

# Humanitix Marketplace Event Promoter Agreement

## About Us

Humanitix provides an online ticketing platform for event organisers and attendees, which aims to turn every event into an opportunity for philanthropy by donating the profits from all booking and payment fees to charity.

## Agreement

You should read the terms and conditions of this agreement carefully.

This Agreement provides the Event Promoter with the terms and conditions under which Humanitix Ltd ("**Company**") will provide a self-service platform for the Event Promoter through our online Marketplace platform (**Marketplace Agreement**).

In these terms and conditions the words, "**Humanitix**", "**Company**", "**we**", "**our**" and "**us**" refer to **Humanitix Ltd (ACN 610 780 439)** trading as **Humanitix**, and includes its directors, employees and agents; and "**the Event Promoter**", "**you**" or "**your**" means the person, company, association or organisation who accepts these terms and conditions.

By accepting the terms and conditions, the Event Promoter agrees to its obligations under this Agreement and Humanitix agrees to provide the Event Promoter with the Services.

## 1. Definitions

1.1 In this Agreement these expressions shall have the following meanings, unless otherwise stated:

'**Agreement**' means these terms and conditions as may be amended by us from time to time;

'**Charges**' means the charges set out in Clause 3, calculated at the rates set out in that clause or as published by us from time to time;

'**Commencement Date**' means the date that we receive a [subscription fee/application for registration/listing] from the Event Promoter;

'**Confidential Information**' means information that relates to

- (a) this Agreement;
- (b) a party to this Agreement; or
- (c) any asset, business, property, right, trade secret, operation, employee, customer or affair of any party or a Related Entity of that party (as that term is defined in the *Corporations Act 2001* (Cth)).

'**Intellectual Property Rights**' means all present and future intellectual and industrial

property rights of whatever nature (whether or not registered or registrable) including but not limited to all technical information, know-how, copyright, trademarks, designs, patents, domain names, business names, logos, drawings, trade secrets, the right to have confidential information kept confidential or other proprietary rights, or any rights to registration of such rights, whether created, written developed or brought to existence by us or you in the provision of the Services.

'**Location(s)**' means our online platform. At the Event Promoter's request, we can provide on-the-spot ticket sales at the event's entry;

'**Services**' means any services we provide pursuant to this Agreement, as set out in Clause 2;

'**Term**' means the Term from the Commencement Date for 12 months and will automatically roll over into a subsequent term unless this Agreement is terminated.

'**User**' means a person using the Website; and

'**Website**' and '**Site**' mean [www.humanitix.com.au](http://www.humanitix.com.au);

- 1.2 If you are contracting with us for the supply of Services directly to a third party then you shall:
  - (a) procure that such third party shall comply with these Terms; and
  - (b) indemnify us for any claim, loss, damage or expense incurred by us as a result of any breach of these Terms by such third party.
- 1.3 By signing up to and making an account with Humanitix you signify your agreement as to Services to be provided and the Charges which shall be payable. You acknowledge and agree that no Services will be provided until your Agreement has been unequivocally provided.

## 2. Overview of Services

- 2.1 Humanitix will provide an online platform through which the Event Promoter's services are presented to our Users. As an Event Promoter, we will provide you with the ability to ("**Services**"):
  - (a) access a self-service platform for the creation of a ticketing page that will allow for the direct purchase of tickets ("**Page**");
  - (b) create, customise and maintain the Page in accordance with the specifications listed on the Website;
  - (c) connect attendees to the Page using an official URL that we will provide to you; and
  - (d) manage and track ticket sales using the dashboard that we will provide to you on the Website.
- 2.2 Humanitix offers access to the Service for the Term.
- 2.3 All information that we provide is supplied in good faith, but we do not guarantee the accuracy or completeness of any information provided by any third party or us. It is not within the scope of our obligations to make enquiries as to the accuracy or

completeness of information that we receive from you or any third parties.

- 2.4 We shall not be obliged to provide any Services that are not described in this Agreement.
- 2.5 We shall only be obliged to provide the Services through the Site and Mobile Applications, unless otherwise agreed in writing.
- 2.6 We shall use our reasonable endeavours to provide the Services.
- 2.7 We shall use our reasonable endeavours to ensure the Services are provided in a prompt and timely manner.
- 2.7 We will perform the Services in return for payment of the Charges.
- 2.8 Upon completion of the event, we will contribute as much of the booking fee as possible to the Event Promoter's nominated charitable cause/s.
- 2.9 To receive access to the Services and the Website, you must agree to this Agreement and the Privacy Policy at <https://www.humanitix.com/privacy-policy/>.

### **3. How much do we charge for the Services? And how do you, as an event promoter, get paid?**

- 3.1 The Event Promoter agrees that Humanitix will receive 2% commission on the ticket price, plus 99 cents (capped at \$9.95) (the "**Booking Fee**") and an additional 2% credit card processing fee (the "**Payment Fee**") per ticket (the Booking Fee and Payment Fee being the "**Charges**").
- 3.2 Upon the successful completion of the event, within 5 business days, Humanitix will transfer to the Event Promoter the proceeds from ticket sales, minus the Charges. This will be completed via a direct bank deposit.
- 3.3 You will nominate and provide us with the details of your preferred bank account into which we will deposit that money in the account you identified when creating the relevant event on the Website.
- 3.4 Where applicable, it is the Event Promoter's responsibility to pay for GST on proceeds from ticket sales.
- 3.5 The Charges payable by you pursuant to this Agreement are inclusive of GST.
- 3.6 You shall indemnify us for any loss, liability or cost that we directly or indirectly suffer in relation to any tax other than tax levied under the law of Australia unless that loss, liability or cost is compensated by an increased payment under this Clause.
- 3.7 In the event that the Website or any associated platforms are offline or not operational for any reason whatsoever, Humanitix will not be liable for any losses, damages, or missed opportunities suffered by the Event Promoter.

### **4. What are your obligations?**

- 4.1 You shall uphold your obligations under this Agreement.
- 4.2 Your obligations include:

#### **(a) Creation and Maintenance of Event Profile**

The Event Promoter bears the responsibility for creating a Page for their chosen event. We reserve the right to make minor adjustments to an Event Promoter's profile without consent. You will be required to submit new information for each subsequent event that you create.

**(b) Pricing**

The Event Promoter must provide an up to date pricing model for any Services listed for sale in the Marketplace. Note that this pricing model will be subject to the commission fees and charges outlined in Clause 3.

**(c) Defamatory Content**

The Event Promoter must not upload any content to our Website that promotes intolerance, racism, illegal behaviour or contains defamatory content.

**(d) Interactions With Users**

Interactions with Users should be carried out in a manner that celebrates diversity and supports equal rights. No Event Promoter should advocate, support or practice discrimination based on race, religion, age, national origin, language, gender, sexual orientation, or mental or physical handicap. Any complaints of abuse or derogatory behaviour on the part of the Event Promoter will see them removed from the Website. This is a condition of the Agreement and any breach will see the Event Promoter removed from Marketplace.

**(e) Availability**

Event Promoters should be available to provide the Services to Users of the Marketplace as and when they arise (such as lost tickets, cancellations, editing bookings and refunds). Event Promoters are expected to respond to User's requests within a 48-hour period.

**(f) Changes to tickets**

Event Promoters are responsible for implementing any changes to tickets requested by a ticket purchaser, including changing the name associating with any ticket.

**(g) Use of Data**

You will not misuse any User data or personal information that you obtain as Event Promoter. You may only use such information to aid a User with their enquiry, to deliver the Services to them, or for promotional purposes where the User has ticked a requisite box when completing an online purchase.

- 4.3 You acknowledge and agree that for us to be able to provide the Services without interruption, at your cost you will:
- (a) co-operate with and assist us in the performance of the Services;
  - (b) promptly provide us with full and accurate information, data and explanations as and when required; and

- (c) inform us of any abusive behaviour by any Users of the platform.
- 4.4 You shall procure all necessary rights from third parties, which are from time to time required in order for us to be able to provide the Services.
- 4.5 If we are delayed or obliged to spend additional time or incur additional expenses in the performance of any of our obligations under this Agreement, by reason of your acts, omissions, failure to provide information, instructions or perform your obligations under this Agreement, then you shall pay us any additional reasonable costs and expenses incurred by or on our behalf. In this situation any agreed target time specified for the performance by us of any of our obligations shall be extended accordingly.
- 4.6 It is your obligation to ensure that any written notification we send to you confirming the terms of this Agreement correctly states the information set out in it and if that information changes during the period of this Agreement, you may write to us to request a change to it.

## **5. Warranties**

- 5.1 We will use reasonable care and skill in performing the Services.
- 5.2 We will investigate any problem or error in any Services, provided that you notify us in writing within seven (7) days following delivery of the Services, giving us all necessary information to be able to investigate the problem, breach or error and limit our liability to the right to re-perform the Service.
- 5.3 You agree to use your reasonable endeavours to ensure that the information you supply is complete and accurate and notify us in writing if there is any change to the information supplied.
- 5.4 Except as provided in this Agreement no further warranty, condition, undertaking or term, express or implied, statutory or otherwise as to the condition, quality, performance or fitness for purpose of the Services provided in accordance with this Agreement is given by us, other than as required at law.
- 5.5 Except as set out in this Clause, all implied warranties are hereby excluded.

## **6. Liability and Exclusions**

- 6.1 Nothing in this Agreement shall in any way exclude or limit either party's liability to the other for death or personal injury caused by negligence, or liability for fraudulent misrepresentation or for any other liability which by law it is not possible to exclude or limit.
- 6.2 Our total liability for direct losses or damage in contract, tort, misrepresentation or otherwise arising out of or in connection with this Agreement, or the performance of our obligations under this Agreement or the provision of the Services, shall be limited to the total Charges paid (excluding GST and expenses) by you to us for the Services (as applicable) in the twelve (12) months immediately prior to the event(s)

complained of.

- 6.3 In no event shall either party be liable to the other for loss of profits, goodwill, business or anticipated savings or for any indirect or consequential loss or damage of whatsoever nature, however caused.
- 6.4 The parties acknowledge that the limitations of liability contained in this Clause are a fair and reasonable allocation of the commercial risk between the parties. The provisions of this Clause 6 will continue to apply after termination or expiry of this Agreement.

## **7. Confidentiality**

- 7.1 Both parties agree not to use or disclose Confidential Information relating to or owned by the other, received or disclosed to it by the other party during the term of this Agreement, save for use or disclosure required in order to perform their respective obligations under this Agreement. Disclosure shall be limited to such of the receiving party's employees, officers, agents or contractors directly involved in performing the receiving party's obligations.
- 7.2 The parties agree that information is not to be regarded as confidential and that the receiving party will have no obligation regarding confidentiality where that information is already in the public domain or enters the public domain through no fault of the receiving party, or is received from a third party without any obligations of confidentiality, or is used or disclosed with the prior written consent of the owner of that information, or is disclosed in compliance with a legal requirement, or is independently developed by the receiving party.
- 7.3 Any confidential information will be returned or destroyed by the receiving party at the prior written request of the owner.
- 7.4 We will be allowed to refer to you in any publicity after performance of the Services and with your permission, during the Services.
- 7.5 In the event that the parties execute a separate confidentiality agreement, the terms of that agreement shall prevail.

## **8. Term and Termination**

- 8.1 The Services will commence on the Commencement Date and will continue in force for the term specified in this Agreement subject to any extension or any earlier termination.
- 8.2 We may terminate this Agreement (or at our discretion, the supply to you of the Services) at our sole discretion if:
- (a) you have provided false or misleading information on the Website; or
  - (b) if you are offensive or abusive to a User; or
  - (c) if we reasonably feel that your event contradicts our values or mission.
- 8.3 Either party may terminate this Agreement immediately on notice if:

- (a) the other is in breach of this Agreement to a material extent and fails to remedy the breach within fourteen (14) days of being notified of the breach (if it is capable of being remedied); or
  - (b) the other party is bankrupt, in a voluntary arrangement, in liquidation or receivership or has ceased business or threatened to cease business or is otherwise insolvent.
- 8.4 On termination of this Agreement for whatever reason, we will be entitled to payment for all Charges properly incurred to the date of termination plus the Charges incurred during the notice period and any Charges specified in this Agreement.
- 8.5 Either party can terminate this agreement with four weeks' written notice.
- 8.6 All provisions of this Agreement that, by their nature, should survive the Termination of this Agreement, including limitations of liability, indemnification obligations, warranties and dispute resolution agreements, shall survive.

## **9. Cancelling of Events and Refunds**

- 9.1 Humanitix reserves the right to remove any Page, at our sole discretion, if it is inappropriate, or made for inappropriate causes.
- 9.2 What is inappropriate includes, but is not limited to, any Page containing content that could be inferred to be abusive, defamatory, disparaging, inciting racial hatred, indecent, offensive, threatening, discriminatory or in breach of privacy in either its content or purpose.
- 9.3 Humanitix may also remove any Page if it stands at odds with the values and ethos that underpin our service. The Event Promoter agrees to indemnify Humanitix for any losses arising from the removal of a Page.
- 9.4 If an event is cancelled, postponed or significantly varied (due to situations, which affect the performer, staff or audience):
- (a) the Event Promoter will email [refunds@humanitix.com](mailto:refunds@humanitix.com) to request specific refunds. Humanitix will then process the refund minus the Charges;
  - (b) the Event Promoter will make reasonable endeavours to inform ticket holders of an event being cancelled, postponed or significantly varied;
  - (c) once the Event Promoter learns of an event being cancelled, postponed or significantly varied and a ticket purchaser wishes to access a comparable ticket at a varied or rescheduled event, or a refund, the Event Promoter must offer the ticket purchaser a comparable ticket at a varied or rescheduled event, or a refund for cancelled events (excluding the Charges), whether they

choose to offer a comparable ticket at a varied or rescheduled event, or a refund will be at their sole discretion;

- (d) the Event Promoter acknowledges that it is their sole responsibility and liability to provide any refund or comparable ticket and Humanitix will not have any liability or responsibility to issue any refund or comparable ticket or to handle the Event Promoter service associated with issuing any refund or comparable ticket; and
- (e) in the event that we provide pre-payment to the Event Promoter prior to the event, the Event Promoter is responsible for refunding the amount of pre-paid ticket sales to whomever purchased tickets to that event.

## **10. Intellectual Property**

- 10.1 You recognise and acknowledge that all Intellectual Property Rights created out of performance of this Agreement immediately and automatically vests with us, and you will take all such steps as practicable to ensure that the Intellectual Property Rights will vest in and remain vested in us.
- 10.2 We grant you a non-exclusive, non-transferable, revocable, license to use the Intellectual Property Rights owned by us, which have been provided to you to improve the performance of your obligations under this agreement.
- 10.3 By posting or adding any content to the Service, you grant us a perpetual, non-exclusive, royalty-free, irrevocable, worldwide and transferable right and licence to use that content in any way (including, without limitation, by reproducing, changing, and communicating the content to the public) and permit us to authorise any other person to do the same thing.

## **11. Situations or events outside our reasonable control**

There are certain situations or events which occur which are not within our reasonable control. Where one of these occurs we will notify you of such and attempt to recommence performing the Services as soon as the situation, which has stopped us performing the Services, has been resolved. In such circumstances there may be a delay (sometimes a substantial delay) before we can start or continue performing the Services.

## **12. Notices**

- 12.1 Any notice required to be given pursuant to this Agreement shall, unless otherwise stated in it, be in writing (includes email communications), sent to the other party marked for the attention of the person at the address specified in this Agreement (or to such other address as either party may from time to time notify to the other in

writing in accordance with this Clause).

- 12.2 A correctly addressed notice sent by post shall be deemed to have been delivered 72 hours after posting, correctly addressed emails shall be deemed to have been delivered 24 hours after sending.

### **13. Dispute Resolution**

- 13.1 If a dispute arises under or in connection with this Agreement, before resorting to external dispute resolution mechanisms (including court proceedings), the parties must attempt to resolve by negotiation any dispute in relation to this Agreement by referring the matter to a mediator for mediation.
- 13.2 A mediator must be appointed by the parties, or failing agreement within (15) business days of the dispute first arising, appointed by the President for the time being of the Law Institute of Victoria, or his or her nominee, and whose costs must be paid equally by the parties.
- 13.3 If the dispute is not settled by the parties within (15) business days of a mediator being appointed, the dispute may be submitted to some alternative dispute resolution mechanisms as may be agreed in writing between the parties.
- 13.4 Notwithstanding the existence of a dispute, each party must continue to perform its obligations under this Agreement.
- 13.5 This Clause 13 survives the expiry or termination of this Agreement.

### **14. Indemnity**

- 14.1 The Event Promoter agrees to waive, release, discharge and relinquish any and all claims that it has now or may have against Humanitix which are connected with, arise out of, relate to or are incidental to the use of the Service.
- 14.2 The Event Promoter agrees and acknowledges that Humanitix will not be liable or responsible for any loss or damage suffered by any User due to the actions of an event promoter and the Event Promoter will indemnify Humanitix from and against any and all claims by a User in relation to the content created by the Event Promoter or actions of the Event Promoter.

### **15. General**

- 15.1 Variations to this Agreement will only be effective if in writing and signed by authorised representatives of both parties.
- 15.2 We may assign, sub-contract, or otherwise transfer any or all of our rights and/or obligations under this Agreement. You may only assign, subcontract, or otherwise transfer any or all of your rights and/or obligations with our prior written consent, which can be refused at our absolute discretion.
- 15.3 If either party chooses to waive or ignore a breach of the Agreement, then this will not

prevent that party from taking action in respect of the same type breach at a future date.

- 15.4 This Agreement will not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in this Agreement. Neither we, nor you, will have, nor represent that it has, any authority to make any commitments of this kind on the other party's behalf.
- 15.5 If any provision of this Agreement is held invalid or unenforceable, such provision shall be deemed deleted from this Agreement and replaced by a valid and enforceable provision which so far as possible achieves the parties' initial intent. The remaining provisions of this Agreement shall continue in full force and effect.
- 15.6 This Agreement shall be governed by, and construed in accordance with, the laws in force in Victoria, Australia. The parties submit to the non-exclusive jurisdiction of the courts of Victoria.
- 15.7 This Agreement may be executed in any number of counterparts and all counterparts taken together will constitute one instrument.
- 15.8 This Agreement and any document expressly incorporated in it contains the whole agreement between us and you in respect of the subject matter of this Agreement and supersedes and replaces any prior written or oral agreements, representations or understandings. The parties confirm that they have not relied on any representation that is not expressly incorporated into this Agreement.