

SmartySearch Terms of Service

Our Community Pty Ltd (ABN 24 094 608 705)

Version 1

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1 Introduction

- 1.1 Our Community Pty Ltd offers an online customised embeddable grants search facility (**SmartySearch**) powered by its Funding Centre grants database, located at www.fundingcentre.com.au, for the primary purpose of providing grant information to grantseekers.

2 Agreement

- 2.1 These terms form a binding **Agreement** between the Customer (**you, your**) and Our Community Pty Ltd (ABN 24 094 608 705) (**we, us, our**) for the supply and use of SmartySearch.
- 2.2 This Agreement should be read in conjunction with the Our Community Terms of Use, and the Our Community Privacy Policy.

3 Our obligations to you

- 3.1 We will supply SmartySearch to you according to the terms of this Agreement, for the period from the **Contract Start Date** until this Agreement is terminated in accordance with clause 11. This period is the **Term** of this Agreement.
- 3.2 We will provide permission and code to allow you to embed SmartySearch in a **Permitted Website/s** to allow members of your community to browse grants.
- 3.3 We will:
- (a) create a tailored grants database using available and **Appropriate Search Parameters** based on your advice of the requirements of grantseekers in your community; and
 - (b) provide you with iframe code to allow SmartySearch to be embedded in your Permitted Website/s with general instructions on how to do so at the Contract Start Date; and
 - (c) provide technical support to assist with initial integration, troubleshooting, and resolving any technical issues related to the embedded SmartySearch feature in accordance with this Agreement; and
 - (d) do our best to ensure timely updates of grant and funding opportunities that appear in SmartySearch; and
 - (e) rectify any data quality issues reported to us.

4 Your obligations to us

- 4.1 You will pay the **Annual Access Fee** annually in advance, within 30 days of the issue date of our invoice.
- 4.2 You will:
- (a) only use SmartySearch strictly in accordance with this Agreement and make sure that your employees, officers and agents do the same; and
 - (b) do your best to prevent unauthorised access to or use of SmartySearch; and
 - (c) notify us immediately if you become aware of any unauthorised access to or use of SmartySearch; and

- (d) ensure appropriate display and placement of the embedded database on your website.
- 4.3 You will comply with all obligations, duties or responsibilities imposed on you under the terms of this Agreement, the Our Community Terms of Use, and the Our Community Privacy Policy, in each case as amended from time to time.
- 4.4 If you need to contact us, you will do so through the Customer Support channels listed in the Our Community Terms of Use, and the Our Community Privacy Policy.
- 4.5 You will notify us in writing (by email or post) if there are changes to the **Primary Contact** or **Billing Contact** for your organisation.

5 Modifications to SmartySearch

- 5.1 We provide regular updates and upgrades to Funding Centre, which will become available to your SmartySearch feature, if relevant, as part of your Annual Access Fee.
- 5.2 We may add, update or remove features and functionality (**Modifications**) at any time.
- 5.3 You agree to accept all updates and modifications.

6 Service availability

- 6.1 **Downtime** is defined as any period when SmartySearch is not accessible and available for use by you due to reasons attributable to us. Downtime includes, but is not limited to, scheduled maintenance, unexpected outages, and any other events that result in the service's unavailability.
- 6.2 We are not responsible for any Downtime that is caused or contributed to by:
 - (a) any maintenance;
 - (b) a malfunction, interruption of access to, or failure of any network;
 - (c) any of your software, internet or network access, or computing devices;
 - (d) any unlawful, negligent or wilful act or omission, by you, your agents, contractors or invitees;
 - (e) your breach of the Agreement;
 - (f) any act or omission of a third party (other than our sub-contractors);
 - (g) any circumstance or event beyond the reasonable control of Our Community, including natural disaster, storm, flood, fire, earthquake, power or water shortage, telecommunication failure, or acts of any government or government authority;
 - (h) Any outage resulting from issues with third-party service providers or infrastructure beyond our control; or
 - (i) either party's exercise of its rights to terminate the Agreement.
- 6.3 We will minimise Downtime to the best of our ability, including aiming, where possible, to restrict scheduled maintenance to 8:00pm and 2:00am Australian Eastern Standard/Daylight Time.
- 6.4 We will notify you promptly of unexpected outages. Notifications will be sent via email to your designated contact(s).
- 6.5 We will promptly respond to information received in writing from you about any service interruptions you experience.

- 6.6 We are committed to continuously improving the availability of SmartySearch and will regularly review and update this Agreement as needed.

7 Intellectual property

- 7.1 We have a worldwide, exclusive licence to use and sub-licence the use of Funding Centre and SmartySearch.
- 7.2 We grant you during the Term a non-exclusive, non-transferrable licence to use SmartySearch for the purpose of providing access to grants information to your community in accordance with this Agreement, at no charge to the end user.
- 7.3 All **Intellectual Property Rights** relating to Funding Centre and SmartySearch, including any developments, modifications or improvements to them, remain our property (or our licensors' property).

8 Data and security

- 8.1 We may collect anonymised usage data to improve the user experience. Anonymised usage data may be used as input to Data Science activities, as set out in our Privacy Policy.

9 Confidentiality

- 9.1 This clause sets out each party's obligations in relation to the other party's **Confidential Information**. This clause survives the termination or expiry of this Agreement.
- 9.2 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.
- 9.3 If you receive a request to disclose any Confidential Information concerning us, you will give us reasonable notice before complying with the request.
- 9.4 We may cite your organisation name in our customer list. However, we will promptly remove it from the list if you ask us to, by contacting Customer support services by email or phone. Our contact details are provided in the Our Community Terms of Use and the Our Community Privacy Policy.

10 Liability

- 10.1 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 SmartySearch, 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.
- 10.2 Our total aggregate liability for any loss arising out of or in connection with this Agreement is limited to the amount of the current year's Annual Access Fee.
- 10.3 The limitation of amount under clause 10.2 does not apply to the extent that loss arises directly from any of the following:
- (a) personal injury (including sickness and death);
 - (b) loss of or damage to tangible property;
 - (c) infringement of a third party's Intellectual Property Rights;
 - (d) unlawful, wilful or illegal acts;
 - (e) a breach of our privacy or confidentiality obligations under this Agreement.

11 Termination of Agreement

- 11.1 You may terminate this Agreement by giving us thirty days' written notice.
- 11.2 We may terminate this Agreement by giving you thirty days' written notice.
- 11.3 Also, either party may immediately terminate this Agreement, by written notice, if the other party:
- (a) breaches a material clause of this Agreement, and fails to remedy the breach within fourteen days of receiving notice of the breach; or
 - (b) breaches a material clause of this Agreement, and the breach is not capable of being remedied; or
 - (c) becomes **Insolvent**.
- 11.4 We are not obliged to refund any part of the Annual Access Fee if:
- (a) you terminate this Agreement under clause 11.1; or
 - (b) we terminate it under clause 11.3 for your breach.
- 11.5 We must refund the Annual Access Fee on a pro rata basis if:
- (a) we terminate this agreement under clause 11.2; or
 - (b) you terminate it under clause 11.3 for our breach.
- 11.6 Termination of this Agreement does not affect the parties' rights and obligations accrued up to the end of the Term.

12 Notices

- 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 (Australian Eastern Standard Time).

13 General

- 13.1 This Agreement, along with the supporting policies and terms listed in clause 2.2, 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.
 - (b) In the event of any inconsistency between this Agreement and supporting policies or terms listed in clause 2.2, the provisions of this Agreement prevail.
- 13.2 We may vary the terms of this Agreement by giving you notice through email to your Primary Contact (**Variation Notice**). You may object to 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, but must first give you written notice.
- 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 the Victorian courts.

14 Definitions

Agreement	means this Agreement between you and Our Community consisting of clauses 1 to 13.
Annual Access Fee	means the amount payable annually by you as agreed between the parties for use of the Funding Centre embeddable grants database (SmartySearch).
Appropriate Search Parameters	means the search filters that we have determined to be relevant to your grantseeking community. We will not provide a customer with access to the entire Funding Centre database.
Billing Contact	means the Customer representative we should contact regarding invoicing and payments. See also Primary Contact.
Business Day	means a day that is not a Saturday, Sunday, or public holiday in Victoria, Australia.
Confidential Information	<p>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 the Annual Access Fee, as well as 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:</p> <ul style="list-style-type: none">A. information in the public domain, unless disclosed contrary to this Agreement;B. information lawfully received from a person who had the unrestricted legal right to disclose it free from any obligation of confidentiality.
Consumer Legislation	means Schedule 2 of the <i>Competition and Consumer Act 2010</i> (Cth).
Contract Start Date	means the date recorded on the first invoice as the date on which your SmartySearch subscription begins, or if not recorded, the date on which the embeddable iframe is made available to you.
Customer	means the party recorded as such in the invoice, or if not recorded, the entity to which we provide SmartySearch, and includes the Customer's agents, officers or representatives.
Downtime	has the meaning given in clause 6.1.
Insolvent	<p>means, in relation to a legal person, when the person:</p> <ul style="list-style-type: none">A. is:<ul style="list-style-type: none">I. insolvent as that term is defined in the Corporations Act 2001 (Cth); or

- II. the subject of an event described in sections 459C(2) (a) to (f) or section 585 of the Corporations Act (or it makes a statement from which another party to this Agreement may reasonably deduce it is so subject); or
 - III. an insolvent under administration, or suffers the appointment of a controller, administrator, liquidator or provisional liquidator as those terms are defined in section 9 of the Corporations Act; or
 - IV. dissolved; other than to carry out an amalgamation or reconstruction while solvent; or
- B. is otherwise unable to pay its debts as and when they become due and payable; or
 - C. being a natural person, commits or suffers an act of bankruptcy; or
 - D. takes or suffers a similar act under the law of any jurisdiction.

Intellectual Property Rights

means any one or more of the following:

- A. industrial and intellectual property rights throughout the world (including all copyright and analogous rights),
- B. rights in relation to inventions or discoveries (including patent rights, designs, circuit layouts),
- C. trade names, brand names, and registered or unregistered trademarks (including service marks),
- D. moral rights.

Modifications

refers to any updates and upgrades made to the Funding Centre and SmartySearch, including the removal or addition of features and functionality which may affect the look and feel of SmartySearch embedded in your website.

Permitted Website/s

means the website or websites that under the terms of the Agreement have been permitted by us to have SmartySearch embedded in via an iframe.

Personal Information

has the same meaning as in the relevant Privacy Legislation.

Primary Contact

means the Customer representative we should contact regarding SmartySearch implementation, Variation Notices, or if we need to get in touch with your organisation in regards to your Funding Centre account. See also Billing Contact.

Privacy Legislation	means, as applicable, the Privacy Act 1988 (Cth), Australian state or territory privacy laws or any legislation that replaces those laws.
Privacy Policy	means the Our Community Privacy Policy (as amended from time to time) available at www.ourcommunity.com.au/privacy
SmartySearch	means the Funding Centre grants database embedded in your website/s under the terms of the Agreement.
Term	has the meaning given in clause 3.1.
Variation Notice	has the meaning given in clause 13.2.