



# SmartyGrants

## Trial Terms of Service

Our Community Pty Ltd (ABN 24 094 608 705)

Version 25

Last updated 18 April 2018

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## 1 The Agreement

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- 1.1 These terms form a binding agreement (**Agreement**) between the entity agreeing to these terms (**you, your**), or someone representing you (**Evaluator**), and Our Community Pty Ltd (ABN 24 094 608 705) (**we, us, our**).
- 1.2 This Agreement should be read in conjunction with the Our Community Terms of Use, and the Our Community Privacy Policy.
- 1.3 This Agreement is effective as of the date you tick the "I have read and accepted the Terms of Service" box and click "Sign Up" when registering for a SmartyGrants trial account (the **Effective Date**).
- 1.4 If you are accepting these terms on behalf of your employer or another entity, you warrant that:
- (a) you have full legal authority to bind your employer, or the applicable entity, to this Agreement; and
  - (b) you have read and understand this Agreement; and
  - (c) you agree, on behalf of the party that you represent, to this Agreement.

If you don't have the legal authority to bind your employer or the applicable entity, you must not tick the "I have read and accepted the Terms of Service" button during registration.

## 2 Our obligations to you

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- 2.1 We will supply SmartyGrants to you on the terms of this Agreement, from the Effective Date and continuing for the period specified in clause 10.1 or until otherwise terminated under clause 10. This period is the **Term** of this Agreement.

## 3 Your obligations to us

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- 3.1 You will not use SmartyGrants to conduct any public grant program or to receive applications for funding.
- 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;
  - (b) comply with our instructions about access to and 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 obligations, duties or responsibilities imposed on you under the terms of the Our Community Terms of Use and Our Community Privacy Policy, in each case as amended from time to time.

## 4 Modifications to SmartyGrants

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- 4.1 We may modify SmartyGrants at any time, including by adding, updating or removing features and functionality, but only if the modifications do not materially adversely affect SmartyGrants' existing functionality.

## 5 Intellectual Property

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- 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 evaluating SmartyGrants 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.

## **6 Customer Data and security**

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- 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 use our best efforts 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 After the end of the Term, if you choose not to purchase SmartyGrants, we will permanently delete the Customer Data unless otherwise agreed in writing.

## **7 Confidentiality**

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- 7.1 This clause sets out each party's obligations in relation to the other party's Confidential Information.
- 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 the *Freedom of Information Act 1982 (Cth)*, or the *Official Information Act 1982 (NZ)* (as applicable), we will do what is necessary on our part to enable you to comply with your disclosure requirements.
- 7.5 This clause survives the termination or expiry of this Agreement.

## **8 Warranties and acknowledgements**

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- 8.1 Our Community gives no warranty about SmartyGrants. We do not warrant that SmartyGrants will meet your requirements or be suitable for your purposes.
- 8.2 You agree that SmartyGrants is provided on an 'as is' basis for evaluation.
- 8.3 You acknowledge that it is your sole responsibility to determine whether SmartyGrants meets your needs.

## **9 Liability**

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- 9.1 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.
- 9.2 If you are not satisfied with SmartyGrants, your only remedy is to terminate this Agreement under clause 10.

## **10 Termination of Agreement**

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- 10.1 When you sign up for a trial of SmartyGrants you can evaluate SmartyGrants for a period of up to sixty days, or another period to which we agree. If you choose not to continue to evaluate the Software, you may terminate this Agreement by:
- (a) sending an email to [service@smartygrants.com.au](mailto:service@smartygrants.com.au), or
  - (b) allowing the period covered by this Agreement to expire.
- 10.2 Either party may terminate this Agreement at any time for any reason.
- 10.3 Termination of this Agreement does not affect the parties' rights and obligations accrued up to the end of the Term.
- 10.4 On termination of this Agreement, you and all Customer representatives must immediately cease to use SmartyGrants.

## **11 Support and Maintenance**

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- 11.1 We will do our best to ensure that email and telephone support is available from 9:00am to 5:00pm (Australian Eastern Standard/Daylight time), Monday to Friday (excluding national public holidays in Australia).
- 11.2 SmartyGrants is generally available twenty-four hours a day, seven days a week. However, we do not warrant or guarantee that access to SmartyGrants will be uninterrupted.
- 11.3 We provide updates on SmartyGrants system status at [status.smartygrants.com.au](https://status.smartygrants.com.au).

## **12 Notices**

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- 12.1 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.

- 12.2 A notice is deemed served:
- (a) if served by post – two 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.

## 13 General

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- 13.1 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.
- 13.2 We may vary the terms of this Agreement by giving you notice (**Variation Notice**). You may reject any variations by giving us written notice within ten Business Days of receiving a Variation Notice.
- 13.3 Failure to exercise a right under this Agreement does not waive that right or prevent the exercise of any other right.
- 13.4 You cannot assign or transfer your rights or obligations under this Agreement, without our prior written consent. We can refuse our consent for any reason. We can assign or transfer our rights and obligations under this Agreement without needing your consent.
- 13.5 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.
- 13.6 This Agreement is governed by the laws of Victoria, Australia. The parties agree to submit to the exclusive jurisdiction of its courts.

## 14 Definitions

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<b>Agreement</b>	means this Agreement between you and Our Community consisting of clauses 1 and 14.
<b>Business Day</b>	means a day that is not a Saturday, Sunday, or public holiday in Australia.
<b>Confidential Information</b>	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: <ul style="list-style-type: none"> <li>A. information in the public domain, unless disclosed contrary to this Agreement;</li> <li>B. information lawfully received from a person who had the unrestricted legal right to disclose it free from any obligation of confidentiality.</li> </ul>
<b>Consumer Legislation</b>	means Schedule 2 of the <i>Competition and Consumer Act 2010</i> (Cth), or the <i>Consumer Guarantees Act 1993</i> (NZ), as applicable.

<b>Customer</b>	means the party recorded when registering for a SmartyGrants trial account and includes the Customer's agents, officers or representatives.
<b>Customer Data</b>	means data, including email, that has been provided, generated, transmitted or displayed via SmartyGrants by the Evaluator.
<b>Documentation</b>	means the guidance and explanation pages found at <a href="http://help.smartygrants.com.au">help.smartygrants.com.au</a> (for grantmakers) and <a href="http://applicanthehelp.smartygrants.com.au">applicanthehelp.smartygrants.com.au</a> (for grantseekers) that set out how SmartyGrants should be used.
<b>Effective Date</b>	see the first clause of this Agreement.
<b>Evaluator</b>	a person evaluating SmartyGrants on behalf of the Customer.
<b>Intellectual Property Rights</b>	means any one or more of the following: <ul style="list-style-type: none"> <li>A. industrial and intellectual property rights throughout the world (including all copyright and analogous rights),</li> <li>B. rights in relation to inventions or discoveries (including patent rights, designs, circuit layouts),</li> <li>C. trade names, brand names, and registered or unregistered trade marks (including service marks),</li> <li>D. moral rights.</li> </ul>
<b>Personal Information</b>	has the same meaning as in the relevant Privacy Legislation.
<b>Privacy Legislation</b>	means, as applicable, the Privacy Act 1988 (Cth) or the Privacy Act 1993 (NZ) or any legislation that replaces those Acts.
<b>Privacy Policy</b>	means the Our Community Privacy Policy (as amended from time to time) available via <a href="http://www.ourcommunity.com.au/privacy">www.ourcommunity.com.au/privacy</a>
<b>SmartyGrants</b>	means the following online services: <ul style="list-style-type: none"> <li>A. the "Software as a Service" online grants management system (including modifications as set out in clause 4);</li> <li>B. the Documentation; and</li> <li>C. the Website, located at <a href="http://www.smartygrants.com.au">www.smartygrants.com.au</a>.</li> </ul>
<b>Term</b>	has the meaning given in clause 2.1.
<b>Variation Notice</b>	has the meaning given in clause 13.2.