

Everyclick Compliance Agreement

For charities with a trading company

1.0 Welcome

1.1 Introduction

This agreement covers the relationship between charities and Everyclick Ltd.

We also have separate documents that cover:

- [Terms and conditions](#)
- [Privacy and data](#)
- [Cookies](#)

If you use other products and services from Everyclick Ltd, as a charity or as a fundraiser, additional policies may apply – you should check the relevant website(s) for those additional policies.

This agreement was last updated on 4th October 2017.

1.2 Summary

The Charities Act 2016 requires an agreement to be in place between a charity (regardless of size) and an organisation that fundraises on their behalf. The agreement must be clear about certain standards, how the charity protects the public (including vulnerable members of the public) and how the charity monitors their compliance.

We therefore require charities to complete and accept our agreement. Accepting the agreement does not invoke any charges or fees to the charity, nor does it affect how much is paid to the charity. The agreement is non-exclusive and does not involve any obligation to continue using Everyclick's services.

There are two versions of our agreement depending on whether your charity has a 'trading company' (i.e. a registered company that operates alongside the charity, such as a charity shop).

The Charities Act states that because Everyclick benefits from having your charities listed on our services, there must be a remuneration to the charity for this.

Therefore, once the agreement is in place, our payments to a charity are split into two parts.

- 1) A 'trading payment' – this is Everyclick's payment to the charity in return for being able to list them on our services and to use the charity's trade mark for the services. This is not an additional payment but is allocated from the funds that have been raised.
- 2) The remainder is a regular donation to the charity.

When completing the agreement, the charity chooses the proportion of the trading payment. The overall value of the payment is not affected by this percentage.

As an illustration, if £100 has been raised through our services and is ready for payment, and the charity has set the trading payment percentage to 10%, the payment would still be £100 in total, comprising of a £10 trading payment and £90 donation.

2.0 Introduction to the agreement

2.1 Agreement Details

The Agreement is non-exclusive and has a simple six month rolling term; it is compliant with the 1992 and 2016 Charities Acts. It includes in a Self-Billing Agreement to enable Everyclick to generate VAT taxable invoices on your behalf so that Everyclick can make payments to you. It lasts for 6 months, unless renewed, or terminated earlier.

By accepting the terms of the Agreement, you also accept the terms of the Self-Billing Agreement.

2.2 Commercial Participation Agreement

This is an agreement entered into on the date this online form is completed ("Commencement Date") between:

- 1) Everyclick Limited (Company number: 05181419) whose registered office is at: Everyclick Ltd, Basepoint Business Centre, Crab Apple Way, Vale Business Park, Evesham, Worcestershire WR11 1GP ("The Company");
- 2) The Charity as listed in the Everyclick Administration System;
- 3) The Trading company of the Charity as listed in the Everyclick Administration System. ("The Trading Company" or "TC").

2.3 Definitions

In this Agreement the following words and phrases shall have the following meanings, unless the context otherwise requires:

'The Acts' - the Charities Act 1992 and the Charities Act 2016.

'Charity Supporters' Registered Users who Select the Charity from the Website and uses the GAYL App™ or downloads the GAYL App™ from a website authorised by the Company.

'Data' - all lists of names and/or other details of individuals in whatever form supplied to or held by the Company.

'Donation' - a gift to a charity entirely free of any reciprocal obligation.

'Company Logos' - the logo of the Company, details of which appear in Schedule 1 and which is subject to trademark registration number EU004295441 and other logos of the Company, details of which appear in Schedule 1.

'GAYL App' - The GAYL® application to be downloaded by Users via the web from www.giveasyoulive.com or www.everyclick.com.

'Gross Revenue' - receipts of income net of VAT.

'Name' - the name of the Charity (Charity registration number as entered within the Everyclick Administration System.

'Logo' - the logo of the Charity (Registered Trademark No (if applicable) as entered within the Everyclick Administration.

'Platform Names' – Everyclick registered trademark number EU004295077 and Give as you Live registered trademark numbers EU009188319 and EU009338849 and any other marks applied for from time to time by the Company.

'Product' or 'Products' - fundraising tools and applications, including www.giveasyoulive.com, www.everyclick.com and other on-line tools as developed by the Company from time to time.

'Registered' - registered with the Company in accordance with the Company's requirements

'Regulations' - the Charitable Institutions (Fundraising) Regulations 1994

'Self-Billing Agreement' - the agreement set out in Annex A.

'Select' - select a particular charity from the Website to benefit from the use of the GAYL App™ by the User.

'Selection' - the process of a User selecting a particular charity from the Website or from the GAYL App™ to benefit from the User's use of the GAYL App™.

'Services' - the provision by the TC of services in connection with the obligations contained in clause 1.1 and clause 2.

'Term' - a period of 6 months commencing on the Commencement Date.

'Trading Payment' - transfer of a sum of money, the amount agreed periodically between the TC and the Company as truthfully representing the commercial value of all Services supplied by the TC in a given calendar month, as detailed in the Everyclick Administration System.

'Use' - use of the GAYL App™ to be measured solely by the on-line transactions made by and tracked by the Company to the User(s).

'User' - an individual that downloads and uses the Products

'Website' - www.giveasyoulive.com and/or www.everyclick.com, and any other fundraising tool operated by the Company.

2.4 Background

a) The Company has developed and operates the Products and has resolved that a share of the gross revenue arising from the use of its Product will for the foreseeable future be given for charitable purposes.

b) The Company is registered with the Fundraising Regulator and commits to practicing the fundraising standards set out within their [Code of Fundraising Practice](#) and their [Fundraising Promise](#).

c) This agreement will set out the terms by which the Charity will receive a proportion of that sum. The Charity will receive a proportion equivalent to the proportion in which its Supporters use the Products and select the Charity as the beneficiary. The activity of Users who do not select a specific charity will, depending on the service used, either be allocated to a particular charity selected by the Company at its sole discretion, or be allocated on a pro-rata basis across all active charities on the Website.

d) The Company will make a Trading Payment in accordance with the Self-Billing Agreement in return for all services whatsoever provided by the TC to the Company and the Company will make a donation to the Charity in respect of the remaining portion of gross revenue allocated to the Charity.

e) TC is wholly owned by the Charity (and covenants all its taxable profits to the charity).

f) The Charity is the beneficial owner of the Name and Logo and has licensed TC to exploit them, in particular, to grant sub-licenses.

g) The TC will commit to promoting the Products, unless an agreement to the contrary has been reached with the Company.

h) The Company is a commercial participator in relation to the Charity as defined in Section 58 of the Charities Act 1992.

i) This agreement is entered into to comply with the Acts and the Regulations.

3.0 What is agreed

3.1 Appointment of Sub-licensee

3.1.1 In consideration of the undertaking to make Trading Payments given by the Company in this agreement, TC hereby appoints the Company as its non-exclusive sub-licensee to use the Name and Logo of the Charity in connection with the Products and to exploit it in any related advertising materials.

3.1.2 In consideration of the undertakings given by TC in this agreement, the Company hereby appoints TC as its non-exclusive licensee to use the Platform Names and Company Logos in connection with promoting the Products for the Term on the terms of this Agreement.

3.2. Obligations of TC

TC undertakes with the Company that it shall:

3.2.1 Promote the Company's Product to the best of its abilities unless an agreement to the contrary has been reached with the Company.

3.2.2 Obtain the prior written approval of the Company in relation to all advertising materials used by TC which utilise the Platform Names and/or Company Logos;

3.2.3 Donate all its taxable profits for the financial period(s) to which this agreement relates to the Charity;

3.2.4 Not bring the Company into disrepute in any way whatsoever and ensure that none of its activities or those of any subsidiary or holding company are or will be inimical to the activities of the Company;

3.2.5 Abide at all times with the Data Protection Act 1998 and the General Data Protection Regulations (when they come into effect in May 2018) in relation to the Data.

3.3 Financial obligations of the Company

The Company undertakes with the Charity and TC that it shall:

3.3.1 In respect of commissions tracked to the User and nominated by them for the benefit of the Charity, every calendar month give at least 50% of such revenue to the Charity;

3.3.2 Make the Trading Payment to the TC Monthly out of the monies allocated to the Charity under clause 3.1;

3.3.3 Pay monthly to the Charity a Donation which equals:- the sum allocated for the Charity's benefit under clause 3.3.1;- less the Trading Payment under clause 3.3.2; provided that the Donation is not less than the minimum payment amount (set at the discretion of the Company

having regard to the economic viability of distributing very small sums) in which case such sum shall be added to the Donation for the following calendar month.

3.4 Ancillary obligations of the Company

The Company undertakes with the Charity and TC that it shall:

3.4.1 Not bring the Charity into disrepute in any way whatsoever and ensure that none of its activities or those of any subsidiary or holding company are or will be inimical to the activities of the Charity;

3.4.2 Keep detailed books of account and records relating to all Trading Payments and Donations and allow the Charity and/or TC, their employees, agents and professional advisers to inspect, audit and take copies of any appropriate records of the Company relating to the Trading Payments to TC and the Donations to the Charity and to ensure that the Charity is able to monitor the Company's compliance with the requirements of this Agreement;

3.4.3 It will use all reasonable skill and care in complying with its obligations under this agreement and that it shall meet or exceed the standards attained by other companies offering similar services;

3.4.4 It shall use its reasonable endeavours to ensure that the Products and the Websites and all related services are operational throughout the Term;

3.4.5 It will perform its obligations under this Agreement in such a way as to not cause any harm or interruption to the Charity's business;

3.4.6 Abide at all times with the Acts;

3.4.7 It shall use its reasonable endeavours and have appropriate systems and processes in place to protect people in vulnerable circumstances and others from unreasonable intrusion to their privacy, unreasonably persistent approaches or undue pressure to donate to the Charity;

3.4.8 Abide at all times with the Data Protection act 1998 and the General Data Protection Regulations (when they come into effect in May 2018) in relation to the Data.

3.5. The Software Licence

3.5.1 The Company is the developer and proprietor of the Products (which include the GAYL App, a tool-kit and administration web-pages for use by registered charities).

3.5.2 The Company grants to the Charity and TC a non-exclusive, non-transferable, revocable licence to access and use the Products and hereby permits the Charity's Supporters to download the applicable Products from the Charity's website (the Software Licence'). The Parties agree that the Charity's Supporters shall have the right to use the Products.

3.5.3 Clause 3.5.2 above allows the Charity to install a reasonable number of copies of the Products on computers which are owned or controlled by the Charity for use internally by the Charity's employees whose job duties require the use of the Products at work or at home. No other use of and no external redistribution of the Products is permitted.

3.5.4 The Charity shall be solely responsible at all times for maintaining the confidentiality and security of any passwords and login details in association with the Agreement.

3.5.5 Except as and only to the extent expressly permitted in the Agreement or by applicable law, Charity may not copy, decompile, reverse engineer, disassemble, modify, or create derivative works of the Products or any part thereof. Any software forming part of the Products is not intended for

use in the operation of equipment in which the failure of the GAYL App software could lead to death, personal injury, or serve physical or environmental damage.

3.5.6 The Charity may not rent, lease, lend or sub-licence the Products. In respect of any NFR ('Not For Resale') copies, notwithstanding other sections of the Agreement, the Products provided on a promotional basis may only be used for demonstration, testing and evaluation purposes and may not be resold or transferred.

3.6. Use of Data

3.6.1 The Charity and TC each agree that solely in relation to use by Charity of the Products the Company and any wholly owned subsidiaries may collect and use technical, and directly related information, about any Charity computer running the Product (and application software and peripherals) that is gathered periodically to facilitate the provision of software updates, Product Support and other services to the Charity (if any) related to the Products. The Company may use this information, so long as the Charity is not identified in any way, to improve the Company's products or to provide services or technologies provided to the Charity or to any third party now or at any time in the future.

3.6.2 The Charity agrees that its Supporters' use of the Products will generate user data which the Company may collate and can down-load onto the administration page at the Charity's request.

3.7. The Trading Payment

3.7.1 The Trading Payment is exclusive of VAT.

3.7.2 The Company will advise the TC of the monies allocated to the Charity for the previous month. The Company will issue a self-billing invoice to the TC of the appropriate period (plus VAT if applicable) in respect of the Trading Payment; in accordance with the amount entered into the Everyclick Administration System.

3.8 Termination

3.8.1 The Charity, TC or the Company shall be entitled to terminate this agreement:

3.8.1.1 Upon serving written notice of their wish on the other parties at any time during the Term effective 3 months from the date that both other parties have received the notice;

3.8.1.2 Forthwith if any party does anything which in the reasonable opinion of one of the other parties brings or is reasonably likely to bring their name or reputation into disrepute; or

3.8.1.3 Forthwith if a resolution is passed for the voluntary or compulsory liquidation of any party or an administrator or a receiver is appointed over all or part of its business or if any party has a bankruptcy petition presented against it.

3.8.2 Subject to the rights to terminate under clause 3.8.1 this agreement shall last for the duration of the Term and upon expiration of the Term and unless any party serves notice on the other parties at least three months prior to the expiration of the Term informing them that they do not wish the contract to be renewed this agreement will be renewed automatically and run for another Term. Upon renewal under this clause any references to Commencement Date in this agreement will refer to the date of renewal.

3.8.3 If this agreement is terminated under clause 3.8.1 all parties will have the right to sell and/or distribute all merchandising products, if any, already in existence bearing the name and logo of

the other parties and the rights and obligations of the Company, TC and the Charity shall continue during that period.

3.8.4 If any party terminates this agreement under clause 3.8.2 and 3.8.3 both the Company and TC will no longer be authorised to use the name and logo of the other party and will cease immediately to distribute, sell and provide all existing products and services bearing the name and/or logo of the other party.

3.8.5 Notwithstanding termination of this agreement clause 3.3 and 3.9 shall survive termination.

3.9 Confidentiality

3.9.1 The Charity, TC and the Company agree to treat as secret and confidential and not to at any time, for any reason, disclose or permit to be disclosed to any person or persons, or otherwise make use of or permit to be made use of, any information relating to the Charity's, TC's or the Company's business affairs or finances (as the case may be) where knowledge or details of the information were received prior to or during the Term.

3.9.2 The obligations of confidence referred to in clause 3.9 shall not apply to any confidential information which:

3.9.2.1 Is in the possession of and is at the free disposal of the Charity, TC or the Company, or is published or is otherwise in the public domain prior to the receipt of such information by the Charity, TC or the Company; or

3.9.2.2 Is or becomes publicly available on a non-confidential basis through no fault of the Charity, TC or the Company; or

3.9.2.3 Is lawfully received or independently developed by a party or is required to be disclosed by law, regulation or supervisory body.

3.10 General

3.10.1 No amendment or addition to this agreement shall be made unless made in writing and executed by the parties.

3.10.2 This agreement shall be governed by the laws of England and Wales.

3.10.3 Any notice to be served on any of the parties shall be sent by pre-paid recorded delivery or registered post to the address above (or such other address may be advised from time to time) and shall be deemed to have been received within 72 hours of posting to the correct number of the addressee.

3.10.4 If any term or provision in this Agreement shall in whole or in part be held to any extent to be illegal or unenforceable under any enactment or rule of law that term or provision or part shall to that extent be deemed not to form part of this agreement and the enforceability of the remainder of this agreement shall not be affected.

3.10.5 Neither party shall be liable for any breach of any term of this Agreement that is the result of any cause beyond the reasonable control of the party in breach.

4.0 Annex A - Self-Billing Agreement

4.1 Everyclick Ltd Agrees:

1. To issue self-billed invoices for the TC as in the Everyclick Administration System whilst this Agreement is in place.
2. To complete self-billed invoices showing the Trading Company's name, address and VAT registration number, together with all the other details which constitute a full VAT invoice.
3. To make a new self-billing agreement in the event that their VAT registration number changes.
4. To Inform the Trading Company if the issue of self-billed invoices will be outsourced to a third party.

4.2 The Trading Company agrees:

1. To accept invoices raised by Everyclick Ltd on their behalf whilst this Agreement is in place.
2. Not to raise sales invoices for the services supplied by Everyclick Ltd.
3. To notify Everyclick Ltd immediately if
 - a. Its VAT number changes
 - b. If it ceases to be VAT registered
 - c. Sells its business or part of its business