



SmartyGrants

Terms of Service

Trial Account

V24T-10-2014



An enterprise of:



ourcommunity.com.au

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1 The Agreement

- 1.1.1 This SmartyGrants Agreement (the "**Agreement**") is entered into by and between Our Community Pty Ltd (ABN 24 094 608 705) ("**Our Community**") and the entity agreeing to these terms ("**Evaluator**"). This Agreement is effective as of the date you tick the "I have read and accepted the Terms of Service" box when registering for a SmartyGrants trial account (the "**Effective Date**"). If you are accepting on behalf of your employer or another entity, you represent and warrant that: (i) you have full legal authority to bind your employer, or the applicable entity, to this Agreement and conditions; (ii) you have read and understand this Agreement; and (iii) 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.
- 1.1.2 This Agreement governs the Evaluator's access to and use of SmartyGrants.

2 Service

2.1 Generally

- 2.1.1 This Agreement will commence on the Effective Date and continue unless and until it is terminated pursuant to clause 9.
- 2.1.2 Our Community will make SmartyGrants available to the Evaluator by providing a username and password, which can be used to supply and administer an unlimited number of Internal End Users and other relevant features of SmartyGrants, as applicable. The Evaluator may use SmartyGrants to provide and administer End User Accounts to its Internal End Users.
- 2.1.3 The Evaluator will not use the Software to conduct any public grant program or to receive applications from the Public End User.

2.2 Licences

- 2.2.1 Our Community owns an exclusive licence to use and sub-licence the use of SmartyGrants worldwide.
- 2.2.2 In consideration for payment of the Annual Access Fees, Our Community grants the Evaluator a non-exclusive licence to use SmartyGrants for the purpose of managing the Evaluator's grant programs in accordance with the Documentation during the Term.
- 2.2.3 The Evaluator has no right to access the object code or source code of SmartyGrants, either during or after the Term.

2.3 Facilities

- 2.3.1 Our Community will ensure all facilities used to store and process Evaluator Data will adhere to reasonable security standards no less protective than the security standards at facilities where Our Community stores and processes its own information and in any case in accordance with good industry practice.
- 2.3.2 Our Community has implemented and will maintain at least good industry standard systems and procedures to ensure the security and confidentiality of Evaluator Data, protect against anticipated threats or hazards to the security or integrity of Evaluator Data, and protect against unauthorised access to or use of Evaluator Data.

2.4 Modifications to SmartyGrants

2.4.1 SmartyGrants is provided as a service and Our Community may make modifications to SmartyGrants as it reasonably determines in its sole discretion, including the addition of new features and functionality, provided such modifications do not have a material adverse affect on the functionality of SmartyGrants.

2.5 Data Transfer

2.5.1 As part of providing SmartyGrants, Our Community may store and process Evaluator Data. Such storage and processing of Evaluator Data shall always take place within Australia. By using SmartyGrants, the Evaluator consents to this transfer, processing and storage of Evaluator Data.

2.5.2 The transfer of Evaluator Data between Our Community and the Evaluator, while using SmartyGrants, will always be encrypted using Transport Layer Security (TLS) 1.0 or better protocols.

2.5.3 If Our Community becomes aware of unauthorised access to Evaluator Data, then Our Community must promptly:

- A) notify the Evaluator of the unauthorised access;
- B) use its reasonable endeavours to identify the cause;
- C) do all things reasonably within its power to remedy any consequences and prevent any further such unauthorised access; and
- D) certify to the Evaluator it has taken all reasonable action to prevent any reoccurrence of the unauthorised access.

3 The Evaluator's Obligations

3.1 Compliance with the Agreement

3.1.1 The Evaluator will comply with the Agreement, and will use its reasonable endeavours to ensure its Internal End Users do the same.

3.2 Access conditions

3.2.1 The Evaluator will use all reasonable endeavours to ensure that all usernames and passwords required to access and use SmartyGrants are kept secure and confidential. The Evaluator will notify Our Community as soon as practicable of any suspected unauthorised use of a password or username or any other breach of security. Upon receipt of such notification, Our Community shall take reasonable steps to address such security breaches including the resetting of passwords and usernames or any other measures it considers necessary.

3.2.2 As a condition of this Agreement, when accessing and using SmartyGrants, the Evaluator must not:

- A) attempt to undermine the security or integrity of the computing systems or networks hosting SmartyGrants;
- B) use, or misuse, SmartyGrants in any way which is contrary to the Documentation or which may impair the functionality of SmartyGrants or the Website, or impair the ability of any other user to use SmartyGrants or Website;
- C) attempt to gain unauthorised access to any materials other than those to which the Evaluator has been given express permission to access or to the computer system on which SmartyGrants is hosted;

- D) transmit, or input into SmartyGrants, any files, content or material that may damage Our Community's or any third party's computing devices or software, be offensive, infringe any third party's Intellectual Property Rights, breach any duty of confidence or violate any applicable law; and
- E) modify, copy, adapt, reproduce, disassemble, decompile or reverse engineer SmartyGrants or the Website except as is strictly necessary in order for either of them to operate normally.

3.3 Unauthorised Use

- 3.3.1 The Evaluator will use all reasonable endeavours to prevent unauthorised use of SmartyGrants, and to stop any detected unauthorised use. The Evaluator will promptly notify Our Community of any unauthorised use of, or access to, SmartyGrants of which it becomes aware.

4 Confidentiality

4.1 Obligations

- 4.1.1 Each party must:
 - A) protect the other party's Confidential Information with the same standard of care it uses to protect its own Confidential Information; and
 - B) not disclose the Confidential Information, except to its Representatives who need to know it and who have agreed in writing to keep it confidential.
- 4.1.2 Each party (and any of its Representatives to whom it has disclosed Confidential Information) may use Confidential Information only to exercise rights and fulfill obligations under this Agreement, while using reasonable care to protect it. Each party is responsible for any actions of its affiliates, employees and agents in violation of this clause.

4.2 Exceptions

- 4.2.1 Confidential Information does not include information that:
 - A) is or becomes public knowledge other than by a breach of this clause;
 - B) is received from a third party who lawfully acquired it and who is under no obligation to restrict its disclosure; or
 - C) is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party.

4.3 Required Disclosure

- 4.3.1 Each party may disclose the other party's Confidential Information when required by law but only after, if legally permissible, the party uses all reasonable endeavours to notify the other party.

5 Privacy and Freedom of Information

5.1 Privacy Laws

- 5.1.1 Our Community maintains two privacy policies ("**Privacy Policies**") for SmartyGrants that sets out Our Community's obligations in respect of Personal Information. These policies, as amended from time to time by Our Community, are available at <http://www.smartygrants.com.au/privacy>
- 5.1.2 Each party must comply with the Privacy Law in relation to Personal Information.

- 5.1.3 Without limiting clause 5.1.1, each party must ensure that in relation to Personal Information it discloses to the other party under or in connection with this Agreement it will:
- A) the Personal Information has been collected in accordance with Privacy Law;
 - B) it has made the individual aware of all matters of which it is required to inform a person about whom it collects Personal Information under Privacy Law; and
 - C) it is authorised, either by consent of the individual or by law, to disclose the Personal Information to the receiving party and to permit the receiving party to use the Personal Information for the purposes of this Agreement.
- 5.1.4 Without limiting clause 5.1.1, each party must ensure that in relation to Personal Information it receives from the other party under or in connection with this Agreement:
- A) comply with any request or instruction of the other party regarding access to, or correction of, Personal Information;
 - B) comply with any request or direction of the other party arising directly from or in connection with the exercise of the functions of the Information Commissioner under the Privacy Law, or otherwise including the issuing of any guidelines concerning the handling of Personal Information; and
 - C) not disclose Personal Information overseas unless the party takes reasonable steps to ensure the overseas recipient complies with the Privacy Law and is required to comply with directions in relation to Personal Information.

5.2 Complaints

- 5.2.1 Both parties must promptly inform the other party in writing of any complaint that it receives concerning the use, disclosure, storage, transfer or handling of Personal Information and comply with any reasonable direction of the other party in relation to a complaint concerning the use, disclosure, storage, transfer or handling of Personal Information.

5.3 End User Privacy

- 5.3.1 Each party agrees to protect the privacy rights of the other party and of all End Users under the Privacy Law.

6 Intellectual Property

6.1 General

- 6.1.1 No Pre-existing IPR of either party is assigned or otherwise transferred under this Agreement.
- 6.1.2 The Evaluator acknowledges and agrees that title to, and all Intellectual Property Rights in SmartyGrants, the Website (excluding any Evaluator trademarks, logos or material included in SmartyGrants by Our Community under the licence provided in clause **Error! Reference source not found.**) and any Documentation relating to SmartyGrants remain the property of Our Community (or its licensors).

6.2 Data

- 6.2.1 Title to, and all Intellectual Property Rights in the Evaluator Data becomes the property of the Evaluator upon creation.
- 6.2.2 Our Community shall:
- A) Make daily back-ups of the system data including Evaluator Data.

- B) Ensure that it adheres to best practice policies and procedures to prevent data loss, including a daily system data back-up regime. Our Community will use its reasonable endeavours to ensure that there will be no loss of Evaluator Data;
 - C) Not use any Evaluator Data for its own purposes or for any other purpose other than contemplated by this Agreement;
 - D) Keep the Evaluator Data confidential and not disclose it to any other agency or person, or allow any other agency or person access to it, unless approved in writing by the Evaluator in advance; and
 - E) Dispose of the Evaluator Data once the Evaluator notifies it in writing that it is no longer required for the purposes of this Agreement (and permanently destroy any copy of the Evaluator Data held or controlled by Our Community) in accordance with standard industry practice, which will include using the DOD 5220.22-M data sanitisation method on all physical media
- 6.2.3 If Our Community has a legal obligation to retain any of the Evaluator Data which prevents it from destroying or de-identifying the Evaluator Data in accordance with clause 6.2.4, it must retain only so much of the Evaluator Data as is strictly required to comply with that legal obligation and for the minimum period required to comply with that obligation. Our Community must destroy or de-identify the relevant Evaluator Data as soon as it is legally able, and must treat the Evaluator Data as Confidential Information for as long as it holds it.
- 6.2.4 Subject to clauses **Error! Reference source not found.** and 6.2.3 Our Community must destroy or permanently de-identify all Evaluator Data upon the expiry or termination of this Agreement (whatever the cause of the expiry or termination) so that it is rendered unusable and cannot be retrieved.
- 6.2.5 The Evaluator acknowledges that, for the avoidance of doubt, if a Public End User elects not to submit data that they have entered into SmartyGrants to the Evaluator, such data does not constitute Evaluator Data.

7 Warranties And Acknowledgements

7.1 Acknowledgement

7.1.1 The Evaluator acknowledges and agrees that:

- A) as is commercially reasonable, the Evaluator's use of SmartyGrants will be uninterrupted and error free, however, the operation and availability of the systems used for accessing SmartyGrants, including public telephone services, computer networks and the Internet, can be unpredictable and may from time to time interfere with or prevent access to SmartyGrants; and
- B) it is the Evaluator's sole responsibility to determine that SmartyGrants meets its needs.

7.2 No warranties

7.2.1 Our Community gives no warranty about SmartyGrants. Without limiting the foregoing, Our Community does not warrant that SmartyGrants will meet your requirements or that it will be suitable for your purposes. The Evaluator agrees that SmartyGrants is provided on an 'as is' basis and, to the full extent permitted by law, Our Community disclaims and excludes all representations, warranties and conditions, whether express, implied or statutory.

7.3 Consumer guarantees

7.3.1 Notwithstanding anything to the contrary, nothing in this Agreement shall limit or exclude any consumer guarantees that are applicable to the provision of SmartyGrants to the Evaluator under the Australian Consumer Law.

- 7.3.2 The Evaluator agrees and acknowledges that SmartyGrants is not for domestic use and, accordingly, the remedy for any breach of an applicable consumer guarantee shall be limited to repair, refund or replacement of SmartyGrants at Our Community's discretion.

8 Limitation of Liability and Insurance

- 8.1.1 To the maximum extent permitted by applicable law, Our Community's potential liability to the Evaluator, for any and all claims in anyway arising from or in connection with the subject matter of this Agreement, whether based in contract, tort (including negligence) or otherwise, is limited as follows:
- A) the Evaluator expressly and irrevocably waives, and Our Community shall have no liability in respect of, any and all claims for indirect, incidental, consequential or punitive damages, including without limitation claims for lost profits, business interruption and loss of data, that in any way relate to this Agreement, SmartyGrants, the Documentation or any other services provided by Our Community to the Evaluator, whether or not Our Community has been advised of the possibility of such damages; and
 - B) Our Community's maximum aggregate liability to the Evaluator for direct loss or damage will be limited to the amount of \$1,000, in respect of any one incident, or series of connected incidents and Our Community's liability shall be reduced proportionately to the extent that such liability is caused directly or by the negligent acts or omissions of the Evaluator or third parties.
- 8.1.2 Any limit on the liability of Our Community under clause 8.1.1 does not apply in relation to liability relating to:
- A) personal injury (including sickness and death);
 - B) loss of, or damage to, tangible property;
 - C) an infringement of Intellectual Property Rights; or
 - D) any breach of any statute or any wilfully wrong act or omission including, in the case of the Our Community, any act or omission that constitutes repudiation of this Agreement.
- 8.1.3 Our Community will hold and maintain such insurance cover (in respect of its own business and obligations under the Agreement) for all normal commercial risks to ensure that any problems encountered by Our Community do not result in the disruption of the efficient performance of this Agreement during the term of this Agreement. The proof of such cover shall be made available to the Evaluator on request.
- 8.1.4 If the Evaluator is not satisfied with SmartyGrants, the Evaluator's sole and exclusive remedy is to terminate this Agreement in accordance with clause 9.

9 Termination

9.1 Trial policy

When the Evaluator signs up SmartyGrants the Evaluator can evaluate SmartyGrants for a period of up to 60 days, or such period as agreed to between Our Community and the Evaluator. Should the Evaluator choose to continue using SmartyGrants, a new agreement shall be entered into and this agreement will be terminated upon the signing of the new agreement. If the Evaluator chooses not to continue to evaluate the Software, the Evaluator may terminate this Agreement by sending an email to service@smartygrants.com.au or by allowing the period covered by this agreement to expire.

9.2 No-fault termination

- 9.2.1 This Agreement may be terminated at any time by Our Community for any reason whatsoever.

9.3 Breach

- 9.3.1 Our Community may terminate this Agreement, or suspend the Evaluator's access to SmartyGrants at its sole discretion, by written notice if the Evaluator:
- A) breaches any clause of this Agreement and does not remedy the breach within 14 days after receiving notice of the breach from Our Community (provided the breach is capable of being remedied); or
 - B) breaches any clause of this Agreement which is not capable of being remedied; or
 - C) goes into liquidation or has a receiver or manager appointed of any of its assets or becomes insolvent, or makes any arrangement with its creditors, or becomes subject to any similar insolvency event in any jurisdiction.

9.4 Accrued Rights & Action Upon Termination

- 9.4.1 Termination of this Agreement is without prejudice to the rights and obligations of the parties accrued up to and including the date of termination.
- 9.4.2 On termination of this Agreement the Evaluator will immediately cease to use SmartyGrants and the Website.

10 Technical Support & Service Availability

10.1 Technical Support

- 10.1.1 Maintenance and Support is provided in accordance with Our Community's Maintenance and Support Policies (**Support Policy**) in effect at the time of entering this agreement and as amended by Our Community from time to time.
- 10.1.2 The Support Policy sets out Our Community's and the Evaluator's obligations in respect of providing support to End Users.

10.2 Service availability

- 10.2.1 Whilst Our Community intends that SmartyGrants should be available 24 hours a day, seven days a week, it is expected that updates and server maintenance will require making SmartyGrants unavailable for very short periods.
- 10.2.2 Our Community represents that:
- A) its server equipment will be monitored 24 hours a day to ensure that it is operating correctly. If there is a failure of the server equipment, Our Community on-site staff will immediately investigate the problem and Our Community will ensure that spare server components will be available so that any fault in the hardware can be fixed as soon as possible; and
 - B) SmartyGrants will be monitored 24 hours a day. Should there be a major failure of SmartyGrants, technicians will immediately investigate the problem so that they can take action as soon as practicable to correct the problem.
- 10.2.3 The Evaluator agrees and acknowledges that Our Community may disable SmartyGrants during at any time between 8pm and 2 am Australian Eastern Standard/Daylight Time ("**Maintenance Period**") to install, upgrade or maintain the infrastructure, hardware, network, or SmartyGrants.
- 10.2.4 Our Community will use reasonable endeavours to provide the Evaluator with advance notification of any planned interruptions to SmartyGrants by emailing details to the Evaluator and by publishing details at <http://www.smartygrants.com.au/status>.

11 General

11.1 Entire agreement

This Agreement supersedes and extinguishes all prior agreements, representations (whether oral or written), and understandings and constitute the entire agreement between the Evaluator and Our Community relating to SmartyGrants and the other matters dealt with in this Agreement.

11.2 Waiver

If either party waives any breach of this Agreement, this will not constitute a waiver of any other breach. No waiver will be effective unless made in writing.

11.3 Force Majeure

Neither party will be liable for inadequate performance to the extent caused by a condition (for example, natural disaster, act of war or terrorism, riot, labour condition, governmental action, and Internet disturbance) that was beyond the party's reasonable control. This clause does not apply to any obligation to pay money.

11.4 No Assignment

The Evaluator may not assign or transfer this Agreement, including any rights created by it, without Our Community's prior written consent. Our Community may assign, transfer or sub-contract its rights and obligations under this Agreement.

11.5 Survival

Clauses 4 (Confidentiality), 5 (Privacy), 6 (Intellectual Property), 8 (Limitation of Liability and Insurance), 9 (Termination) and any other clauses containing an indemnity or that make provision for the continued operation of this Agreement shall continue to apply despite the termination or ending of this Agreement (for whatever reason).

11.6 Governing law and jurisdiction

This Agreement is governed by the law of the State of Victoria, Australia. The parties submit to the non-exclusive jurisdiction of its courts and will not object to the exercise of jurisdiction by those courts.

11.7 Severability

If any part or provision of this Agreement is invalid, unenforceable or in conflict with the law, that part or provision is replaced with a provision which, as far as possible, accomplishes the original purpose of that part or provision. The remainder of this Agreement will be binding on the parties.

11.8 Notices

Any notice given under this Agreement by either party to the other must be in writing by email or mail and will be deemed to have been given on transmission. Notices to Our Community must be sent by email to service@smartygrants.com.au or by mail to the postal address of Our Community.

11.9 Variation

If Our Community wishes to make a material change to this Agreement, then Our Community must notify the Evaluator by either sending an email to the Evaluator's email address specified in clause **Error! Reference source not found.** or alerting the Evaluator via the Website. If the Evaluator considers that change has a material adverse impact on the Evaluator and does not agree to the change, the Evaluator must notify Our Community via email to service@smartygrants.com.au within thirty days after receiving notice of the change. If the Evaluator notifies Our Community within that timeframe, then the Evaluator's use of SmartyGrants will continue to be governed by this Agreement and any variations in effect immediately prior to the change.

12 Definitions

"Confidential Information"	includes all information of a confidential nature exchanged between the parties pursuant to this Agreement, whether in writing, electronically or orally, including, but not limited to, SmartyGrants.
"Evaluator Data"	means data, including email, provided, generated, transmitted or displayed via SmartyGrants by the Evaluator's Internal End Users or submitted by Public End Users.
"Documentation"	means the documentation produced by Our Community and made available at http://help.smartygrants.com.au to the Evaluator specifying how SmartyGrants should be used.
"End Users"	means Internal End Users and Public End Users collectively.
"End User Account"	means each Our Community hosted account provided to either Public End Users or Internal End Users through SmartyGrants for the purpose of enabling such users to use SmartyGrants or to submit information to the Evaluator.
"Intellectual Property Right"	means any patent, trade mark, service mark, copyright, moral right, right in a design, know-how and any other intellectual or industrial property rights, anywhere in the world whether or not registered.
"Internal End Users"	means the Evaluator's Representatives that use SmartyGrants.
"Personal Information"	means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in writing or spoken, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.
"Pre-existing IPR"	means a party's Intellectual Property Rights existing prior to the date of this Agreement or subsequently brought into existence other than in the course of performing this Agreement.
"Privacy Act"	means Privacy Act 1988 (Cth).
"Privacy Law"	means the Privacy Act and any other law that applies to the Evaluator that relates to privacy or to the collection, use, disclosure or handling of information about individuals (including a law of a State or Territory in Australia).
"Public End Users"	means members of the public who use SmartyGrants to submit information to the Evaluator.
"Representative"	of a party includes an employee, agent, officer or director of that party.

"SmartyGrants"

means the online grants management system available (as may be changed or updated from time to time by Our Community) via the Website.

"Term"

means the period beginning upon the Effective Date and ending when terminated pursuant to clause 8.1.2 of this Agreement.

"Website"

means the Internet sites located at the url <http://www.smartygrants.com.au> or <https://manage.smartygrants.com.au> or any other subdomain of smartygrants.com.au.