



GIVECENTRAL TERMS OF USE - CHARITIES

Revised September 17, 2018

Welcome to GiveCentral®

GiveCentral is an online donation tool that helps nonprofits with their fundraising and donor management efforts. Because GiveCentral is cloud-based and multi-platform, you and your donors can access our services through the internet and a variety of devices, including desktop, laptop, tablets, and smartphones.

This terms of use agreement (“**Agreement**”) is a legally binding contract between you and Coleman Group Consulting Incorporated d/b/a GiveCentral (“**GiveCentral**”, “**we**”, or “**us**”), so please read all the terms and conditions carefully before using the Services. By using the GiveCentral Services, Consulting Services, platform and products including applications, mobile, software or websites owned or operated by GiveCentral (collectively, the “**Services**”) you confirm your acceptance of this Agreement.

If you do not agree to this Agreement, do not register or use any of the Services.

By using the Services on behalf of an organization you are agreeing to these terms and conditions for that organization and promising GiveCentral that you have authority to bind that organization to this Agreement (“**you**” or “**your**” will refer to that organization).

1. **Privacy.** To provide the Services, GiveCentral collects certain information about you. We use and protect that information as described in our Privacy Policy at www.givecentral.org/gc-privacy-policy. You acknowledge that use of the Services is subject to GiveCentral’s Privacy Policy and understand that it identifies how GiveCentral collects, stores, and uses certain information.
2. **Acceptable Use Policy.** You agree to comply with GiveCentral’s Acceptable Use Policy at www.givecentral.org/gc-acceptable-use-policy.
3. **Changes to this Agreement.** We reserve the right to modify this Agreement from time to time without notice to you. Please check this Agreement periodically for changes. Your continued use of the Services after we publish changes to this Agreement means that you are consenting to the updated terms.
4. **Consent to Electronic Communications.** By registering with GiveCentral or using the Services, you understand that we may send you information regarding the Services electronically, such as: (a) notices about your use of the Services, including notices of violations of use, (b) updates to the Services and new

features or products; and (c) promotional material and information regarding GiveCentral's services. Notices emailed to you will be considered given and received when the email is sent. If you do not consent to receive notices (other than promotional materials) electronically, you must stop using the Services. To opt out of receiving promotional material, email support@givecentral.org with a request to be unsubscribed.

5. **Services.**

5.1 **Services.** We will provide the Services to you under all the terms stated in this Agreement and each applicable Statement of Work.

5.2 **Service and System Control.** Between you and GiveCentral:

(a) GiveCentral has and will retain sole control over the operation, provision, maintenance and management of the Services and GiveCentral Materials, including the: (i) GiveCentral Systems; (ii) one or more locations where any of the Services are performed; (iii) selection, deployment, modification and replacement of the Service Software; and (iv) performance of Service maintenance, upgrades, corrections and repairs; and

(b) you have and will retain sole control over the operation, maintenance and management of, and all access to and use of your information technology infrastructure, including computers, software databases, electronic systems (including database management systems) and networks, whether operated directly by you or through the use of third-party services ("**Your Systems**"), and sole responsibility for all access to and use of the Services and GiveCentral Materials by any of your Authorized Users.

5.3 **Changes.** GiveCentral reserves the right, in its sole discretion, to make any changes to the Services and GiveCentral Materials that it considers necessary or useful to: (a) maintain or enhance (i) the quality or delivery of GiveCentral's services to its customers, (ii) the competitive strength of or market for GiveCentral's services or (iii) the Services' cost efficiency or performance; or (b) to comply with applicable law.

5.4 **Subcontractors.** GiveCentral may from time to time, in its sole discretion engage third-party subcontractors to perform Services.

5.5 **Suspension or Termination of Services.**

(a) GiveCentral may, directly or indirectly, and by use of a disabling device or any other lawful means, suspend, terminate or otherwise deny your access and that of your Authorized Users to, or use of, part or all of the Services or GiveCentral Materials, without incurring any resulting obligation

or liability, if: (a) GiveCentral receives a judicial or other governmental demand or order, subpoena or law enforcement request that expressly or by reasonable implication requires GiveCentral to do so; (b) GiveCentral has reason to believe that: (i) you or any Authorized User have failed to comply with, any material term of this Agreement, or accessed or used the Services beyond the scope of the rights granted or for a purpose not authorized under this Agreement; (ii) you or any Authorized User is, have been, or are likely to be involved in any fraudulent, misleading or unlawful activities relating to or in connection with any of the Services; or (c) this Agreement is terminated. This **Section 5.5** does not limit any of GiveCentral's other rights or remedies, whether at law, in equity or under this Agreement.

(b) Either you or GiveCentral may terminate this Agreement or any Statement of Work, in whole or in part, at any time without cause, by providing notice to the other.

(c) If your organization closes, you agree to notify GiveCentral by emailing us at support@givecentral.org so that we may close your account to further donations. You further agree to notify persons making recurring donations that you will no longer be able to accept their donations.

5.6 Effect of Termination. Upon termination of this Agreement, except as expressly otherwise provided in this Agreement:

(a) all rights, licenses, consents, and authorizations granted by you or GiveCentral to the other under this Agreement will immediately terminate;

(b) you must immediately stop all use of any Services or GiveCentral Material and (i) promptly return to GiveCentral, or at GiveCentral's written request, destroy all documents and tangible materials containing, reflecting, incorporating, or based on GiveCentral Materials or GiveCentral's Confidential Information; and (ii) permanently erase all GiveCentral Materials and GiveCentral's Confidential Information from all systems you directly or indirectly control and (iii) certify to GiveCentral in a signed writing that you have complied with the requirements of this Section 5.6(b);

(c) GiveCentral may disable your and your Authorized Users' access to the Services;

(d) if you terminate this Agreement under Section 5.5(b); you will be relieved of any obligation to pay any Fees attributable to the period after the effective date of that termination, and GiveCentral will refund to you Fees paid in advance for Services that GiveCentral has not performed as of the effective date of termination; and

(e) If GiveCentral terminates this Agreement under Section 5.5(a) or Section 5.5(b), all Fees that would have become payable had the Agreement remained in effect will become immediately due

and payable, and you agree to pay those Fees, and all previously-accrued by not yet paid Fees on receipt of GiveCentral's invoice for such Fees.

5.7 **Surviving Terms.** The provisions stated in the following sections, and any other right or obligation of you or GiveCentral in this Agreement, that, by its nature, should survive termination of this Agreement, will survive any termination of this Agreement: this Section 5.7, Section 6.3, Section 5.6, Section 14, Section 15.3, Section 16, Section 17, and Section 18.

6. Authorization and Restrictions.

6.1 **Authorization.** Subject to and conditioned on your payment of applicable Fees and compliance and performance under this Agreement, GiveCentral authorizes you and your Authorized Users to access and use the Services and the GiveCentral Materials as GiveCentral may supply or make available to you solely for purposes of soliciting charitable donations and donor management (the "Permitted Use"). This authorization is non-exclusive and other than as may be expressly stated in **Section 18.8**, non-transferable.

6.2 **Reservation of Intellectual Property Rights.** Nothing in this Agreement grants you any right, title or interest in or to (including any license under) any Intellectual Property Rights in or relating to, the Services, GiveCentral Materials or Third-Party Materials, whether expressly, by implication, estoppel or otherwise. All right, title and interest in and to the Services, the GiveCentral Materials and the Third-Party Materials are and will remain with GiveCentral and the respective rights holders in the Third-Party Materials. You are and will remain, the sole and exclusive owner of all right title and interest in and to Your Materials, including all Intellectual Property rights in them.

6.3 **Authorization Limitations and Restrictions.** As a material term of this Agreement, you may not, and may not permit any Authorized User, or any other Person to, access or use the Services or GiveCentral Materials except as expressly permitted by this Agreement and, in the case of Third-Party Materials, the applicable third-party license agreement. You agree not to:

- (a) copy, modify, or create derivative works or improvements of the Services or GiveCentral Materials;
- (b) display, store, process or transmit:
 - (i) material that infringes a third party's intellectual property or proprietary rights;
 - (ii) hateful or violent material, or material advocating discrimination against individuals or groups;

- (iii) obscene, profane, or otherwise objectionable material;
 - (iv) material that is false, indecent, defamatory, offensive, threatening, harmful to minors in any way, threatening, invasive of privacy or publicity rights, abusive, illegal, harassing, violent, tasteless, pornographic or sexually oriented;
 - (v) material advocating or advancing criminal hacking, cracking, or phishing;
 - (vi) material related to illegal drugs;
 - (vii) malicious material;
 - (viii) unlawful software;
 - (ix) material that violates, encourages or furthers conduct that would violate any applicable laws;
- (c) generate or facilitate unsolicited commercial email that violates the CAN-SPAM Act or any other applicable anti-spam law or regulation;
- (d) generate or facilitate SMS, MMS or other text messages or push notifications that violate the Telephone Consumer Protection Act, the Do-Not-Call Implementation Act, or any other applicable law including anti-spam, telemarketing, or telephone consumer protections law or regulations;
- (e) use the Services to advertise or sell any goods or service;
- (f) operate, conduct, or promote, directly or indirectly, raffles, lotteries or other similar gaming activities, whether for charitable purposes or otherwise;
- (g) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available any Services or GiveCentral Materials to any Person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud or other technology or service;
- (h) reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the source code of the Services or GiveCentral Materials, in whole or in part;
- (i) bypass or breach any security device or protection used by the Services or GiveCentral Materials or access or use the Services or GiveCentral Materials other than by you or Authorized Users through then valid Access Credentials;

(j) input, upload, transmit or otherwise provide to or through the Services or GiveCentral Systems, any information or materials that are unlawful or injurious, or contain, transmit or activate any Harmful Code;

(k) damage, destroy, disrupt, disable, impair, interfere with or otherwise impede or harm in any manner the Services, GiveCentral Systems or GiveCentral's provision of services to any third party, in whole or in part;

(l) remove, delete, alter or obscure any trademarks, specifications, Documentation, warranties or disclaimers, or any copyright, trademark, patent or other intellectual property or proprietary rights notices from any Services or GiveCentral Materials, including any copy thereof;

(m) access or use the Services or GiveCentral Materials in any manner or for any purpose that infringes, misappropriates or otherwise violates any Intellectual Property Right or other right of any third party (including by any unauthorized access to, misappropriation, use, alteration, destruction or disclosure of the data of any other GiveCentral customer), or that violates any applicable law;

(n) access or use the Services or GiveCentral Materials for purposes of competitive analysis of the Services or GiveCentral Materials, the development, provision or use of a competing software service or product or any other purpose that is to GiveCentral's detriment or commercial disadvantage;

(o) promise or provide goods or services in exchange for making a donation; or

(p) otherwise access or use the Services or GiveCentral Materials beyond the scope of the authorization granted under **Section 6.1**.

7. Your Obligations.

7.1 **Your Systems and Cooperation.** You promise to at all times: (a) set up, maintain and operate in good repair all Your Systems on or through which the Services are accessed or used; and (b) provide all cooperation and assistance as GiveCentral may reasonably request to enable GiveCentral to exercise its rights and perform its obligations under and in connection with this Agreement. GiveCentral may from time to time upon notice to you, and at its discretion, revise the technical specifications of the Services. You agree to make those upgrades to Your Systems necessary to maintain technical compatibility with GiveCentral's specifications at your own expense.

7.2 **Effect of Your Failure or Delay.** GiveCentral is not responsible or liable for any delay or failure of performance caused in whole or in part by your or any Authorized User's delay in performing, or failure to perform, any of your obligations under this Agreement.

7.3 **Corrective Action and Notice.** If you become aware of any actual or threatened activity prohibited by **Section 6.3**, you must, and must cause your Authorized Users to, immediately: (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Services and GiveCentral Materials and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); and
(b) notify GiveCentral of any such actual or threatened activity.

8. **Third-Party Payment Processors.** For purposes of processing on-line credit card, debit, and ACH donations, you acknowledge that as a condition for the use of the Services, you must (a) apply for and be granted one or more merchant accounts through First American Payment Systems, or other credit card processor approved by GiveCentral, and (b) comply with the terms of the applicable payment processor's terms of service.

9. **Training and Consulting Services.**

9.1 **Statement of Work.** If you enter into one or more statements of work with GiveCentral for professional, educational, operational or technical services (collectively, "**Consulting Services**"), GiveCentral will, subject to the terms of this Agreement, provide those Consulting Services to you as described in more detail in the Statement of Work. Each Statement of Work will contain a detailed description of the Consulting Services, the duration, any Deliverables GiveCentral is to provide to you, the consulting fees, and any other terms agreed upon between you and us in connection with the Consulting Services.

9.2 **Deliverables.** GiveCentral will remain the sole and exclusive owner of all right, title, and interest in and to any Deliverables provided to you under this Agreement or any Statement of Work, including all Intellectual Property Rights in them. GiveCentral grants you a royalty free, limited, non-exclusive, non-transferable and terminable license to use the Deliverables solely for your authorized use of the Services. GiveCentral is, and will remain, the sole and exclusive owner of all right, title, and interest in and to all GiveCentral Materials used in connection with developing the Deliverables, and to the extent that GiveCentral Materials are delivered with or as part of the Deliverables, they are licensed, not assigned to you on the same terms as the Deliverables.

9.3 **Consulting Services Warranty.**

- (a) In regard to Consulting Services only, we represent and warrant to you:
 - (i) that we will perform Consulting Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with

commercially reasonable industry standards for similar services and will devote adequate resources to meet our obligations under the applicable Statement of Work.

- (ii) that the Consulting Services will conform in all material respects with the requirements or specifications stated in the applicable Statement of Work.

(b) You acknowledge that GiveCentral's ability to successfully perform Consulting Services depends on your cooperation with us in matters relating to the Consulting Services and you agree to appoint an employee to serve as the primary contact with respect to matters having to do with the applicable Statement of Work. You agree to respond promptly to any GiveCentral request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for us to perform the Consulting Services for you.

(c) If, through no fault of yours, the Consulting Services do not conform with the foregoing warranty, and you notify us in writing within 14 days of GiveCentral's delivery of the Consulting Services, we will re-perform the non-conforming portions of the Consulting Services at no additional charge to you. If GiveCentral is unable to cure the defect in the Consulting Services with 30 days after we receive your notice of the defect, we will refund any fees paid for the Consulting Services.

10. Your Security Obligations.

10.1 **Personal Information.** You acknowledge and agree that, in the course of soliciting and receiving charitable contributions through GiveCentral, you may create, receive, or have access to Personal Information. "**Personal Information**" includes but is not limited to (i) information that identifies or can be used to identify or authenticate an individual such as names, signatures, addresses, telephone numbers, email address and other unique identifiers; (ii) an individual's government-issued identification number (including Social Security number, driver's license number or state-issued identification number); and (iii) financial account number, credit card number, debit card number, or credit report information, with or without any required security code, access code, personal identification number, or password that would permit access to an individual's financial account.

10.2 **Your Control and Responsibility.** You have and will retain sole responsibility for: (a) all data and other content, in any form or medium, that you collect, download or otherwise receive, directly or indirectly, including Personal Information related to a donor or donor's payment instrument that you obtain as part of a donation transaction, including a donor's name, address, phone number, date of birth, payment instrument account number and expiration date, PIN data, and CVV2 or CVC2 data, and any data read, scanned or otherwise obtained from the payment instrument, including its content and use; (b) all information, instructions and materials provided by you or on your behalf in connection with the Services; (c) Your Systems; (d) the security and use of your Access Credentials and the Access

Credentials you provide to Authorized Users including de-authorization of Access Credentials to persons who are no longer Authorized Users; and (e) all access to and use of the Services and GiveCentral Materials directly or indirectly by or through the Your Systems, with or without your knowledge or consent, including all results obtained from, and all conclusions, decisions and actions based on, such access or use.

10.3 **Access and Security.** You promise to use all physical, administrative and technical controls, screening and security procedures and other safeguards necessary to: (a) securely administer the distribution and use of all Access Credentials and protect against any unauthorized access to or use of the Services; and (b) control the content and use of Personal Information. You shall comply with all security standards and guidelines that may be published from time to time by any card association or organization, including PCI-DSS.

10.4 **Privacy Policy.** You promise to maintain and publish a privacy policy to your donors that informs donors in reasonable detail: (a) what information you collect; (b) how that information is used; and (c) with whom the information is shared.

11. **Data Backup.** The Services do not replace the need for you to maintain regular data backups or redundant data archives. GIVECENTRAL HAS NO OBLIGATION OR LIABILITY FOR ANY LOSS, ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION OR RECOVERY OF YOUR DATA.

12. Fees; Payment Terms.

12.1 **Fees.** You agree to pay GiveCentral the fees together with any applicable consulting fees (collectively, "**Fees**"). The one-time fee to establish an account is \$75.00. The monthly Fee for each merchant ID is \$24.50, plus pass-through fees of \$3.42 for regulatory compliance and a \$4.90 Visa® network fee. Payment processor per transaction fees range, depending on the type of credit card, from 1.4% to 2.9% of the amount of the transaction plus 38¢ per transaction. ACH transactions incur a fee of .40% and a \$1.00 daily fee for ACH batching. Fees are subject to change without notice. Fees for non-standard services will be set forth in a Statement of Work as stated in Section 9.1.

12.2 **Payment.** For any Fees not recovered through transaction processing, for example fees for Consulting Services and mobile device swipers, you must provide us with current complete, accurate and authorized payment method information, for example debit or credit card information or ACH routing numbers. You authorize us to charge the payment method you provide for the Fees. We may bill in advance, when you buy Services, or shortly after purchase, or if you have elected an ongoing subscription service, on a recurring basis.

12.3 **Late Payment.** If you do not make any payment when due, then

(a) if the failure to make payment when due continues for thirty days following written notice to you, GiveCentral may suspend performance of the Services, in whole or in part, until all past due amounts have been paid, without incurring any obligation or liability to you or any other Person because of that suspension; and

(b) you agree to reimburse GiveCentral for all reasonable costs incurred by GiveCentral in collecting any late payments or interest, including attorneys' fees, court costs and collection agency fees.

12.4 **No Deductions or Setoffs.** You agree to pay all amounts payable to GiveCentral under this Agreement in full, without any setoff, recoupment, counterclaim, deduction, debit, or withholding for any reason (other than any deduction or withholding of tax as may be required by applicable law).

13. Intellectual Property Rights.

13.1 **Services and GiveCentral Materials.** All right, title and interest in and to the Services and GiveCentral Materials, including all Intellectual Property Rights therein, are and will remain with GiveCentral and the respective rights holders in the Third-Party Materials. You have no right, license or authorization with respect to any of the Services or GiveCentral Materials (including Third-Party Materials) except as expressly stated in **Section 6.1** or the applicable third-party license, in each case subject to **Section 6.3**. All other rights in and to the Services and GiveCentral Materials (including Third- Party Materials) are expressly reserved by GiveCentral and the respective third-party licensors. You unconditionally and irrevocably grant to GiveCentral an assignment of all right, title and interest in and to any Aggregated Data, including all Intellectual Property Rights relating to the Aggregated Data.

13.2 **Your Materials.** As between you and us, you are and will remain the sole and exclusive owner of all right, title and interest in and to all Your Materials, including all Intellectual Property Rights relating to them, subject to the rights and permissions granted in **Section 13.3**.

13.3 **Consent to Use Your Materials.** You irrevocably grant all the rights and permissions in or relating to Your Materials: (a) to GiveCentral, its subcontractors and the GiveCentral Personnel to the extent necessary to provide you with Services; and (b) to GiveCentral to the extent necessary to enforce this Agreement and exercise its rights and perform its obligations under it.

14. Confidentiality.

14.1 **Confidential Information.** In connection with this Agreement each of you and GiveCentral (as the "**Disclosing Party**") may disclose or make available Confidential Information to the other (as the

“**Receiving Party**”). Subject to **Section 14.2**, “**Confidential Information**” means information in any form or medium (whether oral, written, electronic or other) that the Disclosing Party considers confidential or proprietary, including information consisting of or relating to the Disclosing Party’s technology, trade secrets, know-how, business operations, plans, strategies, customers, and pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, in each case whether or not marked, designated or otherwise identified as “confidential”.

14.2 **Exclusions.** Confidential Information does not include information that: (a) was rightfully known to the Receiving Party without restriction on use or disclosure before that information's being disclosed or made available to the Receiving Party in connection with this Agreement; (b) was or becomes generally known by the public other than by the Receiving Party's or any of its Representatives' noncompliance with this Agreement; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that, to the Receiving Party's knowledge, was not or is not, when the information was received, under any obligation to maintain its confidentiality; or (d) was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.

14.3 **Protection of Confidential Information.** The Receiving Party shall:

(a) not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under this Agreement;

(b) except as may be permitted by and subject to its compliance with **Section 14.4**, not disclose or permit access to Confidential Information other than to its Representatives who: (i) need to know the Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under this Agreement; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this **Section 14.3**; and (iii) are bound by confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms stated in this **Section 14.3**;

(c) safeguard the Confidential Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect its similarly sensitive information and in no event less than a reasonable degree of care; and

(d) ensure its Representatives' compliance with, and be responsible and liable for any of its Representatives' non-compliance with, the terms of this **Section 14**.

14.4 **Compelled Disclosures.** If the Receiving Party or any of its Representatives is compelled by applicable law to disclose any Confidential Information then, to the extent permitted by applicable law,

the Receiving Party shall: (a) promptly, and before the disclosure, notify the Disclosing Party in writing of the requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights under **Section 14.3**; and (b) provide reasonable assistance to the Disclosing Party, at the Disclosing Party's sole cost and expense, in opposing the disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this **Section 14.4**, the Receiving Party remains required by law to disclose any Confidential Information, the Receiving Party may disclose only that portion of the Confidential Information that, on the advice of the Receiving Party's legal counsel, the Receiving Party is legally required to disclose.

15. Representations and Warranties.

15.1 GiveCentral Representations and Warranties. We represent and warrant to you that we shall perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with commercially reasonable industry standards for similar services and will devote adequate resources to meet its obligations under this Agreement.

15.2 Your Representations and Warranties. You represent and warrant to us that you own or otherwise have and will have the necessary rights and consents in and relating to the Your Materials so that, as received by GiveCentral and Processed in accordance with this Agreement, they do not and will not infringe, misappropriate or otherwise violate any Intellectual Property Rights, or any privacy or other rights of any third party or violate any applicable law.

15.3 DISCLAIMER OF WARRANTIES. EXCEPT FOR THE EXPRESS WARRANTIES STATED IN **SECTION 9.3 AND SECTION 15.1**, ALL SERVICES AND GIVECENTRAL MATERIALS ARE PROVIDED "AS IS" AND GIVECENTRAL HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER, AND GIVECENTRAL SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, GIVECENTRAL MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES OR GIVECENTRAL MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET YOUR OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY MATERIALS IS STRICTLY BETWEEN YOU AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

16. Indemnification.

16.1 **Indemnification.** You agree to indemnify, defend and hold harmless GiveCentral and its Representatives, successors and permitted assigns from and against all Losses arising out of or resulting from any, suit, action, or proceeding arising out of or resulting from your material breach of any representation, warranty or obligation stated in this Agreement.

16.2 **Exclusivity.** The rights and remedies stated in this **Section 16** constitute the exclusive rights and remedies of GiveCentral in respect of the matters indemnified under **Section 16.1**.

17. **Limitations of Liability.**

17.1 **EXCLUSION OF DAMAGES.** EXCEPT AS OTHERWISE STATED IN **SECTION 17.3**, IN NO EVENT WILL EITHER YOU OR GIVECENTRAL BE LIABLE TO THE OTHER PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, LOSS OR DATA, OR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THE DAMAGES, AND DESPITE THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

17.2 **CAP ON MONETARY LIABILITY.** EXCEPT AS OTHERWISE STATED IN **SECTION 17.3**, IN NO EVENT WILL THE AGGREGATE LIABILITY OF GIVECENTRAL UNDER OR IN CONNECTION WITH THESE TERMS OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, EXCEED THE AGGREGATE AMOUNTS PAID OR PAYABLE BY YOU TO GIVECENTRAL IN THE TWELVE-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATION APPLIES DESPITE THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. YOU MUST BRING ANY ACTION NO MORE THAN TWELVE MONTHS AFTER THE EVENT GIVING RISE TO THE ACTION, AND YOU EXPRESSLY WAIVE ANY RIGHT TO INVOKE ANY DIFFERENT LIMITATION ON THE BRINGING OF ACTIONS UNDER STATE LAW.

17.3 **Exceptions.** The exclusions and limitations in **Section 17.1** and **Section 17.2** do not apply to your obligations under Section 16 or GiveCentral's liabilities arising out of GiveCentral's gross negligence or willful misconduct.

18. **Miscellaneous.**

18.1 In no event will either you or GiveCentral be liable or responsible to the other, or be in default or breach of this agreement, for any failure or delay in fulfilling or performing any term of this Agreement, (except for any obligation to pay), when and to the extent that failure or delay is caused by any circumstances beyond that your or GiveCentral's reasonable control, including acts of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades

in effect on or after the date of this Agreement, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of law or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation.

18.2 **Further Assurances.** You and GiveCentral agree, upon the reasonable request of the other, to promptly execute those documents and perform those acts as may be necessary to give full effect to the terms of this Agreement.

18.3 **Independent Contractors.** The relationship between you and us is that of independent contractors. Nothing in this Agreement is to be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between you and GiveCentral, and neither you nor we have the authority to contract for or bind the other in any manner whatsoever.

18.4 **Waiver.** No waiver by you or GiveCentral of any of the provisions of this Agreement is effective unless explicitly stated by you or GiveCentral in a signed writing. No failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement operates or is to be construed as a waiver thereof; nor will any single or partial exercise of any right, remedy, power, or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

18.5 **Public Announcements.** Neither you nor GiveCentral may use the other's trademarks, service marks, trade names, logos, domain names or other indicia of source, affiliation or sponsorship, in each case, without the prior written consent of the other, which consent may not be unreasonably withheld, conditioned or delayed, except that GiveCentral may, without your consent, include your name and other indicia in its lists of GiveCentral's current or former customers of GiveCentral in promotional and marketing materials. Despite the previous sentence, GiveCentral grants you a revocable, limited, non-exclusive, royalty-free license to use the trademark "GiveCentral®" solely on your fundraising pages for purposes of raising funds. You acknowledge the ownership of GiveCentral's trademarks by GiveCentral, and all use of GiveCentral trademarks by you inures to the benefit of GiveCentral. GiveCentral reserves the right, in its sole discretion, to revoke permission to use the "GiveCentral®" trademark at any time.

18.6 **Notices.** Except as otherwise expressly stated in this Agreement, all notices, requests, consents, claims, demands, waivers and other communications under this Agreement have binding legal effect only if in writing and addressed to as follows (or to another address or another person that you or we may designate from time to time in accordance with this **Section 18.6**):

If to GiveCentral: 2 N. Riverside Plaza
Suite 1350
Chicago, IL 60606
Attention: Legal Dept.

If to you: The email address you provided upon application for Services.

18.7 **Entire agreement.** This Agreement constitutes the final agreement between you and GiveCentral. It is the complete and exclusive expression of the parties' agreement on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement.

18.8 **Assignment.** You may not assign or otherwise transfer any of your rights, or delegate or otherwise transfer any of your obligations or performance, under this Agreement without GiveCentral's prior written consent. We may transfer or assign this Agreement or any right or obligation under it at any time. This Agreement binds and benefits you and GiveCentral and your and GiveCentral's respective permitted successors and assigns.

18.9 **No Third-Party Beneficiaries.** This Agreement is for the sole benefit of you and GiveCentral and your and GiveCentral's respective successors and permitted assigns and nothing in this Agreement, express or implied, is intended to or does confer upon any other Person, any legal or equitable right, benefit or remedy of any nature whatsoever under or by this Agreement.

18.10 **Severability.** If any provision of this Agreement is held invalid, illegal or unenforceable, (a) the validity, legality and enforceability of the remaining provisions of this Agreement are not affected or impaired in any way; and (b) you and we shall negotiate in good faith in an attempt to agree to another provision (instead of the provision held to be invalid, illegal or unenforceable) that is valid, legal and enforceable and carries out your and our intentions to the greatest lawful extent under this Agreement.

18.11 **Governing Law.** This Agreement is governed by and construed in accordance with the laws of Illinois without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of Illinois.

18.12 **Dispute Resolution.** You and GiveCentral agree that all controversies and claims arising under or relating to this Agreement are to be resolved by arbitration on an individual basis in accordance with the rules of the American Arbitration Association before one arbitrator selected in accordance with those rules. You and GiveCentral agree that each of you and us may bring claims against the other only on an individual basis and not as a plaintiff or class member in any purported class or representative action or proceeding. The arbitration is to be conducted in Chicago, Illinois. The arbitrator is to apply Illinois law, without regard to its choice of laws principles. You and we agree to submit to any court of competent jurisdiction for purposes of the enforcement of any award, order or judgment. Any award, order or judgment pursuant to the arbitration is final and may be entered and enforced in any court of competent jurisdiction.

18.13 **Waiver of Jury Trial.** You and we, to the extent permitted by law, knowingly, voluntarily, and intentionally waive our respective rights to a trial by jury in any action or other legal proceeding arising out of or relating to this Agreement and the transactions it contemplates. This waiver applies to any action or legal proceeding, whether sounding in contract, tort or otherwise.

18.14 **Glossary**

“Access Credentials” means any Authorized User name, identification number, password, license or security key, security token, PIN or other security code, method, technology or device used, alone or in combination, to verify an individual's identity and authorization to access and use the Services.

“Aggregated Data” means data and information related to your use of the Services that is used by us in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Services.

“Authorized User” means your employees, consultants, contractors, and agents who are authorized by you to access and use the Services under the rights granted to you under this Agreement.

“Deliverables” means all documents, work product, and other materials that are delivered to you under this Agreement or prepared by or on behalf of GiveCentral in the course of performing the Services.

“Documentation” means any manuals, instructions or other documents or materials that the GiveCentral provides or makes available to you in any form or medium and which describes the

functionality, components, features or requirements of the Services, including any aspect of the installation, configuration, integration, operation, use, support or maintenance of the Services.

“GiveCentral Materials” means the Service Software, Documentation and GiveCentral Systems and any other information, data, know-how, documents, materials, works and other content, devices, methods, processes, hardware, software and other technologies and inventions, including any technical or functional descriptions, requirements, plans or reports, that are provided or used by GiveCentral or any subcontractor in connection with the Services or otherwise comprise or relate to the Services or GiveCentral Systems. GiveCentral Materials include Aggregated Data but do not include Your Materials.

“GiveCentral Personnel” means all individuals involved in the performance of Services as employees, agents or independent contractors of GiveCentral or any subcontractor.

“GiveCentral Systems” means the information technology infrastructure used by or on behalf of GiveCentral in performing the Services, including all computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by GiveCentral or using third-party services.

“Harmful Code” is any software, hardware or other technology, device or means, including any virus, worm, malware or other malicious computer code, the purpose or effect of which is to (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any (i) computer, software, firmware, hardware, system or network or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality or use of any data Processed thereby, or (b) prevent you or any Authorized User from accessing or using the Services or GiveCentral Systems as intended by this Agreement.

“Intellectual Property Rights” are any registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

“Losses” means any losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the costs of enforcing any right to indemnification under this Agreement and the cost of pursuing any insurance providers.

“PCI-DSS” means the Payment Card Industry Data Security Standards.

“Person” means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association, or other entity.

“Process” means to take any action or perform any operation or set of operations that the Services are capable of taking or performing on any data, information or other content. **“Processing”** and **“Processed”** have correlative meanings.

“Representatives” means, with respect to a party, that party's employees, officers, directors, consultants, agents, independent contractors, sub-licensees, subcontractors and legal advisors.

“Service Software” means the GiveCentral software application or applications and any third-party or other software, and all new versions, updates, revisions, improvements and modifications of the foregoing, that GiveCentral provides remote access to and use of as part of the Services.

“Statement of Work” means each statement of work entered into between you and us.

“Third-Party Materials” means materials and information, in any form or medium, including any software, documents, data, content, specifications, products, equipment or components of or relating to the Services that are not proprietary to GiveCentral.

“Your Materials” means any documents, data, know-how, methodologies, software and other materials you provide GiveCentral.