



SmartyGrants UK

Agreement

Our Community International (Company Number 15906965)

Version 4.0 UK
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1 Agreement

- 1.1 These terms form a binding agreement (**Agreement**) between the Customer (**you, your**) and **Our Community International (we, us, our)** for the supply and use of SmartyGrants.
- 1.2 This Agreement should be read in conjunction with the SmartyGrants UK Support and Maintenance Policy, the SmartyGrants UK Terms of Use, the SmartyGrants UK Data Processing Addendum, the SmartyGrants UK Privacy Policy, and your Letter of Offer.

2 Our obligations to you

- 2.1 We will supply SmartyGrants 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 9. This period is the **Term** of this Agreement.
- 2.2 We provide access to SmartyGrants to you for your use only.
- 2.3 We will:
 - (a) give you a username and password;
 - (b) apply the look and feel of your website to your Applicant Site (i.e. those sections of SmartyGrants that are publicly accessible);
 - (c) provide training in accordance with our training offering explained at <https://smartygrants.co.uk/training/training-options> or as agreed;
 - (d) provide implementation services as described in your Letter of Offer;
 - (e) provide support and maintenance in accordance with the SmartyGrants UK Support and Maintenance Policy; and
 - (f) otherwise administer and provide access to SmartyGrants in accordance with this Agreement.

3 Your obligations to us

- 3.1 When you sign this Agreement you are agreeing to pay the Annual Access Fee that has been documented in your Letter of Offer.
- 3.2 You will pay the Annual Access Fee annually in advance, within 30 days of the issue date of our invoice.
- 3.3 You will:
 - (a) only access and use SmartyGrants 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 SmartyGrants; and
 - (c) notify us immediately if you become aware of any unauthorised access to or use of SmartyGrants.
- 3.4 You will comply with all obligations, duties or responsibilities imposed on you under the terms of the SmartyGrants UK Support and Maintenance Policy, the SmartyGrants UK Terms of Use, and the SmartyGrants UK Privacy Policy, in each case as amended from time to time.
- 3.5 If you need to contact us, you will do so through the Customer Support channels listed in the SmartyGrants UK Support and Maintenance Policy.
- 3.6 You will notify us in writing (by email or post) if there are changes to the Primary Contact or Billing Contact for your organisation.
- 3.7 Unless otherwise agreed, approaching each anniversary of the Contract Start Date, we will ask for confirmation of disbursement amounts for the previous year as well as anticipated disbursement for the upcoming year to determine the appropriate Annual Access Fee. If the amount disbursed over the previous year exceeds the level of distribution that was anticipated, and the additional disbursement pushes you into a higher fee category, you are obligated to pay the difference in Annual

- Access Fee within 30 days of notification, in addition to the following year's access fee (should you choose to continue your subscription).
- 3.8 Each party shall pay any applicable undisputed VAT (or equivalent sales tax) to the other on receipt of a valid VAT invoice.
- 3.9 Unless otherwise agreed, Annual Access Fees may be varied each year. We will notify you of the change in Annual Access Fees in writing 60 days before the change in the Annual Access Fee. Where we notify you of a change in fees and you do not agree to the change, acting reasonably, you may terminate your subscription on 30 days written notice at no cost.
- 3.10 You agree that we may suspend or reduce access to SmartyGrants if you do not comply with clauses 3.1 and 3.2. We will give you 7 days written notice before we suspend or reduce your access to SmartyGrants.

4 Modifications to SmartyGrants

- 4.1 We provide updates and upgrades to SmartyGrants as part of your Annual Access Fee.
- 4.2 We may add, update or remove features and functionality (**modify SmartyGrants**) at any time. Refer to the SmartyGrants UK Support and Maintenance Policy for more information about product upgrades, release management and notifications.
- 4.3 Where any features or functionality of SmartyGrants are added, updated or removed and the modification deprives you of the benefit of this Agreement, you may terminate this Agreement on 30 days' written notice. We may ask you to substantiate this request, acting reasonably.

5 Intellectual property

- 5.1 We have a worldwide, exclusive licence to use and sub-licence the use of SmartyGrants.
- 5.2 We grant you during the Term a non-exclusive, non-transferrable licence to use SmartyGrants for the purpose of managing your grant programme(s) in accordance with this Agreement.
- 5.3 All Intellectual Property Rights relating to SmartyGrants, including any developments, modifications or improvements to them, remain our property (or our licensors' property).
- 5.4 All Intellectual Property Rights arising in the Customer Data produced as a result of this Agreement become your property upon their creation (in the case of form content filled out by Applicants, it becomes your property when the form is submitted).
- 5.5 To the extent necessary to apply the look and feel of your website to your Applicant Site, you grant us a non-exclusive, non-transferable, royalty-free, fully-paid-up licence for the duration of the Term to use your trademarks, logos and other Intellectual Property Rights.

6 Customer Data and security

- 6.1 If we process Personal Information, we will do so in accordance with Privacy Legislation, this Agreement, the Data Processing Addendum and the SmartyGrants UK Privacy Policy.
- 6.2 Unless otherwise agreed in writing, at the end of the Term we will make all Customer Data we hold available to you for downloading through SmartyGrants for a further 30 days. We will then de-identify Customer Data. On request we will permanently delete the Customer Data.

- 6.3 You may ask us to retain all Customer Data in full for an additional period after that 30-day period. However, if we do so, it may be subject to additional fees and separate terms and conditions.
- 6.4 We are not responsible for the accuracy or completeness of information sourced from third parties and displayed in SmartyGrants (for example, lookups to business or charity registers, maps).
- 6.5 We may access, aggregate and use Customer Data as input into our Data Science activities. However, we do not disclose information that identifies any individuals or organisations unless we have their express consent. (Refer to the SmartyGrants UK Privacy Policy for more information.)

7 Confidentiality

- 7.1 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.
- 7.2 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.
- 7.3 If you receive a request to disclose any Confidential Information concerning us, you will give us reasonable notice before complying with the request.
- 7.4 If you are subject to information requests under applicable laws, we will do what is necessary on our part to enable you to comply with your disclosure requirements.
- 7.5 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.

8 Liability

- 8.1 To the maximum extent permitted by law we exclude all of the following:
- (a) all warranties in relation to the provision of SmartyGrants, 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.
- 8.2 Notwithstanding clause 8.1, nothing in the Agreement is intended to either limit or exclude any liability of a party that cannot be excluded or limited by law.
- 8.3 Each party's 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. Any liability shall be reduced proportionately to the extent that a party's negligent or wrongful act or omission contributed to the damages suffered or incurred.
- 8.4 The limitation of amount under clause 8.3 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.

9 Termination of Agreement

- 9.1 Either party may terminate this Agreement by giving 30 days' written notice.
- 9.2 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 14 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.
- 9.3 We are not obliged to refund any part of the Annual Access Fee if:
 - (a) you terminate this Agreement under clause 9.1; or
 - (b) we terminate this Agreement under clause 9.2 for your breach.
- 9.4 We must refund the Annual Access Fee on a pro rata basis if:
 - (a) we terminate this agreement under clause 9.1; or
 - (b) you terminate this Agreement under clause 9.2 for our breach.
- 9.5 Termination of this Agreement does not affect the parties' rights and obligations accrued up to the end of the Term.

10 Notices

- 10.1 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.
- 10.2 A notice is deemed served:
 - (a) if served by post – 2 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 (GMT).
 - (d) Notices to us under this Agreement must be directed to:
Our Community International Ltd
167-169 Great Portland Street, 5th Floor, London, W1W 5PF
service@smartygrants.co.uk

11 General

- 11.1 This Agreement, along with the Letter of Offer and supporting policies and terms listed in clause 1.2, 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) The Letter of Offer provides a record of the agreed Annual Access Fee and other agreed fees and inclusions.
 - (c) In the event of any inconsistency between the documents comprising this Agreement, the following order of precedence shall apply:
 - i. The Letter of Offer;
 - ii. The Agreement; and
 - iii. the supporting policies and terms listed in clause 1.2.

- 11.2 Clause 11.1 does not apply to any previous false, misleading or deceptive statements or misrepresentations.
- 11.3 To the fullest extent permitted by law, the Customer acknowledges that in entering into this Agreement the Customer has not relied on any representations made by us (or our agents or employees) other than matters expressly set out in this Agreement.
- 11.4 We may vary the terms of this Agreement from time to time by giving you 30 days written notice through email to your Primary Contact (**Variation Notice**). Your continued use of SmartyGrants constitutes acceptance of the amended terms. You may object to any variations by giving us written notice within 10 Business Days of receiving a Variation Notice and you must stop using SmartyGrants. If you are adversely affected by the amended terms, you may cancel this Agreement by written notice without penalty. We may ask you to substantiate a request to terminate under these circumstances, acting reasonably.
- 11.5 Failure to exercise a right under this Agreement does not waive that right or prevent the exercise of any other right.
- 11.6 Neither party may assign or transfer their rights or obligations under this Agreement without the other party's prior written consent which must not be unreasonably withheld or delayed.
- 11.7 You acknowledge and agree that nothing in this Agreement prevents us from changing our third party service providers from time to time.
- 11.8 No person other than the parties to this Agreement has any right to enforce any term of this Agreement under the Contracts (Rights of Third Parties) Act 1999.
- 11.9 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.
- 11.10 This Agreement is governed by the laws of England and Wales. The parties agree to submit to the exclusive jurisdiction of the courts of England and Wales.
- 11.11 Each party may sign this Agreement using electronic signatures. An electronic signature has the same effect as a handwritten signature. Each party may keep this Agreement in electronic form and rely on it as the original.

12 Definitions

Agreement	means this Agreement between you and Our Community International Ltd consisting of clauses 1 to 12.
Annual Access Fee	means the amount payable annually by you as agreed between the parties (and documented in the Letter of Offer) for use of SmartyGrants.
Applicant Site	means the public-facing SmartyGrants portal used by Applicants. (We set up the URL for your Applicant Site when your SmartyGrants account is created.)
Applicants	means members of the public who use your Applicant Site to enter data or submit forms to you.
Billing Contact	means the Customer representative we should contact regarding invoicing and payments.
Business Day	means a day that is not a Saturday, Sunday, or public holiday in the Customer's country as per their Billing Contact address.
Business Hours	Means 9am to 5pm GMT on a Business Day.
Confidential Information	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 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, Customer Data and the terms of this Agreement. However, it does not include: 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.
Contract Start Date	means the date specified in the Letter of Offer, or if not specified, the date recorded on the first invoice as the date on which your SmartyGrants subscription begins.
Customer	means the party recorded as such in the invoice, or if not recorded, the entity to which we provide SmartyGrants, and includes the Customer's agents, officers or representatives.
Customer Data	means data, including email, that has been provided, generated, transmitted or displayed via SmartyGrants by Manage Users or Applicants.
Data Science	means the application of scientific methods, processes and systems to extract meaning from structured or unstructured data.
Documentation	means the guidance and explanatory materials provided to the Customer that set out how SmartyGrants should be used.
Insolvent	means, in relation to a legal person, when the person:

	(a) stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so; (b) is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or (c) becomes insolvent or subject of a moratorium, company voluntary arrangement, restructuring plan, scheme of arrangement, winding up, administration, or has a receiver, manager, administrator or administrative receiver appointed; (d) has a freezing order made against it; (e) is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title to those items; or (f) is subject to any events or circumstances analogous to those above; (g) being a natural person, commits or suffers an act of bankruptcy; or (h) 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.
Letter of Offer	means the Letter of Offer supplied to the Customer alongside this Agreement that documents agreed pricing, other agreed fees and inclusions, and other terms.
Manage Users	means the Customer's representatives who use SmartyGrants, for example: grant managers, heads of department, administrative staff, external assessors and board/council members.
Manage Site	means the SmartyGrants portal used by Manage Users.
Our Community International	means Our Community International Ltd (Company No: 15906965) or one of our related companies (including our Australian holding company Our Community Pty Ltd).
Personal Information	has the same meaning as in the relevant Privacy Legislation.
Primary Contact	means the Customer representative we should contact regarding SmartyGrants implementation, Variation Notices, or if we need to get in touch with your organisation in regard to your SmartyGrants account or Applicants.
Privacy Legislation	means, as applicable, the Privacy Act 1988 (Cth), or the UK Data Protection Act 2018 or any legislation that replaces those laws.

Privacy Policy	means the SmartyGrants UK Privacy Policy (as amended from time to time) available at smartygrants.co.uk/privacy .
SaaS	means Software as a Service.
SmartyGrants	means the following online services, which may be referred to as “SmartyGrants” or “SmartyGrants UK” (including modifications as set out in clause 4.2): (a) the “Software as a Service” online grants management system, including the Manage Site and Applicant Site; (b) the Help Hub and Learning Management System, (c) the Documentation; and (d) the websites, located at smartygrants.co.uk, smartygrants.com, smartygrants.com.au and smartygrants.co.nz
Term	has the meaning given in clause 2.1.
Users	means Manage Users and Applicants collectively.
Variation Notice	has the meaning given in clause 11.4.
VAT	means value added tax, as defined by the Value Added Tax Act 1994.

SIGNED for and on behalf of OUR COMMUNITY INTERNATIONAL LTD (Company No15906965) by its:

Authorised Officer:

Name of Authorised Officer

Signature of Authorised Officer

Signed on:

Date

SIGNED for and on behalf of:

Customer's Organisation Name

Customer's Companies House Number or Charity Number

By Customer's authorised officer:

Name of Customer's Authorised Officer

Signature of Customer's Authorised Officer

Signed on:

Date

CONTACT DETAILS for Our Community International:

Our Community International Ltd
167-169 Great Portland Street, 5th Floor, London, W1W 5PF

service@smartygrants.co.uk

CONTACT DETAILS for the Customer:

Primary contact name:

Primary contact job title:

Primary email address:

Primary phone:

Billing contact name:

Billing email address:

Billing address:

Billing phone:
