

GIVENGAIN FOUNDATION TERMS OF USE

We are the GivenGain Foundation, a nonprofit organization regulated by the Swiss Federal Department of Home Affairs. Our registered office is Chalet la Renarde, Chemin des Rapes, 1884, Villars-sur-Ollon, Switzerland.

BACKGROUND

- A. The GivenGain Foundation, among other things, provides electronic fund transfer services and other services to facilitate on-line donations to causes who have signed up for a Foundation Account at www.givengain.com;
- B. You now wish to obtain and the GivenGain Foundation wishes to provide the electronic fund transfer services and other services to facilitate on-line donations at www.givengain.com for your cause.
- C. You understand and agree that contributions made to your cause through www.givengain.com are processed and disbursed through the GivenGain Foundation.

If you want to access and make use of the GivenGain websites and all content, services and products available at or through the websites, including, but not limited to, the GivenGain Foundation Account ("Foundation Account"), (taken together, the Website), you will have to enter into a separate agreement with GivenGain International Ltd., whose registered office is Trafalgar House, 25 Nelson Street, Douglas, Isle of Man IM1 2AN. The Website is owned and operated by GivenGain International Ltd.

THIS AGREEMENT

This Agreement is a contract between you and the GivenGain Foundation and applies to your use of the electronic fund transfer services and other services provided by the GivenGain Foundation. If you do not agree to be bound by the terms and conditions of this agreement, please do not use or access our services.

You must read, agree with, and accept all of the terms and conditions contained in this agreement and the GivenGain privacy policy available at <http://www.givengain.com/cgi-bin/giga.cgi?cmd=privacy>, which include those terms and conditions expressly set out below and those incorporated by reference, before you may make use of the GivenGain Foundation's services.

We may amend this Agreement at any time by posting the amended terms on www.givengain.com. In this agreement, "you" or "your" means any person or entity or authorized representative making use of the GivenGain Foundation's service ("Users"). Unless otherwise stated, "GivenGain", "we", "our" or "us" will refer collectively to the GivenGain Foundation and its subsidiaries.

AUTHORIZATION

By completing the cause application form, you agree that you are 21 years old, and have obtained the necessary authorization, should authorization be required, to act on behalf of your cause. You agree that you are an authorized representative of your cause, and that you will follow all laws and legal regulations that relate to your cause regardless of where those laws and regulations came from, and will comply with any laws and regulations that may apply in the future. In the event that you no longer have the authorization to act on behalf of your cause, you and you only must notify GivenGain in writing of the change of authorization. GivenGain will then require the new authorized user to execute a new agreement with GivenGain.

PAYMENT PROCESSING

GivenGain credits a donor's authorized payment account and periodically transfers the credited funds to the bank account designated by you. Donors may authorize a single or recurring payment to any cause or cause project.

RESERVES

In addition to the transaction-processing fee, GivenGain may, in our sole discretion, decide to hold a reserve for chargebacks and refunds, and any other returned items. Should GivenGain decide to hold a reserve, we will notify you of the reserve amount and the period of time it is held. We may also require an additional security deposit for high volume accounts.

TRANSFER SCHEDULE

GivenGain will initiate a transfer to the cause account on a monthly basis, at least 30 days after the actual payment is processed, provided that the then-current balance transfer satisfies minimum levels that we may establish. GivenGain may, at our sole discretion and depending on the good standing of the cause, transfer funds to the cause account according to a mutually agreed time schedule different from the one above.

Notwithstanding the above, a number of factors, several of which are outside of our control, will contribute to when the funds are received. We make no representations or warranties regarding the amount of time needed to complete processing, such as delays in the banking system, nor shall we be liable for any actual or consequential damages arising from any claim of delay.

GivenGain can initiate transfers to a cause account only on business days when the automated clearinghouses are open for business. If a scheduled payment date falls on a non-business day, however, GivenGain will not initiate the transfer until the next business day. We will initiate a transfer to the cause account on each payment date for the total amount of payments received from donors' authorized transactions for the cause, less the fees applicable, amounts reversed by donors, the reserve (if applicable) and refunds not processed in previous payments. Although GivenGain cannot guarantee the exact date and time when the funds will be available in your cause account (due to the nature of SWIFT transfers and the fact that different banks are involved in the transfer process), transfers to the cause account will generally be credited within five (5) business days of the date GivenGain initiates the transfer.

REFUNDS

GivenGain will use its best efforts to direct donor inquiries and complaints to the support offered by your cause. In order to resolve complaints and disputes, GivenGain may issue refunds without your knowledge or approval in any situation we think is appropriate. GivenGain may also include the donor in its database of blocked accounts if there is an indication of fraud or inappropriate use of the donor's information by either the donor or anyone else.

TRANSFER CURRENCY AND METHOD

All transfers to your cause account will either be in the currency the donation was received, or in US Dollar by way of interbank SWIFT electronic transfers to a non-card account specified by you, held at a bank recognized by GivenGain's banking partners, except in the case where donors donate in South African Rand to a cause with a South African, Lesotho, Swaziland or Namibian bank account, in which case the funds will be transferred by way of direct deposit in South African Rand. On occasion and in our sole discretion, we may send you a paper check instead of an electronic credit to your bank account. GivenGain charges a fee for each transfer that reflects the cost to GivenGain of sending the money through the banking system, as indicated on our pricing pages at http://www.givengain.com/cgi-bin/giga.cgi?cmd=processing_fees. GivenGain will not be held liable for any payment of funds received on your behalf which GivenGain made in good faith to the account listed by you or any other authorized representative of your cause.

TRANSACTION LIMITS

The minimum and maximum payment depends on limits determined by GivenGain. As a security measure, GivenGain may, but are not required to, impose transaction limits on some or all causes and their donors relating to the value of any transaction or disbursement, the cumulative value of all transactions or disbursements during a period of time, or the number of transactions per day or other period of time. GivenGain will not be liable to you if: (1) we do not proceed with a transaction or disbursement that would exceed any limit established by us for a security reason, or (2) if we permit donors to withdraw from a transaction because the GivenGain service is unavailable following the commencement of a transaction.

TRANSFER DELAYS

GivenGain may delay initiating the transfer of payments pending an investigation if we, in our sole discretion, believe you or a donor may have violated this agreement. If we determine, in our sole discretion, that you have violated this agreement, we may refuse to transfer payments to your cause and may instead return the payment to the applicable donor. We will not be liable to you if we act in accordance with the provisions of this paragraph.

INVOICES

You are responsible to take all necessary steps to enable GivenGain to issue invoices to donors on your behalf. You also grant GivenGain the authority to sign the invoices on your behalf.

INTEREST

GivenGain may earn interest or other compensation from the balances in our bank accounts that result from the timing difference between our being paid by donors and our bank account being debited to pay payments to your cause.

TRANSACTION INFORMATION

You can access, download and view transaction information online within the secure, password protected cause administration area at www.givengain.com.

REIMBURSEMENT

GivenGain reserves the right to seek reimbursement from you if we provide a refund to a donor who requests to reverse a payment or if we receive a chargeback from a donors' credit card issuer for the amount of the donors' payment. GivenGain may obtain this reimbursement by deducting this amount from future payments owed to you, by reversing any transfers to the your account, by direct debit from your account, or by seeking the reimbursement from your by any other lawful means.

DISCLOSURE OF INFORMATION

GivenGain reserves the right to report any activity that we suspect violates any law or regulation to appropriate law enforcement officials, regulators, or other third parties. In order to cooperate with governmental requests, to protect our systems and customers, or to ensure the integrity and operation of our business and systems, we may access and disclose any information we consider necessary or appropriate, including, without limitation, user contact details, transaction data, IP addressing and traffic information, usage history, and posted content.

INDEMNIFICATION

You are solely responsible for your website and its content, for your advertising and promotion, and that of anyone referring others to your website. You are also responsible for insuring that you or your cause are the rightful owners or licensees for any copyrighted material, trademarks, or items that appear on your website. You and your cause will take all necessary measures to preclude GivenGain from being made a party to any lawsuit or claim regarding the service provided to or by you, or any end user. You hereby agree to indemnify GivenGain and hold GivenGain harmless from any and all claims of whatever nature brought by any anyone against GivenGain in excess of the remedy set forth herein.

SERVICE CANCELLATION

You may terminate your participation in the GivenGain service at any time upon giving notice to us and we may terminate this agreement at any time by giving notice to you or your cause. Upon termination, you must pay GivenGain whatever fees have been incurred prior to the effective date of the termination. Also upon termination, any pending transactions will be canceled. All of your website content and database records will be immediately deleted upon cancellation. This information cannot be recovered once your account is cancelled.

DISPUTES

GivenGain will attempt to resolve all disputes arising out of this agreement in a spirit of cooperation without formal proceedings. Any dispute which cannot be so resolved (other than the collection of money due on unpaid invoices and other than injunctive relief) will be subject to arbitration upon written demand of either party. Arbitration will take place in the City of London, United Kingdom, or at another location if the parties so agree. The arbitration will take place before an arbitration panel chosen as follows: The parties will each choose an arbitrator, and the two arbitrators will choose a third arbitrator and determine the third arbitrator's compensation. Each party will have one veto over the choice of the third arbitrator. The three arbitrators will schedule an informal proceeding, hear the arguments, and decide the matter by secret majority vote. Unless the arbitrators decide otherwise, each party will pay the costs of its own arbitrator, and will pay half of the other costs of the arbitration proceeding. Each party will have the right to have the proceedings transcribed. The arbitrators will not have the authority to award punitive damages or any other form of relief not contemplated in the contract. The majority of arbitrators will render a written opinion setting forth the basis on which they arrived at the decision regarding each issue submitted to arbitration; the dissenting arbitrator, if any, will not issue a dissenting opinion. Regarding each issue submitted to arbitration, the decision will be final and binding only to the extent it is accompanied by a written explanation of the basis upon which it was arrived at. Judgment upon the award, if any, rendered by the arbitrators may be entered in any court having jurisdiction thereof. Should any legal action permissible under this agreement be instituted to enforce the terms and conditions of this agreement, in particular the right to collect money due on unpaid invoices, the prevailing party will be entitled to recover reasonable attorney's fees and expenses incurred at both the trial and appellate levels.

FEES

You will be responsible for payment of the Processing Fees and any credit card processing fees. You will be responsible for any sales, use, excise, value-added, services, consumption, or other tax that is assessed on the services. Each party shall be responsible for any personal property taxes on property it owns or leases and for taxes based on its net income or gross receipts.

TAX INFORMATION

GivenGain is not an accounting, taxation or financial advisor, and you should not rely on information given on the site to determine the accounting, tax or financial consequences of making a payment or using the service. We strongly recommend that you consult your own advisor about any accounting, taxation or financial consequences that may affect you.

ELECTRONIC TRANSFERS

GivenGain reserves the right to resubmit for collection any transfers authorized by you that is returned for insufficient or uncollected funds.

NO WARRANTIES

GivenGain makes no express or implied warranties or representations with respect to the GivenGain service (including, without limitation, warranties of fitness, merchantability, non-infringement, or any implied warranties arising out of a course of performance, dealing, or trade usage). In addition, we make no representation that the operation of our site will be uninterrupted or error-free, and we will not be liable for the consequences of any interruptions or errors.

NONE OF GIVENGAIN, ITS CONSULTANTS OR ITS AFFILIATES WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF REVENUE, PROFITS OR DATA, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

INVALID OR UNENFORCEABLE PROVISIONS

If any provision of this Agreement is held to be invalid by a court of competent jurisdiction, then the remaining provisions will nevertheless remain in full force and effect. You and GivenGain agree to renegotiate in good faith any term held invalid and to be bound by any mutually agreed to substitute provision.

ENTIRE AGREEMENT AND MODIFICATIONS

This agreement sets forth the entire agreement and understanding between the parties and merges all prior discussion between them. Utilization of the service by you following the effective date of any change or modification of this agreement will constitute acceptance by you of such change(s). Otherwise, this agreement may not be modified except by the written consent of both parties.

GOVERNING LAW

These Terms of Use are governed by English law.