction amount less the Pay-As-You-Go Rate) shall be deposited into Customer's designated merchant account in accordance with the payment processor's standard settlement schedule.

4.2 Reporting. Provider shall make available to Customer, through the Platform's dashboard, monthly reporting detailing gross transaction volume, fees deducted, and net amounts settled.

4.3 Term Binding. The full Term (as defined in the Order Form), including the Initial Term and any Renewal Term, is binding and enforceable regardless of Customer's actual or planned transaction volume under the Pay-As-You-Go Pricing Model. The Term applies to the Pay-As-You-Go Pricing Model and governs all renewal and termination rights.

4.4 Pricing Model Changes. Customer's selection of the Pay-As-You-Go Pricing Model is locked in for the applicable Initial Term or Renewal Term and may not be changed during such term unless expressly approved by Provider in writing. If Customer wishes to request a change from the Pay-As-You-Go Pricing Model to another GiveSmart pricing model for the next Renewal Term, Customer must contact its assigned Customer Success Manager in writing no later than one hundred twenty (120) days prior to the applicable renewal date. Any approved pricing model change shall be effective only as of the start of the next renewal term following Provider's written confirmation of the change, and shall be subject to satisfaction of any eligibility requirements and execution of an updated Order Form. Provider may, in its sole discretion, decline a pricing model change request.

5. GENERAL PROVISIONS

The following provisions apply to Customer's use of the Platform under the Pay-As-You-Go Pricing Model.

5.1 Fees Under Pay-As-You-Go. Amounts retained by Provider under the Pay-As-You-Go Rate constitute Fees (as defined in the Terms and Conditions) paid by Customer under the

Agreement and are non-cancelable/non-refundable unless otherwise specified in the Order Form.

5.2 Authorized Users. Customer's Authorized Users (as defined in the Terms and Conditions) include Customer's employees, consultants, and members who are authorized by Customer to access and use the Platform on Customer's behalf. Customer is responsible for ensuring that all Authorized Users comply with the Agreement and shall be liable for any breach by an Authorized User as if such breach were committed by Customer.

5.3 Support Services. Provider shall provide Customer with Support Services for the Platform consisting of technical support access via the Help/Knowledge Center and access to an assigned Customer Success Manager, as described in Section 2.1.

5.4 Data and Reporting. Provider shall provide Customer with access to reporting dashboards and transactional data within the Platform. Customer acknowledges that Provider may collect, compile, and use anonymized and aggregated data derived from Customer's use of the Platform as provided in the Terms and Conditions.

5.5 Compliance. Customer shall comply with all Applicable Law in connection with its use of the Platform, including without limitation all applicable payment card industry standards, charitable solicitation laws, and consumer protection laws. Customer's obligations regarding compliance with laws and indemnification set forth in the Terms and Conditions apply to Customer's use of the Platform under the Pay-As-You-Go Pricing Model.

5.6 Refunds and Chargebacks.

- (a) Customer is solely responsible for its refund policies and for communicating such policies to donors and customers. Provider does not control and is not responsible for Customer's refund decisions.
- (b) If Customer issues a refund for a transaction processed through the Platform, Customer shall process the refund through the Platform. The Pay-As-You-Go Rate deducted from the original transaction is non-refundable.
- (c) Customer is solely responsible for all chargebacks, chargeback fees, and related costs arising from transactions processed through the Platform. Provider may debit any chargeback amounts and associated fees from Customer's account or future settlements, or invoice Customer for such amounts.
- (d) Customer shall cooperate with Provider in responding to and disputing chargebacks, including by providing documentation and information reasonably requested by Provider or the applicable payment processor.

- (e) Provider reserves the right to establish, maintain, or increase a reserve from Customer's transaction funds if Provider reasonably determines that Customer presents an elevated risk of chargebacks, refunds, or other financial exposure. Provider will notify Customer of any reserve requirement and the basis therefor.

5.7 Assumption of Risk. CUSTOMER, KNOWINGLY, VOLUNTARILY, AND WITH FULL UNDERSTANDING OF THE CONSEQUENCES THEREOF, ASSUMES ALL RISKS ASSOCIATED WITH ITS ELECTION, ACTIVATION, CONFIGURATION, AND USE OF THE PAY-AS-YOU-GO PRICING MODEL, INCLUDING WITHOUT LIMITATION: (A) COMPLIANCE WITH APPLICABLE LAW; (B) CLAIMS BY DONORS, CUSTOMERS, OR OTHER THIRD PARTIES; (C) CIVIL OR REGULATORY ENFORCEMENT ACTIONS; (D) ALLEGED OR ACTUAL VIOLATIONS OF APPLICABLE LAW; (E) THE MANNER IN WHICH THE PAY-AS-YOU-GO RATE OR ANY OTHER FEE IS PRESENTED TO DONORS OR CUSTOMERS; AND (F) ANY OTHER LIABILITY, LOSS, OR CLAIM ARISING FROM CUSTOMER'S USE OF THE PAY-AS-YOU-GO PRICING MODEL.

Without limiting the foregoing, Customer acknowledges that (i) the regulatory landscape governing checkout fees and surcharges varies by state and is subject to change; (ii) certain states regulate the manner in which fees or surcharges may be disclosed, presented, or charged at checkout; and (iii) Customer bears sole responsibility for monitoring and complying with all such requirements applicable to its jurisdiction(s) of operation.

5.8 Limitation of Liability. The aggregate liability cap set forth in the Terms and Conditions shall be calculated based on the total Fees paid by Customer to Provider (including amounts retained by Provider under the Pay-As-You-Go Rate) during the twelve (12)-month period immediately prior to the event giving rise to the claim. Provider shall not be liable for any loss of donations or transaction failures arising from third-party payment processor outages or Customer's failure to maintain an active merchant services account.

5.9 Suspension Rights. Provider may suspend, disable, restrict, modify, or terminate Customer's access to or use of the Pay-As-You-Go Pricing Model or the Platform, in whole or in part, at any time in its sole discretion if Provider determines that: (a) Customer may be using the Pay-As-You-Go Pricing Model or the Platform in violation of Applicable Law, the Terms and Conditions, the Order Form, or these Product Terms; (b) such action is necessary or appropriate to protect any Provider party, any donor, customer, or third party; (c) such action is requested or required by any governmental authority, court, regulator, or other third party; or (d) continued availability of the Pay-As-You-Go Pricing Model could create legal, regulatory, operational, reputational, or financial risk. Provider shall not be responsible or liable for any losses, damages, costs, or other consequences arising from any such suspension or termination. Any suspension or termination shall not relieve

Customer of any obligation accrued before such action or any obligation that survives under the Agreement.

5.10 No Legal or Compliance Advice. Customer acknowledges and agrees that Provider is not providing legal, regulatory, tax, or compliance advice of any kind, and that Provider has not represented or warranted that the Pay-As-You-Go Pricing Model will comply with Applicable Law or that the Platform includes any particular legal or compliance-related features. Customer is solely responsible for obtaining its own legal and compliance advice. Provider's provision of the Platform under the Pay-As-You-Go Pricing Model does not constitute an endorsement, recommendation, or opinion regarding the legality or advisability of any particular pricing arrangement.

5.11 Regulatory Change; Compliance Cooperation. If any change in Applicable Law, card network rule, or regulatory guidance materially affects the legality or permissibility of the Pay-As-You-Go Pricing Model or the Pay-As-You-Go Rate, Provider may, upon written notice to Customer: (a) modify the checkout flow or disclosure language to the extent necessary to comply with such change; (b) suspend or discontinue the Pay-As-You-Go Pricing Model or any affected feature in the affected jurisdiction(s); or (c) require Customer to execute an amendment reflecting the necessary changes. Provider shall use commercially reasonable efforts to provide Customer with thirty (30) days' advance notice of any such modification, except where immediate action is required to avoid regulatory exposure. Customer shall cooperate in good faith with any compliance-related modifications requested by Provider.

5.12 Donor and Customer Communications. Customer bears sole responsibility for: (a) providing all required disclosures, notices, reports, signage, and communications to donors and customers in the form, content, manner, and timing required by Applicable Law; (b) maintaining accurate records relating to Customer's use of the Platform, including transaction records and donor communications; (c) responding to and resolving donor or customer inquiries, complaints, or disputes relating to any fees; and (d) not marketing, advertising, or representing the Platform or the Pay-As-You-Go Pricing Model as "free," "no-cost," "zero-fee," or similar language if the Pay-As-You-Go Rate or any other fee is charged to or solicited from donors in connection with transactions, unless all such charges are clearly and conspicuously disclosed in immediate proximity to any such representation.

6. CLASS ACTION WAIVER AND DISPUTE RESOLUTION

To the fullest extent permitted by Applicable Law, any dispute, claim, or controversy arising out of or relating to the Order Form, these Product Terms, the Pay-As-You-Go Pricing Model, the Pay-As-You-Go Rate, or otherwise in connection with the Platform (a "Dispute") shall be resolved on an individual basis only. **CUSTOMER AND PROVIDER EACH WAIVE THE**

RIGHT TO PARTICIPATE IN A CLASS ACTION, COLLECTIVE ACTION, OR REPRESENTATIVE PROCEEDING, WHETHER AS A NAMED PLAINTIFF, CLASS MEMBER, OR OTHERWISE. This waiver applies to all Disputes, including but not limited to claims brought by or on behalf of donors, customers, or other third parties relating to fees, disclosures, or pricing practices. If any court or arbitrator determines that this class action waiver is unenforceable as to a particular claim or request for relief, the parties agree that such claim or request for relief shall be severed and proceed individually. Nothing in this Section limits Provider's right to seek injunctive or equitable relief as provided elsewhere in the Agreement. Governing law and venue are as set forth in the Terms and Conditions.

7. ACCEPTANCE

By executing the Order Form or by otherwise activating or using the Platform under the Pay-As-You-Go Pricing Model, the individual completing the acceptance process (i) represents and warrants that such individual has authority to bind Customer to the Order Form and these Product Terms, and (ii) on behalf of Customer, represents that Customer has read and agrees to the Order Form, these Product Terms, and the Terms and Conditions. Electronic acceptance is intended to have the same legal effect as a manual signature, consistent with the Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001) and, where applicable, state electronic transactions laws. Provider may retain electronic records, including audit logs, acceptance timestamps, IP addresses, browser identifiers, and other metadata, to evidence Customer's acceptance and use of the Order Form, these Product Terms, and the Pay-As-You-Go Pricing Model.