

GivingTools Terms of Service Agreement

Last updated: April 29, 2018

These terms (“Terms”) cover the use of the givingtools.com website, the GivingTools Online Giving service, the GivingTools Campaign Website service, the GivingTools Print Design service, and the GivingTools Video Production service (together, or individually, the “Service”) operated by GivingTools (“us”, “we”, or “our”), a DBA of Fathom Studio, LLC., 310 East Main Street, Mechanicsburg PA 17055.

Your access to and use of the Service is conditioned upon your acceptance of and compliance with these Terms. These Terms apply to all visitors, users, and others who wish to access or use the Service.

By accessing or using the Service you agree to be bound by these Terms. If you disagree with any part of the terms then you do not have permission to access the Service.

Context of Agreement

GivingTools strives to support the work of nonprofits by providing services at competitive prices and by making affordable third-party solutions available to our customers. We intentionally forgo opportunities for added profit in order to maintain our pricing and support our nonprofit customer base. We do this because we believe that nonprofits have limited resources and that by maintaining affordability, we help them make the world a better place. Accordingly, we must carefully protect our interests so that we can provide services to as many nonprofits as possible. We know that legal agreements can be off-putting, and we apologize in advance for the lengthy and detailed nature of this agreement.

Privacy

You have every right to expect your personal data to be handled with care and to not be used for purposes not closely associated with the delivery of our services. Please read the GivingTools Privacy Statement (the “Privacy Statement”) as it describes our policies regarding the collection, use, and disclosure of personal data when you use our Service and the choices you have associated with that data.

Communications

By creating an Account on our service, you agree to subscribe to newsletters, marketing or promotional materials and other information we may send. However,

you may opt out of receiving any, or all, of these communications from us by following the unsubscribe link or instructions provided in any email we send.

Availability, Errors, and Inaccuracies

We are constantly updating product and service offerings on the Service. We may experience delays in updating information on the Service and in our advertising on other web sites. The information found on the Service may contain errors or inaccuracies and may not be complete or current. Products or services may be mispriced, described inaccurately, or unavailable on the Service, and we cannot guarantee the accuracy or completeness of any information found on the Service.

We therefore reserve the right to change or update information and to correct errors, inaccuracies, or omissions at any time without prior notice.

CardConnect Agreements

If you wish to create funding requests and receive donated funds through GivingTools Online Giving service or our Campaign Website service, you must set up a master account (“Master Account”) with GivingTools. To activate your Master Account and enable it to process donations, your Master Account requires a separate account with our integrated payments processor, CardConnect, a subsidiary of First Data. CardConnect is located at 1000 Continental Dr #300, King of Prussia, PA 19406. CardConnect and GivingTools are entirely separate companies that work collaboratively to provide an online processing experience to donors.

CardConnect is used to process ACH transactions for all our customers. CardConnect handles the debiting of our monthly fee. And for those customers who are not using a different processor (like Stripe, for example) for credit card processing, CardConnect handles cards processing, too.

As a convenience to our customers, the signup process for a GivingTools Master Account includes an automated sharing of information with CardConnect so that a separate account with CardConnect can be set up for you. CardConnect requires that you read and agree to certain terms in order to consider your application.

By agreeing to the terms of GivingTools, you are also agreeing that you have read and agree to the terms of CardConnect, which are comprised of CardConnect’s Merchant Application ([view](#)), PCI Data Storage Compliance ([view](#)), Program Guide ([download](#)), Personal Guarantee ([view](#)), BlueChex pricing as presented on the BlueChex Addendum ([download](#)), and Electronic Signature Acknowledgement ([view](#)).

If you are plan on using CardConnect for cards processing, you are asked by CardConnect (through their vendor, currently Trustwave) to complete a PCI self-assessment questionnaire (“SAQ”) within 90 days and renew it when prompted each year. There is no cost to complete the SAQ. It is further noted that the early termination fee noted in the Program Guide is waived by CardConnect via notation on the Merchant Application.

You do not need to complete the Merchant Application form as this form is automatically completed on your behalf when you submit your GivingTools Online Giving application. If you complete the Merchant Application form independently, two CardConnect accounts may be created for you, and one would need to be cancelled.

Your CardConnect account provides the following fees and rates (cards-related fees and rates do not apply if you are not using CardConnect to process cards transactions):

- Monthly Fee (passed to GivingTools): \$14.95
- ACH processing at 0% plus a 25¢ per-transaction fee
- Standard: Visa, Mastercard, American Express, Discover processing for cards issued by U.S.-based banks at 2.85% plus a 25¢ per-transaction fee
- International: Visa, Mastercard, American Express, Discover processing for cards issued by non-U.S.-based banks at 3.25% plus a 25¢ per-transaction fee
- ACH Bounce Check Fee: \$8
- Cards Chargeback Fee: \$35
- ACH Reversal Fee: \$15
- No Setup Fee
- No Early Termination Fee
- No High-Ticket Surcharge
- No PCI Compliance Fee
- No Settlement Fees

Purchases

If you wish to make a donation to a Master Account or pay for any product or service made available through the Service (“Purchase”), you may be asked to supply certain information relevant to your Purchase including, without limitation, your credit card number, the expiration date of your credit card, your billing address, and your shipping information. In some instances, payment will be via debit of a bank account that you link to our system. In that instance, your bank account and routing number are requested along with other information related to your Purchase.

You represent and warrant that: (i) you have the legal right to use any credit card(s) or other payment method(s) in connection with any Purchase; and that (ii) the information you supply to us is true, correct, and complete.

The service may employ the use of third party services for the purpose of facilitating payment and the completion of Purchases. By submitting your information, you grant us the right to provide the information to these third parties subject to our Privacy Policy.

We reserve the right to refuse or cancel your order at any time for reasons including but not limited to: product or service availability, errors in the description or price of the product or service, error in your order or other reasons.

We reserve the right to refuse or cancel your order if fraud or an unauthorized or illegal transaction is suspected.

Subscriptions

Some Purchases are billed on a subscription basis (“Subscription(s)”). You will be billed in advance on a recurring and periodic basis (“Billing Cycle”). Billing cycles for Master Accounts are set on a monthly basis. Billing cycles for donations to Master Accounts are set at the time of the gift and may have a billing cycle that is one-time, weekly, bi-weekly, monthly, quarterly, or yearly, as available.

At the end of each Billing Cycle, your Subscription will automatically renew under the exact same conditions unless you cancel it, GivingTools cancels it (itself or at your request), or the Subscription expires based on an expiration date set at the time of Purchase.

A Master Account Subscription renewal may be cancelled by contacting GivingTools customer support (support@givingtools.com).

While every attempt is made to bill on the billing cycle selected, it is possible that a Payment or Payments may not be billed on schedule. In this instance, GivingTools is granted permission to initiate a billing equal to the sum of Payments due at the time.

In the case of our Online Giving service (or to enable online payments to function on our Campaign Website service), payment for Master Account processing services is via bank debit. On the second of each month, your bank account will receive up to two debits. A debit, from “ACH Transaction Bankcard” covers your monthly fee as well as any card processing charges for the prior month. A debit from “BluePay” covers any ACH processing charges from the prior month.

In some instances (generally for international customers), a Master Account Subscription may be funded via credit card. In that instance, a valid payment method, including credit card, is required to process the payment for your Subscription. You shall provide GivingTools with accurate and complete billing information including full name, address, state, zip code, telephone number, and a valid payment method information. By submitting such payment information,

you automatically authorize GivingTools to charge all Subscription fees incurred through your Master Account to any such payment instruments.

In the case of credit-card-funded Master Account Subscriptions, should automatic billing fail to occur for any reason, GivingTools will issue an electronic invoice indicating that you must proceed manually, within a certain deadline date, with the full payment corresponding to the billing period as indicated on the invoice.

Nonpayment

If GivingTools collects any payment due at law or through an attorney at law or under advice there from or through a collection agency, or if GivingTools prevails in any action to which the Customer and GivingTools are parties, Customer will pay all costs of collection and litigation, including, without limitation, all court costs and GivingTools's reasonable attorneys' fees. If any Customer payment is returned for insufficient funds GivingTools may, in its sole discretion, impose a processing charge of up to \$25. If two or more Customer payments are returned for insufficient funds in any six-month period, GivingTools in its sole discretion may require alternative payment methods for all future Customer payments.

Fee Changes

GivingTools, in its sole discretion and at any time, may modify the Subscription fees for Master Accounts. Any Master Account Subscription fee change will become effective at the end of the then-current Billing Cycle.

GivingTools will provide you with a reasonable prior notice of any change in Master Account Subscription fees to give you an opportunity to terminate your Subscription before such change becomes effective.

Your continued use of the Service after the Master Account Subscription fee change comes into effect constitutes your agreement to pay the modified Subscription fee amount.

Refunds

Except when required by law, paid Subscription fees are non-refundable.

Content

Our Service allows you to post, link, store, share and otherwise make available certain information, text, graphics, videos, or other material ("Content"). You are responsible for the Content that you post on or through the Service, including its legality, reliability, and appropriateness.

By posting Content on or through the Service, you represent and warrant that: (i) the Content is yours (you own it) and/or you have the right to use it and the right to grant us the rights and license as provided in these Terms, and (ii) that the posting of your Content on or through the Service does not violate the privacy rights, publicity rights, copyrights, contract rights or any other rights of any person or entity. We reserve the right to terminate the account of anyone found to be infringing on a copyright.

You retain any and all of your rights to any Content you submit, post or display on or through the Service and you are responsible for protecting those rights. We take no responsibility and assume no liability for Content you or any third party posts on or through the Service. However, by posting Content using the Service you grant us the right and license to use, modify, publicly perform, publicly display, reproduce, and distribute such Content on and through the Service.

GivingTools has the right but not the obligation to monitor and edit all Content provided by users.

In addition, Content found on or through this Service is the property of GivingTools or is used with permission. You may not distribute, modify, transmit, reuse, download, repost, copy, or use said Content, whether in whole or in part, for commercial purposes or for personal gain, without express advance written permission from us.

Accounts

When you create an account with us, you guarantee that you are at least the age of 18 and that the information you provide us is accurate, complete, and current at all times. Inaccurate, incomplete, or obsolete information may result in the immediate termination of your account on the Service.

You are responsible for maintaining the confidentiality of your account and password, including but not limited to the restriction of access to your computer and/or account. You agree to accept responsibility for any and all activities or actions that occur under your account and/or password, whether your password is with our Service or a third-party service. You must notify us immediately upon becoming aware of any breach of security or unauthorized use of your account.

You may not use as a username the name of another person or entity or that is not lawfully available for use, a name or trademark that is subject to any rights of another person or entity other than you, without appropriate authorization. You may not use as a username any name that is offensive, vulgar, or obscene.

We reserve the right to refuse service, terminate accounts, remove or edit content, or cancel orders at our sole discretion.

Intellectual Property

The Service and its original content (excluding Content provided by users), features and functionality are and will remain the exclusive property of GivingTools and its licensors. The Service is protected by copyright, trademark, and other laws of both the United States and foreign countries. Our trademarks and trade dress may not be used in connection with any product or service without the prior written consent of GivingTools.

Links to Other Web Sites

Our Service may contain links and/or integrations to/with third party web sites or services that are not owned or controlled by GivingTools, such as BluePay.

GivingTools has no control over, and assumes no responsibility for the content, privacy policies, or practices of any third party web sites or services. We do not warrant the offerings of any of these entities/individuals or their websites.

You acknowledge and agree that GivingTools shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such content, goods or services available on or through any such third party web sites or services.

Termination

We may terminate or suspend your account and bar access to the Service immediately, without prior notice or liability, under our sole discretion, for any reason whatsoever and without limitation, including but not limited to a breach of the Terms.

If you wish to terminate your account, you may simply discontinue using the Service and contact us by email at support@givingtools.com. We can initiate cancellation of your BluePay processing account via email to BluePay as a courtesy.

All provisions of the Terms which by their nature should survive termination shall survive termination, including, without limitation, ownership provisions, warranty disclaimers, indemnity, and limitations of liability.

Indemnification

You agree to defend, indemnify and hold harmless GivingTools and its licensee and licensors, and their employees, contractors, agents, officers and directors, from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's fees), resulting

from or arising out of a) your use and access of the Service, by you or any person using your account and password; b) a breach of these Terms, or c) Content posted on the Service.

Limited Warranty

GivingTools represents and warrants to Customer that the Services will be performed (i) in a manner consistent with industry standards reasonably applicable to the performance thereof; (ii) at least at the same level of service as provided by GivingTools generally to its other customers for the same services; and (iii) in compliance in all material respects with the applicable Service Descriptions. Customer will be deemed to have accepted such Services unless Customer notifies GivingTools within 30 days after performance of any Services of any breach of the foregoing warranties. Customer's sole and exclusive remedy, and GivingTools' sole obligation, for breach of the foregoing warranties shall be for GivingTools, at its option, to re-perform the defective Services at no cost to Customer, or, in the event of interruptions to the Services caused by a breach of the foregoing warranties, issue Customer a credit in an amount equal to the current monthly Service Fees pro rated by the number of hours in which the Services have been interrupted. GivingTools may provision the Services from any of its data centers and may from time to time re-provision the Services from different data centers.

The foregoing warranties shall not apply to performance issues or defects in the Services (i) caused by factors outside of GivingTools' reasonable control; (ii) that resulted from any actions or inactions of Customer or any third parties; or (iii) that resulted from Customer's equipment or any third-party equipment not within the sole control of GivingTools.

Except as expressly provided in this section, GivingTools makes no representations or warranties of any kind, express or implied, with respect to the services or any software provided under this agreement, including, without limitation, any warranty of merchantability, fitness for a particular purpose, title or non-infringement of third-party rights, and GivingTools hereby expressly disclaims the same. Without limiting the foregoing, any third-party software provided to customer hereunder is provided "as is" without any condition or warranty whatsoever. GivingTools does not warrant that the services will be uninterrupted, error-free, or completely secure.

Limitation of Liability

In no event shall GivingTools, nor its directors, employees, partners, agents, suppliers, or affiliates, be liable for any indirect, incidental, special, consequential or punitive damages, including without limitation, loss of profits, data, use, goodwill, or other intangible losses, resulting from (i) your access to or use of or inability to access or use the Service; (ii) any conduct or content of any

third party on the Service; (iii) any content obtained from the Service; and (iv) unauthorized access, use or alteration of your transmissions or content, whether based on warranty, contract, tort (including negligence) or any other legal theory, whether or not we have been informed of the possibility of such damage, and even if a remedy set forth herein is found to have failed of its essential purpose.

Exclusions

Some jurisdictions do not allow the exclusion of certain warranties or the exclusion or limitation of liability for consequential or incidental damages, so the limitations above may not apply to you.

Notice of Dispute

The term “dispute” is as broad as it can be. It includes any claim or controversy between you and us concerning the Services, the software related to the Services, your GivingTools account, advertising, marketing, communications, your purchase transaction, billing, or these Terms, under any legal theory including contract, warranty, tort, statute, or regulation, except disputes relating to the enforcement or validity of your, your licensors’, our, or our licensors’ intellectual property rights.

We hope we never have a dispute, but if we do, you and we agree to try for 60 days to resolve it informally. If you have a dispute and our customer service representatives can’t resolve it, send a Notice of Dispute by U.S. Mail to: GivingTools, Notice of Dispute, 310 East Main Street, Mechanicsburg, PA 17055, U.S.A. Tell us your name, address, how to contact you, what the problem is, and what you want.

Class Action Waiver

Class action lawsuits, class-wide arbitrations, private attorney-general actions, and any other proceeding where someone acts in a representative capacity aren’t allowed. Nor is combining individual proceedings without the consent of all parties.

Governing Law

These Terms shall be governed and construed in accordance with the laws of Pennsylvania, United States, without regard to its conflict of law provisions.

Our failure to enforce any right or provision of these Terms will not be considered a waiver of those rights. If any provision of these Terms is held to be invalid or

unenforceable by a court, the remaining provisions of these Terms will remain in effect. These Terms constitute the entire agreement between us regarding our Service, and supersede and replace any prior agreements we might have had between us regarding the Service.

Changes

We reserve the right, at our sole discretion, to modify or replace these Terms at any time. If a revision is material, we will provide at least 30 days notice prior to any new terms taking effect. What constitutes a material change will be determined at our sole discretion. Otherwise, changes to Terms of Service are effective when they are posted on this page.

By continuing to access or use our Service after any revisions become effective, you agree to be bound by the revised terms. If you do not agree to the new terms, you are no longer authorized to use the Service.

Contact Us

If you have any questions about these Terms, please contact us by email at support@givingtools.com