

BARHEAD FUNDRAISING SOLUTION (BFS) TERMS OF USE

Welcome to Barhead Fundraising Solution (BFS), is a new Microsoft Cloud-based, standardised, best-practice deployment with localised features tailored to Australian not-for-profit (NFP) organisations built by **Barhead Solutions Australia Pty. Ltd. (“Barhead”)**, an Australian company with registration number ABN 75 609 675 854.

By agreeing to these terms, You represent and warrant that you have the authority to accept this Agreement, and You also agree to be bound by its terms. This Agreement applies to all Orders entered into under this Agreement. Capitalized terms have the meanings given under “Definitions.”

LICENCE TERMS AND CONDITIONS

1. Licence

- 1.1 The Licensor grants a non-exclusive, non-transferable, revocable licence to the Licensee to Use the Licensed Software and Materials on and from the date of this Agreement for the Term, for the Permitted Purpose.
 - 1.2 The Licensee may not assign the Licence, nor allow any third party to access the Licensed Software or the Materials for any reason.
 - 1.3 The Licensee may not sublicense the Licence. The Licensee is not permitted to adapt/modify the code. The Licensor is not liable for any changes the Licensee makes to the Licensed Software or Materials.
 - 1.4 The Licensee is not permitted to reverse engineer, disassemble, or otherwise endeavour to obtain or copy the source code or any other artefacts delivered as part of the Licensed Software.
 - 1.5 The Licensee shall not (i) use the Licensed Software to provide services to third parties; (ii) distribute or publish keycode(s); (iii) make any use of or perform any acts other than as expressly permitted in accordance with the terms of this Agreement; (iv) use Licensed Software components other than those specifically identified in this Agreement; (v) use any of the Materials or Licensed Software components, files, modules, content, or related licensed materials separately from the Licensed Software; (vi) use the Licensed Software for commercial application hosting; (vii) benchmark or disclose the results of any benchmark test of the Licensed Software to any third party without the prior written approval of the Licensor.
 - 1.6 In the event that the use of the Licensed Software and Materials are for trial purposes only, the Licensed Software shall not be used for any purposes other than evaluation and testing of the
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Licensed Software, and the Licensee takes full responsibility for any use of the Licensed Software beyond this purpose.

- 1.7 The Licensee consents that contact, usage, and transactional information is to be shared with the Licensor during the Term. This information is used by the Licensor to support billing and other transactional activities and to enable telemetry.

2. Term of Licence

- 2.1 The parties agree that the Licence is for the Term from the date of this Agreement unless terminated by either party as set out in this Agreement.
- 2.2 In the event that a Trial Term is applicable, the parties acknowledge that the purpose of this Licence is to allow a trial period for the Licensed Software and Materials. At the end of the Trial Term (or earlier if agreed between the parties), should the trial be successful, the parties intend that the Licence Agreement will automatically continue for the Licence Term on the same terms as set out in this Agreement.
- 2.3 Following the expiry of the initial Licence Term, and each subsequent Licence Term, the Licence will be extended for a further period of the Licence Term unless the Licensee gives the Licensor thirty (30) days' notice prior to the expiration of the current Licence Term. A Licence Fee will be payable in respect of each Licence Term.

3. Licence Fee

- 3.1 The Licensee will pay the Licensor the Licence Fee for each Licence Term.
- 3.2 The Licensee is not obliged to pay any fee due unless it has received a Tax Invoice from the Licensor.
- 3.3 Should the Licensee fail to make payment within thirty (30) days of the due date as specified in an applicable invoice, the Licensor shall have the right to terminate access to the Licensed Software. The Licensee must provide the Licensor access to the environment of the Licensee in order to effect such termination.

4. Intellectual Property

- 4.1 The Licensee acknowledges and agrees that the Licensor is the owner of all Intellectual Property Rights in the Licensed Software and the Materials.
- 4.2 Each party will continue to own any Intellectual Property Rights that it developed prior to or independently of the Agreement ('**Existing IP**'). The Licensee grants the Licensor a non-exclusive, royalty free right to use their Existing IP to the extent that the Licensor reasonably requires for the purposes of this Agreement.
- 4.3 The Licensee acknowledges and agrees that the Intellectual Property Rights in any ideas, concepts, techniques or materials (including software, data, text, words, graphics, logos, artwork, audio, video or software) developed by or for the Licensor in the course of performing this Agreement, including Intellectual
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Property which is specifically created for the Licensee remain the property of the Licensor (“**Developed IP**”).

- 4.4 The Licensee must not alter, remove or obscure any trade mark or copyright symbol or legend or other proprietary mark on the Licensed Software and the Materials.
- 4.5 Third party Intellectual Property Rights will remain the property of such third party.
- 4.6 Each party warrants it holds their respective Intellectual Property Rights and each party (“**first party**”) is liable to the other for any loss or damage suffered by the other party if a third party makes a claim or demand relating to first party’s Intellectual Property Rights infringing the Intellectual Property Rights or other rights of the third party.

Intellectual Property Rights means all intellectual property rights including all rights in the Intellectual Property, including moral rights (as such term is defined in the *Copyright Act 1968* (Cth)), any right to have Confidential Information kept confidential, and any application or right to apply for registration of any of these rights.

5. Confidential Information

- 5.1 Each party acknowledges and agrees that pursuant to the terms of the Agreement, it may receive Confidential Information belonging to other party.
- 5.2 Each party agrees to disclose Confidential Information only to its employees who need to access such information so that the Party can exercise its rights and obligations under this Agreement.

Confidential Information means:

- The terms of this Agreement;
- The Licensed Software and Materials;
- Any information relating to the business or financial affairs of a party, including a party’s product pricing or pricing strategies;
- Any trade secret, technical knowledge, concepts, ideas, designs, programs, processes, procedures, innovations, databases, client contracts, lists or information, sales plans or marketing plans, research, software, records, intellectual property or other information of a party;
- Any information that would at law be considered confidential information; or
- Any information which is designated as confidential by a party.

6. Third Party Products

- 6.1 The Licensee acknowledges that the Licensed Software is dependent on third-party products for the successful operation of the Licensed Software.
 - 6.2 The Licensee must ensure that any required third-party products are available for the successful operation of the Licensed Software, including but not limited to the procurement of Microsoft Power Platform licences and sufficient Database storage.
 - 6.3 The Licensee acknowledges that these third-party products are provided under separate terms by the Publishers of such products.
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7. Licensor representations & warranties	7.1 The Licensor represents and warrants that: a) it has the right to license the Licensed Software and the Materials to the Licensee, and b) the Licensee's Use of the Licensed Software and the Materials will not infringe the rights including Intellectual Property Rights of any third party.
8. Licensee warranties, obligations and acknowledgements	8.1 The Licensee warrants that it has not relied upon any representation made by the Licensor other than as set out in this Agreement. 8.2 The Licensee is not permitted to sell, charge, mortgage or otherwise encumber the Licensed Software and/or the Materials in any way. 8.3 The Licensee acknowledges that it has no Intellectual Property Rights in the Licensed Software and/or the Materials. 8.4 The Licensee acknowledges that Licensor gives no guarantee as to the accuracy or completeness of the Licensed Software and the Materials nor that they are free from error. 8.5 The Licensee is solely responsible for the use, supervision, management and control of the Licensed Software and the Materials. 8.6 The Licensee will ensure that the Licensed Software and Materials are at all times protected from access, use or misuse and damage and destruction by any person not authorised by either the Licensor or the Licensee and the Licensee will notify the Licensor immediately if it becomes aware of any unauthorised use of the Licensed Software and/or Materials. 8.7 The Licensee agrees to provide access to its software environment for the Licensor to perform audit and consistency checks of the Licensed Software on an ad-hoc basis, with Seven (7) days advance notice.
9. Limitation of Liability	9.1 To the fullest extent permitted by law, the Licensor expressly disclaims all implied warranties and conditions, including without limitation implied warranties as to merchantability, fitness for purpose of the Licensed Software and Materials. 9.2 To the extent that any liability of the Licensor under Competition and Consumer Act 2010 (Cth) cannot be excluded, the Licensor's liability is limited to replacing the Licensed Software and/or Materials. 9.3 Where the Licensor has agreed to install or install and acceptance test the Licensed Software, to the fullest extent permitted by law the Licensor makes no representation or gives any warranty in respect of the provision of the services except that it will carry out

the service competently, professionally and to the best of its ability having regard to the terms of this Agreement.

- 9.4 To the extent that any liability of the Licensor under the Competition and Consumer Act 2010 (Cth) cannot be excluded, the Licensor's liability is limited to either the supply of the services by the Licensor under these terms and conditions again or the payment of the cost of having another person provide again to the Licensee similar services as the services supplied by the Licensor under these terms and conditions.
- 9.5 To the fullest extent permitted by law, the Licensor excludes all liability for indirect and consequential loss including without limitation the loss or corruption of the Licensed Software, loss of revenue, loss of profits, failure to realise expected profits or savings and any other commercial or economic loss of any kind arising from this Agreement or the provision of any services by the Licensor.

10. Indemnity

The Licensee indemnifies and holds harmless the Licensor and promises to keep the Licensor indemnified against any loss, claim, action, settlement, award, judgment, expense or damage of whatsoever kind or nature and howsoever arising that the Licensor might suffer as a result of any inaccuracy of the Licensed Software and/or the Materials including any unauthorised use of the Licensed Software and/or Materials by the Licensee.

11. Termination

- 11.1 Where the Licensee fails to perform any of its obligations set out in this Agreement, the Licensor reserves the right to immediately terminate the Licence with notice to the Licensee, subject to the terms of this Agreement.
- 11.2 Either party may terminate this Agreement having immediate effect by notice to the other party if the other party:
- (1) breaches any provision of this Agreement and fails to remedy the breach within Fourteen (14) days of receiving notice requiring it to do so; and/or
 - (2) is wound up, has an administrator appointed to it, a receiver appointed to any of its assets, enters into any arrangement, assignment or composition with any of its creditors or any of them or becomes insolvent; and/or
 - (3) ceases to carry on its business or where there is any effective change in the control of or ownership of that business.
- 11.3 Subject to Clause 11.4, on termination the parties agree that all rights granted to the Licensee under this Agreement will cease immediately and the Licensee will return the Licensed Software and Materials provided under this Agreement. If requested by the Licensor, the Licensee will provide Notice to the Licensor stating that the Licensed Software and Materials have been returned, destroyed or otherwise dealt with as the case may be as directed by the Licensor.
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11.4 Following termination, the parties agree that the provisions set out in Clause 4 (Intellectual Property), Clause 7.1 (Licensor warranty), Clause 5 (Confidentiality) and Clause 9 (Limitation of Liability) of this Licence will continue to be binding.

12. Notices

Any notice given pursuant to this Agreement must be in writing, signed by the authorized representative of the sender, addressed to the recipient at the address or email address set out below or to such other address or email address as a party may from time to time notify in writing to the other.

13. Dispute resolution

13.1 In the event of a dispute arising between the parties in respect of any right or obligation under this Licence, each party covenants with the other in good faith to take all steps necessary to attempt to resolve the dispute.

13.2 In the event that the parties are unable between themselves to resolve a dispute within a reasonable period having regard to the nature of the Licence and the dispute, then either party may apply to their local State/Territory Alternative Dispute Resolution centre for resolution of the dispute under the ADRoIT Principles.

14. General

14.1 **(Law and Jurisdiction)** This Agreement shall be governed by and construed in accordance with the laws of New South Wales and any claim made by one party against the other in any way arising out of this Agreement will be heard in New South Wales and the parties submit to the exclusive jurisdiction of those Courts.

14.2 **(Relationship)** Nothing in this Agreement will constitute or be deemed to constitute a partnership, joint venture or agency between the parties.

14.3 **(Entire Agreement)** The terms of this Agreement constitute the entire terms of this Agreement and all understandings, prior representations, arrangements or commitments that are not contained in this Agreement have no effect whatsoever and do not bind the parties.

14.4 **(Waiver):** No waiver of any right or remedy will be effective unless in writing and shall not operate as a waiver of that right or remedy or any other right or remedy on a future occasion.

14.5 **(Implied Terms):** Any implied term under law that can be excluded is hereby expressly excluded and no term is to be implied as being a term of this Agreement unless by law it cannot be excluded.
