

Terms

Dated: **12 October 2015**

1. About these terms

These are the terms and conditions governing our supply of the Community2Go Service to you, including our obligations to each other (**Terms**).

1.1. Definitions

Some words in these Terms have particular meanings:

ACL or **Australian Consumer Law** means Schedule 2 of the Competition and Consumer Act 2010 (Cth).

Agreement means the agreement between you and CommunityToGo, which includes your Order and these Terms.

Business Day means a day that is not a Saturday or a Sunday or a bank or public holiday in Perth, Australia.

Community means you and each end user of the Community2Go App in your team or group or club.

Community2Go Service means the provision of the functionality outlined in your Order (including the Community2Go App) and the associated technical support and maintenance services.

Community2Go App means the application which we make available to your Community to enable members of your Community to communicate with one another, amongst other things.

Content means any content that you or any member of your Community posts to, or makes available on, the App. Content includes, without limitation, messages, information, publications, images or videos.

End-user Terms means the terms and conditions that govern our supply of the Community2Go App, and any other app we may make available, to end-users. The End-user Terms are available here: https://www.community2go.com.au/documents/Community2Go_End_User_Terms.pdf

Fees means fees and charges relating to the provision of the Community2Go Service, including all fees set out in any Order and any ongoing technical support fees.

Loss or Claim means any loss, liability, action, proceeding, damage, cost or expense (including all reasonable legal costs and expenses), including liability in tort and consequential and economic losses.

Order means a signed purchase order or completed online order between you and CommunityToGo which includes your acceptance of and agreement to these Terms.

Our App means the application we use to communicate with you and your Community. For the avoidance of doubt, it is separate to the Community2Go App.

Personal Information means that term as defined in the Privacy Act. Basically, this is information about an identifiable individual.

Privacy Act means the *Privacy Act 1988 (Cth)*.

Third Party Services means any services provided by a person we have contracted to help us provide the Community2Go Service. This includes services from service providers engaged by us for the delivery, maintenance and administration of the Community2Go Service.

we, us, our or **CommunityToGo** means CommunityToGo Pty Ltd ABN 79 160 476 942 of PO Box 1477 Joondalup DC, WA, 6919 and 08 6102 5117.

you and **your** means the client indicated in the Order and, when appropriate, includes the rest of the Community.

2. General terms

2.1. Nondisclosure

- (a) By virtue of the Agreement, the parties may have access to information that is confidential to one another.

We each agree to disclose only information that is required for the performance of obligations under the Agreement.

Confidential Information means the terms and pricing under this Agreement and all information clearly identified as confidential at the time of disclosure. However a party's Confidential Information does not include information that:

- (i) is or becomes a part of the public domain through no act or omission of the other party;
- (ii) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party;
- (iii) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or

- (iv) is independently developed by the other party.
- (b) We each agree to hold each other's Confidential Information in confidence for a period of three years from the date of disclosure.
- (c) We each agree to disclose Confidential Information only to those employees or agents or any bona fide purchaser of the business to which the Agreement relates who are required to protect it against unauthorized disclosure. Nothing shall prevent either party from disclosing the terms or pricing under this Agreement in any legal proceeding arising from or in connection with this agreement or disclosing the confidential information to a federal or state governmental entity or recognized stock exchange as required by law or the rules of the recognized stock exchange.

2.2. Use of the Community2Go Service and our intellectual property

- (a) Until your use of the Community2Go Service expires or is terminated and subject to your compliance with the Agreement, you have a non-exclusive and non-transferable licence to use the Community2Go Service as permitted in accordance with these Terms.
 - (c) Except where specifically set out in these Terms, these Terms do not give you any intellectual property or other rights in, or subsisting in, any of our:
 - (i) software, documents, templates, marketing material, trademarks, business names, logos, trading styles, processes or methodologies; or
 - (ii) other intellectual property.
- You (including your staff, agents or contractors) must not use, reproduce or modify any of these documents or other intellectual property rights.
- (d) You agree that any intellectual property rights in any systems, processes or methodologies developed by you which derive from your use of the Community2Go Service become our intellectual property.
 - (e) You must notify us immediately if you become aware of any:
 - (i) unauthorised copying or use of the Community2Go Service; or
 - (ii) other infringement of our intellectual property rights.
 - (f) If a claim is made or an injunction is obtained against the use by you of any part of the CommunityToGo Service by reason of an infringement of intellectual property rights by the CommunityToGo Service, we may at our option and expense:

- (i) procure the right for you to continue using the CommunityToGo Service which is the subject of infringement claim; or
 - (ii) modify, alter or substitute the Community2Go Service in order to avoid the alleged infringement.
- (g) You indemnify us against any Claim or Loss arising out of a claim by a third party alleging infringement of intellectual property rights arising from:
 - (i) use of the Community2Go Service in combination by any means and in any form with other goods not specifically approved by us;
 - (ii) use of the Community2Go Service in a manner or for a purpose not reasonably contemplated by the Agreement or not authorised by us;
 - (iii) modification or alteration of the Community2Go Service without our prior written consent; or
 - (iv) any transaction entered into by you relating to the Community2Go Service without our prior consent in writing.

2.3. Payment of Fees, taxes and other duties

- (a) You must pay us all Fees due to us in relation to your use of Community2Go Service, on the due date as specified in the relevant invoice. Unless otherwise agreed and indicated in the relevant invoice, our standard payment terms require payment within 30 days of issue of the invoice.
- (b) Fees may be changed or introduced based on new functionality provided within the Community2Go Service and/or the associated costs of the Community2Go Service functionality that requires the usage of Third Party Services and payment of the third party fees for those Third Party Services.
- (c) By giving you at least 20 Business Days' notice before the change takes effect, we may change the amount of periodic Fees or introduce a new Fee. Such changes will not affect the Fees relating to any support periods for which you have already paid and we will not increase the annual Fees by more 4 % over the prior year's Fees.
- (d) Upon agreement of both parties, we may change the circumstances in which, or frequency with which, a Fee is payable.
- (e) All payments due to us (eg. Fees), unless already stated to be GST inclusive, are to be increased by the amount of any GST liability we have in relation to supplies we make to which those payments relate.

- (f) You must pay all duties (eg. stamp duty, other government charges or third party service fees) payable in relation to your usage of the Community2Go Service. If we have paid them, they must be reimbursed by you on our request.

2.4 Privacy and Communication with End-users

- (a) By using the Community2Go Service, you acknowledge and agree that we require access to the Personal Information of your Community. You acknowledge that, where we hold Personal Information of any member of your Community, we must comply with our obligations under the Privacy Act in respect of this Personal Information.
- (b) In the event that you provide us with this Personal Information, you warrant that you have permission from your Community to make this disclosure to us. You undertake that you will continue to have this permission as long as this Agreement remains in effect. We may request that you provide evidence of this permission at any time during the term of this Agreement. You must comply with any such request within 2 business days.
- (c) From time to time, we may request that you send to each end-user of the Community2Go App, on our behalf, our Privacy Policy and End-user Terms (or a link to our Privacy Policy and End-user Terms) or a notice relating to changes to these documents. You must comply with any such request within 5 business days.
- (d) The collection, use and disclosure of Personal Information by us is regulated by the Privacy Act. For more information about our policy on our management of the Personal Information of your Community, see our Privacy Policy which is available by request or at www.communitytogo.com.au.

3. Force Majeure

Neither of us shall be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancellation of any export or other license); other event outside the reasonable control of the obligated party. We both will use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than 90 days, either of us may cancel unperformed services upon written notice. This section does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures or your obligation to pay for products delivered or services provided.

4. Availability of the Community2Go Service

You acknowledge that:

- (a) The Community2Go Service could be disrupted if systems failure occurs due to networks or technology used by either us or third parties involved in providing the Community2Go Service.
- (b) We may update, change or suspend access to all or part of the Community2Go Service at any time and from time to time.
- (c) Without limiting paragraph (b) above, we may suspend the operation of the Community2Go App for repair or maintenance work or in order to update or upgrade the contents or functionality of the Community2Go App at any time and from time to time. We do not guarantee that access to or use of the Community2Go App or any sites or pages linked to it will be uninterrupted or error free.

5. Warranties

- (a) In addition to any rights and remedies you have under the law, CommunityToGo warrants that the Community2Go Service will operate in all material respects as described in the Order for one year after your Order for the service. CommunityToGo will investigate any allegation of warranty breach notified and will, upon CommunityToGo's verification, rectify the Community2Go Service such that it operates in all material respects as described in the Order without additional charge to you within a reasonable time.

CommunityToGo will not be liable under this clause to the extent that you have used the Community2Go Service other than in accordance with the Agreement.

- (b) To the maximum extent permitted by law, you must notify CommunityToGo in writing that the Community2Go Service is not operating in all material respects as described in the Order within one year of your Order and this express warranty will expire upon the first anniversary of your Order.
- (c) When supplied to a consumer (as defined by the Australian Consumer Law), our provision of the Community2Go Service comes with guarantees that cannot be excluded under the Australian Consumer Law. Where there is a failure to comply with a consumer guarantee, consumers are entitled, and our liability to consumers is limited, to:
 - (i) the re-supply of the Community2Go Service;
 - (ii) the payment of the cost of having the Community2Go service re-supplied,
- (d) Without limiting the express warranty stated in clause 5(a) and the applicable consumer guarantees provided under the Australian Consumer Law, , the Community2Go Service and any Third Party Services provided under the Agreement are provided "as is", and we and our suppliers disclaim all other warranties.

- (e) To the maximum extent permitted by law and without limiting the Australian Consumer Law, CommunityToGo's entire liability will be limited to the re-performance of the deficient Community2Go Service, or if CommunityToGo cannot substantially correct a breach in a commercially reasonable manner, you may end the service and recover the fees paid to CommunityToGo for the deficient service.

6. Technical Support

- (a) For purposes of the Order, technical support consists of annual technical support services for the Community2Go Service. Annual technical support (including first year and all subsequent years) is provided under CommunityToGo's technical support policy in effect at the time the services are provided (**Technical Support Policy**).

The Technical Support Policy is incorporated in this agreement and is subject to change at CommunityToGo's discretion; however, policy changes will not result in a material reduction in the level of services provided during the current period for which Fees for technical support have been paid. You may access the current version of the Technical Support Policy at <http://www.CommunityToGo.com>.

- (b) Technical support is effective upon the effective date of the relevant Order unless otherwise stated in your Order.

7. Your responsibilities

7.1. Protecting your username and password – for accessing Web administration functions

- (a) You agree that you are responsible if your login details as web administrator of your Community are used by an unauthorised person.
 - (i) Unless you take adequate security precautions, it could be possible for an unauthorised person to gain access to your Community2Go Service. It is important to take all reasonable precautions to ensure your username and password are not misused, and remain secure and confidential. In particular:
 - (A) you must not tell anyone who does not require access to the web administration function your username or password; and
 - (B) you must not let any third party, whether acting as your agent or not, access the Community2Go Service using your username and password; and

- (C) if you think any unauthorized third party might know your password you should reset your password.

7.2. Other responsibilities you have as a user

- (a) Content - You will not, and will ensure that your authorized persons do not, post to the App any Content that is offensive, defamatory, or in breach of applicable laws or regulation, including in relation to privacy and intellectual property rights;
- (b) No interference with the Community2Go Service – You will not, and will ensure that your authorized persons do not:
 - (i) interfere with the operation of the Community2Go Service or overload the system;
 - (ii) reverse-engineer, reverse-assemble, decompile, or otherwise attempt to discover source code, formulas or processes in respect of the software behind Community2Go Service; or
 - (iii) copy, reproduce, alter, modify, create derivative works, or publicly display any part of any content from the Community2Go Service except where we have given you permission.
- (c) Cooperation and limited authority in relation to third parties – You:
 - (i) must do all things we consider appropriate (acting reasonably) to enable us to fulfil our obligations to third parties in relation to the Community2Go Service; and
 - (ii) authorise us to give a third party or other person any authority, consent or instruction in respect of CommunityToGo, to enable us to provide the Community2Go Service to you.
- (c) Change of details – You must let us know of any changes to your details which you have provided to us in relation to Community2Go Service, and provide any proof of the change we reasonably require.

8. Termination

8.1. How can you end your usage of the Community2Go Service?

- (a) You can cancel your usage of the Community2Go Service by giving us at least 30 days' written notice. Any fees paid by you prior to cancellation for convenience are non-refundable.

- (b) Your usage of the Community2Go Service will cease on the effective date of termination. During the notice period, you are still liable for any Fees in relation to your use of Community2Go Service up to the effective date of termination.

8.2. When we may terminate your usage of the Community2Go Service without prior notice

- (a) Circumstances – If any of the situations set out below occurs, we may terminate or suspend your Community’s usage of the Community2Go Service without prior notice. We will notify you of your suspension or termination as soon as possible. The situations are:
 - (i) you fail to remedy a material breach of these terms and conditions within 5 Business Days after we notify you of the breach;
 - (ii) in our reasonable opinion, a change to any Third Party Services necessary for the operation of the Community2Go Service renders the ongoing operation of the Community2Go Service substantially unworkable or non-functional or economically unviable;
 - (iii) in our reasonable opinion, the actions of a regulator or a change in law or regulation makes the ongoing operation of the Community2Go Service substantially unworkable or non-functional;
 - (iv) we reasonably believe termination or suspension is necessary either to protect the security, integrity or reputation of the Community2Go Service or any of its function, service or facility, to otherwise protect our interests;
 - (v) we receive notification of a dispute from you;
 - (vi) you go into liquidation, administration, insolvency, bankruptcy or such other similar arrangement with creditors, or in our reasonable opinion, it is reasonably likely you will do so;
 - (vii) there is a change in your ownership or control; or
 - (viii) in our reasonable opinion, you have failed to fulfil any of your obligations in section 2.4(b).
- (b) Notification
 - (i) We will make reasonable attempts to notify you in writing (which includes by email) of the termination or suspension.

- (ii) We can reinstate a suspension in our absolute discretion by written notice to you, and this takes effect on receipt or any later time specified in the notice, subject to you meeting any conditions set out in the notice.
- (iii) If you become aware that a circumstance which would permit us to terminate your Community's participation or use under section 8.2(a) has arisen or may arise, you must advise us in writing as soon as possible.

8.3. What happens on the effective date of termination?

- (a) Limited period for data extraction: you will have 30 days from the effective date of termination to extract any of your data from the Community2Go Service system, after which time your Community will have no further access to the Community2Go Service or any data accessed via it.
- (b) Continuation of limitations on liability: any limitations on liability under the Terms continue after termination in relation to your use of the Community2Go Service.

9. Liability and indemnities

9.1. Limitation of Liability

- (a) Without limiting the application of the Australian Consumer Law and to the extent permitted by law, CommunityToGo its employees, officers and directors shall not be liable to you for any Claims or Loss in any way arising out of, or relating to, the use of the Community2Go Service (whether that liability arises in contract, tort (including negligence) or statute), for any amounts in aggregate in excess of the Fees paid by you to CommunityToGo in the twelve (12) months prior to the events giving rise to liability.
- (b) Without limiting the application of the Australian Consumer Law and to the extent permitted by law, in no event shall CommunityToGo or its employees, officers and directors, be liable for any loss of profits, lost management time, savings, contracts, revenue, invest, goodwill, data, or penalties, fines or for damages, costs, expenses or losses that do not arise as a direct and natural result of a breach or for , special or exemplary damages, costs, expenses, or losses.

9.2. When we and our providers will not be liable to you

We and any providers of Third Party Services are not responsible or liable to you or the Community for:

- (a) the actions or inaction of other persons (including those which may be negligent or unauthorised) relating to the Community2Go Service;

- (b) any Loss or Claim arising from a failure by us to comply with the Terms for any cause which could not reasonably be controlled or prevented by us; or
- (c) any Loss or Claim arising from a failure by you or the Community to maintain archive records of your data.

9.3. Indemnity to us and our providers

You will indemnify us against any Loss or Claim (including legal fees on a solicitor/client basis) suffered or incurred by us, our officers, directors, employees, agents and related companies that arise in connection with your use of the Community2Go Service (including the use of the Community2Go App by any member of your Community) and/or any breach by you of these Terms, but you will not be liable for any Loss or Claim we suffer or incur to the extent such Loss or Claim is caused by us.

10. Changes to Terms

- (a) We may change any of the Terms (including the Fees, which are specifically dealt with in section 2.3 above) provided that we give you at least 10 days' prior notice (longer if required by legislation or any other code of conduct we subscribe to) of any change that is likely to materially affect or disrupt the manner in which you use the Community2Go Service. Notice will be given in accordance with section 11(b) below.
- (b) Urgent changes - However if we need to restore or maintain the security of the Community2Go Service immediately, we may change your use and access to the Community2Go Service without advance notice.

11. Notices

- (a) You agree that all communications between you and us in relation to the Community2Go Service will be via email or the communication tools available on our website or via the method set out in 11(b) unless another method is agreed to by both parties.
- (b) We may provide a notice or other communication to you by posting to Our App. That notice or other communication is regarded as being given by us and received by you when the posting is made to Our App. Your administrator (and/or whoever holds the responsibility for the administrative matters relating to your Community and their use of the Community2Go App) is/are required to download and regularly check Our App for notices or other communications. Our App can be downloaded from the Apple Store at : <https://itunes.apple.com/au/app/communitytogo/id632386268?mt=8> and from the Google

Play Store -

<https://play.google.com/store/apps/details?id=com.communitytogo.CommunityToGo>

12. Legal

- (a) The Agreement contains the whole of the agreement between us and you in relation to the Community2Go Service. Any representations or warranties made before you entered into the Agreement are not effective unless expressly set out in the Agreement. Any waiver of our rights or powers under these Terms may only be given in writing signed by our authorised officer.
- (b) If any part or provision of the Agreement is void, unenforceable or illegal in a jurisdiction, that part or provision does not apply in that jurisdiction. However, the remainder of the Agreement continues in operation in that jurisdiction unless this would alter the basic agreement between you and us, in which case we can terminate your use of the Community2Go Service at our election.
- (c) If we do not insist upon strict performance of any part or provision of the Agreement, that waiver will not be deemed to be a waiver of a subsequent breach or default of the Agreement.
- (d) You cannot assign or otherwise transfer the benefit of the Agreement between us and you without our prior written consent. We can assign or otherwise transfer the benefit of the Agreement between us and you.
- (e) We may without your consent engage any third party providers to provide the Third Party Services to assist with the provision of the Community2Go Service.
- (f) In the event of any inconsistency in the terms of the Agreement, the terms of any Order will prevail over these Terms.
- (g) The Agreement is governed by the laws of NSW and the courts of NSW have jurisdiction over the parties to the Agreement (being you and us).