

Memorandum of Understanding between GIVE Foundation and

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This Memorandum of Understanding (hereinafter referred to as the "Agreement") is

Entered into at Mumbai this ____ day of _____, 20____, BETWEEN

GIVE Foundation, a company licensed under section 25 of the Companies Act, having its office at 3rd floor, West Khetwadi Municipal School, Khetwadi Lane No.5, Mumbai-400 004 (hereinafter referred to as "**the Channel**") which expression shall, unless repugnant to the context or meaning thereof, deem to mean and include its successors and assigns) of the ONE PART

AND

_____ ,

an organisation (NGO) registered under the

Act and having its office at

(Hereinafter referred to as "**the NGO**" which expression shall, unless repugnant to the context or meaning thereof, deem to mean and include its successors and assigns) of the OTHER PART

The Channel and the NGO are hereinafter collectively referred to as the "Parties" and individually as the "Party"

WHEREAS

The Channel has set up an online donation

channel (hereinafter referred to as "GIVE Online") to host various NGOs registered as non-profit NGOs, societies or companies, invite the public at large to donate to them, and receive donations from donors in India and abroad, through various online and offline payment mechanisms, including, but not limited to, credit cards, internet banking, remittance systems like Money2India, physical cheques, drafts, and the like.

AND WHEREAS

The NGO is desirous of being listed on the channel, and allowing donors to make their donations to them online through various payment mechanisms,

AND WHEREAS

The Channel has processed the NGO's application for listing on GIVE Online, and, based on the documents submitted, found the application to be in line with the Channel's listing requirements and criteria,

NOW, THEREFORE, in consideration of mutual promises and undertakings herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Channel and the NGO agree as follows:

ARTICLE I - DEFINITIONS

NGO shall mean, for the purposes of this agreement, a non-governmental/ governmental/ voluntary organisation designated as and registered with the Channel as an NGO.

Site shall mean, for the purposes of this agreement, the online donation channel set up by the Channel referred to above.

Listed shall mean, for the purposes of this agreement, listed with the Channel to receive donations through the site.

Donor shall mean, for the purposes of this agreement, any legal person, whether Indian or otherwise, that has accessed the site, and that

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donates or intends to donate or is capable of making a donation through the site.

FCRA shall mean the Foreign Contribution (Regulation) Act, 1976, as updated from time to time, and including amendments thereto, and the Rules thereof.

Foreign donation shall mean, for the purposes of this agreement, donations from foreign sources as defined by the FCRA.

Foreign donor shall mean, for the purposes of this agreement, foreign sources as defined by the FCRA.

FCRA-registered NGOs shall mean, for the purposes of this agreement, NGOs registered under the FCRA as eligible to receive foreign donations, subject to the provisions of the said Act.

FCRA Account shall mean, for the purposes of this agreement, the Bank Account of the NGO or of an FCRA-registered NGO that is designated to receive foreign donations, in keeping with the provisions of the FCRA.

Merchant Account shall mean, for the purposes of this agreement, an account opened to receive online credit, debit or charge card and similar payments through the site.

ARTICLE II - THE RESPONSIBILITIES OF THE CHANNEL

1. The Channel shall carry information about the NGO on the "GIVE Online" sub site it operates at ICICCommunities.org, provide necessary formats or templates to present such information in a user friendly manner, and promote the sub site in order to attract donations for the NGO.
2. The Channel shall provide necessary software interfaces that allow donors to donate online to the NGO, using different modes of payment as the legal framework and economics of operation may permit, such as credit cards, Internet banking, remittances, and so on.
3. The Channel shall assist the NGO to open bank or merchant accounts, access internet banking facilities and payment gateway facilities, and, where it deems fit, provide such facilities itself, in order for the NGO to be able to receive donations online.
4. The Channel shall process transactions on its site, collect funds on behalf of the NGO

or receive donations earmarked for the NGO either into its own account, or directly into the NGO's bank or merchant accounts, as appropriate.

5. The Channel shall periodically disburse to the NGO, moneys collected on behalf of the NGO or earmarked by donors for the NGO, and also regularly provide information to the NGO about donations received on its behalf or earmarked for the NGO. Such disbursements may be made unconditionally, or contingent upon the NGO fulfilling its obligations with respect to the donations, as per the terms of this agreement.
6. The Channel shall, for the time being, ensure that 100% of the amount donated by a donor for the NGO, is passed on to the NGO, and that all transaction costs and financial charges are borne by the Channel. Any change in this arrangement shall be intimated to the NGO by the Channel in writing, at least 30 days in advance.
7. The Channel shall solicit funds from donors for the participating NGOs, as well as for other purposes that it may determine. Donors may specify the organisation they wish to donate to, or request the Channel to manage their charity funds. The Channel is bound to transfer specifically targeted donations, to the organisation specified by the donor. However, the Channel shall be free to manage the charity funds given in its charge, in such manner as it may, in its sole discretion, deem fit. Where the donor does not specify any organisation, the Channel shall be at liberty to disburse the funds on behalf of the donor in such ways as it may deem fit.

ARTICLE III - THE RESPONSIBILITIES OF THE NGO

1. The NGO authorizes the Channel to appeal for and seek donations on behalf of the NGO, or earmarked for the NGO, on a regular basis, in such ways as are within the provisions of law, and promotional ethics.
2. The NGO shall provide to the Channel, write-ups, publications, reports, data, photographs, internal reports, reports submitted to/by external evaluators, funding agencies, etc., newsletters, studies and researches, financial information, statistics, etc. and such other information, including financial information, as the Channel or its representatives may require, in order to present the same in suitable

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formats and templates on the site. The NGO shall provide full support and co-operation to the Channel and its representatives to develop content for the site.

3. The NGO shall, if required, open a merchant account with ICICI Bank Ltd. or such other Bank as the Channel may recommend to it, and enter into payment gateway agreements with ICICI ePayments Ltd. or such other gateway service providers as the Channel may recommend, in order to accept online donations. The NGO shall provide such limited access rights to such accounts or facilities, to the Channel, as may be required for the Channel to accept donations on its behalf and reconcile transactions.
4. The NGO shall, if required, carry out such formalities as may be required to obtain suitable tax exemption or deduction status, or other tax benefits that may be passed on to donors. While the Channel shall provide advisory support and guidance to the NGO in this regard, the responsibility of obtaining such concessions shall vest with the NGO.
5. The NGO shall ensure that all donations received through the site are used within a reasonable time limit, not exceeding 90 days in any case, for the purpose selected by the donor, from the choices made available by the NGO on the site. The NGO shall ensure that the donor's intention is honoured, and in case of inability to do so, shall, in consultation with the Channel, either refund the donor's money, or obtain her consent to apply the donation for such other purpose as the donor may deem fit.
6. The NGO shall issue suitable receipts and tax deduction or exemption certificates to the Channel or to the donor, as the case may apply. Where the donation was collected by the Channel on behalf of the NGO, the NGO shall issue a receipt favouring the donor, whereas if the donation was collected by the Channel, and was earmarked by the donor for the NGO, the NGO shall, on receipt of the disbursement from the Channel, issue a receipt favouring the Channel. The language and wording on the receipt shall be in accordance with the wordings prescribed by the Channel, but within the provisions of law.
7. The receipts may be sent to the Channel or to the donor directly, as may be determined by the Channel from time to time.
8. The NGO shall send to the Channel or to the donor directly, as may be determined by

the Channel from time to time, such feedback on the utilization of her donation, as may have been mutually agreed to between the NGO and the Channel and documented. The NGO appreciates that provision of such feedback forms a very key element of its responsibilities as part of this agreement, and that non-fulfillment of the same shall, without prejudice to the other provisions of this agreement, make it liable to refund the donation to the Channel or donor. Where the donation has not been credited to the NGO, the Channel may, if it so desires, withhold disbursement till such feedback is provided.

9. The NGO shall maintain a separate account of donations received through the site showing the receipt and application of funds therein. The NGO shall also permit an external audit or inspection of its books of accounts by the Channel or its representatives, covering the donations and grants received through the site, or from any other source or sources, including funding agencies or other donors.
10. The NGO shall maintain adequate systems to track the donations of individuals, usage of donations for the purpose specified, mailing of tax certificates and receipts, and reporting formats as applicable. These systems shall be subject to the audit mentioned above. The Channel may, at its sole discretion, provide such assistance to the NGOs as it deems necessary, for setting up such systems.
11. The NGO shall uphold, in keeping with the image of the site, such norms for interaction or correspondence with donors as may be prescribed by ICICIcommunities.org or by the Channel from time to time.
12. The NGO shall carry out statutory audits on time, and provide all audit reports (statutory as well as internal) to the Channel on request.
13. The NGO will provide regular updates on the usage of funds and their impact, performance and financial ratios of efficiency and effectiveness, etc. through reports and case studies, and also help the Channel and its representatives to compile such updates.

ARTICLE IV - REPRESENTATIONS, RIGHTS, WARRANTIES AND INDEMNITIES

1. The Channel indemnifies the NGO of any and all legal liabilities arising out of false or

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- incorrect information provided by the Channel or any other organisation listed on the site, barring when the information pertains to the NGO itself and the Channel has presented the same on the basis of information provided by the NGO, which was itself incorrect or false. Where the information provided by the NGO is false or incorrect, the NGO indemnifies the Channel against any and all legal liabilities arising out of the presentation of such false or incorrect information.
2. While the Channel and its representatives shall have the right to present the content about the NGO on the site in such formats, templates and manner as they deem fit, the same shall require to be approved by the NGO in advance, so as to ensure that such presentation is in keeping with the NGO's image and value systems.
 3. The Channel indemnifies the NGO of any and all legal liabilities arising out of any claims relating to misuse of funds by any of the other NGOs listed on the site, or out of any other such claims that arise in spite of the NGO discharging its responsibilities as envisaged in this agreement.
 4. The Channel indemnifies the NGO of any and all liabilities arising out of misuse of the merchant administration or similar software operated by the Channel or its representatives on behalf of the NGO.
 5. The NGO warrants that all the information provided by it to the Channel at the time of application and subsequently, is true to the best of its knowledge and belief, and especially warrants that it has provided accurate information about whether it is duly registered as per the provisions of the FCRA or not. The NGO indemnifies the Channel from any liabilities arising out of error or willful default in regard to the NGO's legal obligations with regard to the FCRA or any other Act as may apply to the NGO, including, but not limited to, submission of FC forms and other such documents.
 6. The Channel warrants that the software and programs that constitute the site do perform the functions as detailed in this agreement, and indemnifies the NGO from any liabilities arising from non-performance on this account.
 7. The NGO indemnifies the Channel from any and all legal liabilities arising due to non-compliance on part of the NGO, with the terms of this agreement.
 8. The NGO indemnifies the Channel from any and all legal liabilities that may arise due to the NGO authorizing any other person or entity to operate the merchant administration or similar software on its behalf.
 9. The NGO indemnifies the Channel of all liability for financial transactions that are not honoured by the donors, including, but not limited to credit card charge backs, cheques that are dishonoured, online transactions reversed at the request of the donor, stop-payments and the like. In all cases where the NGO has already received payment which is subsequently dishonoured, the NGO undertakes to make good any repayments that the Channel will have to make to financial intermediaries on account of such dishonouring of the donation by the donor.
 10. The Channel and its representatives may respond to the queries from a donor or any other person based on information already provided by the NGO, which they believe to be true to the best of their knowledge. The NGO indemnifies the Channel and its representatives from any and all liabilities arising out of such response in good faith.
 11. The Channel limits to itself the sole rights of adding or removing various features, facilities or capabilities on GIVE Online.
 12. The Channel may use such payment mechanisms and routes as it may, in its sole discretion, deem fit. This could include tying up with Foundations or organisations in India or abroad to receive donations on its behalf, or on behalf of the NGO, if the NGO is registered with the FCRA. The Channel may also enter into financial arrangements with banks, financial institutions, payment gateways, online bill paying systems and other forms of e-commerce and financial services organisations, to collect donations on behalf of the NGO.
 13. All conversion of exchange from one currency to another will be done at such exchange rates as the Channel may, at its sole discretion, determine.
 14. All the material developed for and hosted on the site, including text, photographs, multimedia and any other matter will be the copyright of the Channel alone, except for material which is taken directly from an existing publication, photograph, news clipping or publication of the NGO, etc. In cases where the material is taken from an existing publication, the copyright shall vest with the original source.

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15. The Parties represent and warrant that they have full capacity, power and authority to enter into, execute, deliver and perform this agreement, that such execution, delivery or performance do not violate or conflict with any law applicable to the Parties, any provision in their constitutional documents, any order or judgment of any court or other agency of government applicable to them or any of their assets, or any contractual restriction binding on or affecting them or any of their assets.
16. The Parties represent and warrant that all governmental and other consents that are required to have been obtained by them with respect to this agreement have been obtained and are in full force and effect and all conditions of any such consents have been complied with.
17. The Parties represent and warrant that there is not pending, or, to their knowledge, threatened against them, any action, suit, proceedings at law or in equity or before any court, tribunal, government body, agency or official, or any arbitrator, that is likely to affect the legality, validity or enforceability of this agreement, or their ability to perform their obligations under this agreement.
18. The Parties represent and warrant that all applicable information that is furnished in writing or otherwise, by or on behalf of the Parties, is, as of the date of information, true, accurate and complete in every material respect.

ARTICLE V - ESSENCE OF THE AGREEMENT

The essence of the consideration provided by the Channel is the value of the donations collected on behalf of the NGO from donors. The essence of the consideration provided by the NGO is usage of the donations through the site for the purpose they were intended, and provision of relevant receipts, tax certificates and feedback on usage of the donation, to the Channel or the donor.

As viewed by the NGO, the relationship between the Channel and the Donor is that of an Agent and a Principal, and as such, the Channel shall exercise on behalf of the donor, such rights as the donor would have been able to herself exercise with respect to the donation she makes for the NGO.

This view is solely applicable to the NGO and does not preclude the Channel's right to enter

into such agreements with the donor as it may deem fit, and the provisions of this agreement shall not, in any way, affect or influence the provisions of the agreement between the Channel and the donor.

ARTICLE VI - TERM AND TERMINATION

1. The terms and conditions of this agreement shall be valid until such time that this agreement is replaced by another agreement.
2. Provided, however, that this agreement may be terminated by either Party by providing a notice of 1 month to the other Party, in the event of any dispute arising between the Parties, or upon failure of the other Party to observe or perform any of its covenants under this agreement.
3. Provided, further, that this agreement may be terminated by mutual consent of the Parties hereto, with or without notice.
4. **Force Majeure:** Notwithstanding anything else contained in this agreement, the agreement shall stand terminated if either of the parties becomes incapable of acting as is provided for in this agreement, due to earthquake, flood, cyclone, or other natural disasters or any other act of God.
5. In the event of termination of this agreement, the following shall apply:
 - (i) The Channel shall immediately disable this payment mechanism on the site, including all software programs and other systems, and surrender to the NGO, the operating rights to the merchant administration and similar software, under intimation to the providers of the service.
 - (ii) The merchant account opened by the NGO and the payment gateway facility agreements entered into by it shall automatically stand voided, and both Parties shall severally notify the providers of such account or facility of the termination of this agreement.
 - (iii) The terms of this agreement shall be complied with by both Parties for all the donations committed through the site, and any indemnities relating to such donations or other such transactions made prior to the termination of the agreement shall hold insofar as they apply to such transactions and donations.

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- (iv) The Channel shall withdraw or cause to be withdrawn, any publicity, promotion or information that offers donors the option of making donations to the NGO on this site.

Terms of this agreement and further agreements

This agreement is legally binding on the parties to this agreement and represents a basis of consent towards a formal agreement to be entered into, pursuant to this agreement, after all the necessary approvals have been obtained.

ARTICLE VII - MISCELLANEOUS

- 1. The provisions of this agreement shall be governed by, and construed in accordance with Indian law, and any dispute, controversy or claims arising out of or relating to this agreement or any breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the Indian Arbitration and Conciliation Act, 1996. The jurisdiction of this agreement shall be Ahmedabad.
- 2. This agreement represents the current intentions of the Parties and is subject to any changes that may take place in the laws relating to the conduct of financial services business or the activities of not-for-profit organisations in India, and is also subject to all laws, rules and regulations presently applicable, and to obtaining all licenses, permissions, consents, approvals and execution of such agreements as may be necessary to give effect to the rights and obligations of the Parties as contemplated

- herein.
- 3. Any provision of this agreement may be amended or waived if, and only if, such amendment or waiver is evidenced by a written instrument signed by a duly authorized representative of the Parties, or, in the case of a waiver, by the Party against whom the waiver is to be effective.
- 4. Provided that neither Party may assign, delegate or otherwise transfer any of their rights or obligations under this agreement to any person in any manner without the prior written consent of the other Party. Nothing in this agreement, either express or implied, is intended to release either Party from liability and responsibility with respect to their rights and obligations hereunder.
- 5. In connection with this agreement, as well as all transactions contemplated by this agreement, each Party agrees to execute and deliver such additional documents and to perform such additional actions as may be necessary, appropriate and reasonably requested, to carry out or evidence the transactions contemplated hereby.
- 6. The invalidity or unenforceability of any provisions of this agreement in any jurisdiction shall not affect the validity, legality or enforceability of the remainder of this Agreement in such jurisdiction or the validity, legality or enforceability of this agreement, including any such provision, in any other jurisdiction, it being intended that all rights and obligations of the Parties hereunder shall be enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, the undersigned have executed this agreement, in duplicate, as of the date set forth above.

For GIVE Foundation

For _____

Name:

Name:

Date:

Date:

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