



**CHARITY  
BYTES**

## **USER AGREEMENT**

*Effective September 22, 2017*

These terms of use ("Agreement" or "User Agreement") apply to access to, and use of, Silent Solutions' (herein, "Charity Bytes") web- and mobile-enabled application (the "Website"), and other features offered as part of the Charity Bytes service (collectively, the "Service"). Please review the terms described herein carefully. By using the Service in any manner, you (the "user" or "you") enter into a binding contract with Charity Bytes, whether or not you create a Charity Bytes account. Your use of the Service is contingent on your acceptance of these terms and all the terms and policies incorporated herein. You must not use this service if you do not agree to these terms, and your use of the Services means that you have read, understand and agree to be bound by these terms. This Agreement applies to all users of the Service, including without limitation users who are vendors, customers, merchants, contributors of content, information and other materials or services.

If you accept or agree to these terms on behalf of a company or other legal entity, you represent and warrant that you have the authority to bind that company or other legal entity to these terms and, in such event, "you" and "your" will refer and apply to that company or other legal entity.

### **1. DESCRIPTION OF SERVICES**

- a. The Service provides a platform that enables businesses and organizations ("Suppliers" or "Supplier") to manage otherwise wasted food. The Service enables Suppliers with surplus food or organic waste items ("Food Items") to connect with organizations that are prepared to consume or repurpose such Food Items ("Receivers" or "Receiver"). Collectively, Suppliers and Receivers make up Charity Bytes' customer base ("Customers"). You may be a Supplier and/or Receiver in

connection with your use of the Services and, in either case, you are a “Customer” as such term is used herein.

- b. Charity Bytes provides a platform for Suppliers and Receivers to connect. It is up to Customers to coordinate food transportation for transactions scheduled through use of the Service. Charity Bytes offers information and a method to communicate with other Customers, but does not provide transportation services or act in any way as a coordinator or transporter of Food Items or other goods. Charity Bytes has no responsibility or liability for the quality, timeliness, or reliability of Food Items or the transportation coordinated between Customers.
- c. The Services may enable Customers to provide ratings and feedback regarding other Customers (“Ratings”).

## **2. NO AGENCY; NO RESPONSIBILITY FOR FOOD ITEMS OR TRANSPORT**

You and Charity Bytes are independent contractors, and no agency, partnership, joint venture, employee-employer or franchiser-franchisee relationship is intended or created by this agreement. The actual exchange of Food Items occurs between the Supplier and Receiver according to pricing, donation, terms and conditions established by such Supplier and Receiver. Charity Bytes is not responsible for insuring any Customer or for the quality, safety, or legality of any aspect of the Food Items listed, the truth or accuracy of listings of Food Items, or the ability of Suppliers to provide Food Items or the ability of Receivers to receive Food Items.

## **3. REGISTRATION**

To access the Service, you must create a Charity Bytes account. You agree to provide accurate, current, and complete information to your account as may be required by Charity Bytes from time to time. You will be responsible for the use and maintenance of the confidentiality of your login credentials and password and shall not share your login credentials or password with anyone else.

You agree not to use the account, login credentials, or password of another user at any time, disclose your password to anyone else, or impersonate any person or entity. You agree to exit from your account at the end of each session and to immediately notify Charity Bytes of any unauthorized use of your password or account. You are solely responsible for any and all use of your account and for any actions that take place using your account. Failure to provide accurate and timely account information may result in your account being closed and/or your access to content provided through your account being suspended, discontinued, or removed. Charity Bytes reserves the right to disallow use of a login credentials or account information that is deemed offensive or inappropriate. All suggestions and comments you provide become the intellectual property of Charity Bytes.

#### **4. ACCESS RIGHTS**

- a. Subject to your compliance with this User Agreement, Charity Bytes grants you limited, revocable, nonexclusive, non-assignable, non-sublicensable right to access the Service. Any rights not expressly granted herein are reserved by Charity Bytes.
- b. Without limiting any of the preceding terms, you may not
  - i. modify, decompile or reverse engineer any software or hardware related to the Service, including the web and mobile applications;
  - ii. remove or alter any product identification, trademark, copyright or other notices related to the Service;
  - iii. use or allow the use of the web or mobile applications by or for the benefit of third parties, including by renting, leasing or lending the web or mobile applications; or
  - iv. reproduce, sell, or distribute the web or mobile applications without Charity Bytes' permission.

## **5. USER CONTENT AND INTELLECTUAL PROPERTY**

- a. When you submit Ratings or other content as part of the Service (“posting” or “listing”), you grant Charity Bytes a non-exclusive, worldwide, perpetual, irrevocable, royalty-free, sublicensable (through multiple tiers) right to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, make available to the public, and exercise any and all copyright, publicity, trademarks, database rights and other intellectual property rights you have in the content, both in any media now known or in the future. Further, to the fullest extent permitted under applicable law, you waive your moral rights and promise not to assert such rights or any other intellectual property or publicity rights against Charity Bytes, its sublicenses, or its assignees. Further, if you provide Charity Bytes with any suggestions or feedback regarding potential improvements or extensions to the Services (“Feedback”), you hereby grant to Charity Bytes a non-exclusive, perpetual, irrevocable, royalty-free, fully-paid, transferable, sublicensable (through one or more tiers) license to copy, use, modify and otherwise exploit such Feedback.
- b. You represent and warrant that any posting and use of your information submitted to Charity Bytes shall be true, correct and complete and shall not infringe or violate the rights of any third party.
- c. You acknowledge and agree that, when you provide us with your name of business, type of business, business address, logo and other business-specific information (“Business Information”), you grant to Charity Bytes the right to disclose and utilize that Business Information as outlined in the Privacy Policy.

## **6. FEES & BILLING**

- a. Charity Bytes may charge fees for the Service, as provided on the Website. Such fees may include a nonrecurring service initialization fee, a recurring monthly subscription fee per location and/or per user, and/or a service fee

- associated with a transaction. Charges may also be imposed for your failure to honour commitments made to other Customers through our Services. By continuing to access and use the Service after you are notified of such fees, you agree to be subject to these fees.
- b. If Charity Bytes terminates a listing or your account, if you close your account, or if the payment of your Charity Bytes fees cannot be completed for any reason, you remain obligated to pay Charity Bytes for all unpaid fees. If your account is not paid in full and becomes past due, we may suspend your access to the Service and/or terminate your account and other collection mechanisms (including retaining collection agencies and legal counsel).
  - c. You acknowledge and agree that Charity Bytes shall have the right to utilize a third-party payment processor in its discretion.

## **7. USER CONDUCT**

- a. You agree to comply with all applicable laws when using the Service, and to use the Service solely in a lawful manner and for lawful purposes. You shall not cause nuisance, annoyance, inconvenience, or property damage to any party in connection with your use of the Services or your interactions with other Customers arising from your use of the Services. You must accurately listing Food Items, and for reading and understanding the description of Food Items before claiming a listing for such Food Items.
- b. By using the Service in any manner, you are prohibited from:
  - i. using the Service if you have been temporarily or indefinitely suspended from Charity Bytes' site, services, applications or tools;
  - ii. manipulating or interfering with the listings or account of another user;
  - iii. posting false, inaccurate, or misleading content;
  - iv. transferring accounts without consent;
  - v. distributing or posting malicious software such as viruses, time bombs, trojan horses, worms, or any other disruptive or harmful component;

- vi. distributing or posting spam, unsolicited or bulk electronic communications, chain letters, or pyramid schemes;
  - vii. collecting information about users without their consent;
  - viii. web scraping, using spiders or otherwise using technical or robotic means to collect data from the Services;
  - ix. circumventing any technical measures used to provide the Service;
  - x. attempting to gain unauthorized access to any part of the Service, to other users' accounts, or to other networks or systems connected to the Service;
  - xi. interfering with the use of the Service by any other individual or party;
  - xii. soliciting or using personal identifying information for commercial or unlawful purposes from other users or disseminating another person's personal information without his or her permission.
- c. If Charity Bytes believes or discovers that you are using the Service in any of the ways mentioned above, Charity Bytes may, in its sole discretion, take any steps to prevent and mitigate such abuse such as limiting, suspending, or terminating your user account(s) and access to the Service, delaying or removing hosted content, and taking technical and/or legal steps to prevent you from using the Service.
- d. Inactive Accounts: Charity Bytes reserves the right, in its sole discretion, to cancel unconfirmed or inactive accounts.
- e. Charity Bytes reserves the right to refuse service to anyone, for any reason, at any time. Charity Bytes may suspend or terminate provision of the Services at any time and for any or no reason.

## **8. SUPPLIER LISTING CONDITIONS**

- a. Suppliers using the Service are responsible for the accuracy and content of the listing and Food Items they offer.
- b. Suppliers are prohibited from listing prohibited content, including but not limited to, content that (is):

- i. fraudulent or involves the sale of illegal, counterfeit or stolen Food Items;
- ii. links directly or indirectly, references or contains descriptions of goods or services that are prohibited by Charity Bytes, either in this agreement or any other agreement you enter into with Charity Bytes;
- iii. hosts images that are not part of the listing;
- iv. violates local, state, or federal food safety laws or standards;
- v. includes any copyrighted material unless you own or control the copyright in and to such material;
- vi. knowingly false and/or defamatory, profane, inaccurate, libelous, tortuous, abusive, vulgar, hateful, racist, bigoted, sexist, harassing, threatening, inflammatory, obscene, profane, sexually oriented, invasive of a person's privacy, or is otherwise objectionable or in violation of any applicable law, rule, or regulation;
- vii. violates or infringes the rights of any other party, including, without limitation, rights of privacy, rights of publicity, copyright, trademark, or other intellectual property rights;
- viii. contains material that breaches another's privacy, i.e., phone numbers, addresses, or other personal information;
- ix. contains spam, including, but not limited to, junk mail, chain letters, unsolicited bulk email or duplicative messages, excessive cross-postings, and material that is unrelated to the forum in which it is posted;
- x. includes material that contains advertisements or commercial solicitations; or;
- xi. includes material discussing illegal activities or linking to websites that deal with such activities.

## **9. RECEIVER CLAIMING CONDITIONS**

- a. Receivers are responsible for reading and understanding full Food Item listings before making a bid or commitment to claim a Food Item.

- b. Customers, not Charity Bytes, are solely responsible for honouring any confirmed transactions and making available any products reserved through the application. If you, as a Receiver, choose to enter into a transaction with a Supplier for the transfer of Food Items, you agree and understand that you will be required to enter into an agreement with the Supplier containing terms, conditions, rules and restrictions mutually agreed by you and the Supplier. You acknowledge and agree that you, and not Charity Bytes, will be responsible for performing the obligations of any such agreements, that Charity Bytes is not a party to such agreements, and that, Charity Bytes disclaims all liability arising from or related to any such agreements.

## 10. DISPUTES

- a. In the event a dispute arises between you and another user or a third party, Charity Bytes encourages you to contact the user or third party to resolve the dispute amicably. Charity Bytes has the right but no obligation to resolve disputes between users or between users and outside parties. To the extent that Charity Bytes attempts to resolve a dispute, Charity Bytes will do so in good faith based solely on Charity Bytes' policies. Charity Bytes will not make judgments regarding legal issues or claims; if Charity Bytes may impose fees for your improper use of the Services or failure to honour your supply or purchase obligations with other Customers, as such fees may be agreed by you from time to time.
- b. You release Charity Bytes (and Charity Bytes officers, directors, agents, subsidiaries, joint ventures and employees) from any and all claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way connected with disputes with one or more users, or any other outside party.

## 11. DISCLAIMER OF LIABILITY

- a. You agree that the provisions of this section will survive any termination of your account or of the Services.
- b. You agree that your use of the Service is at your own risk, and that the Service is provided "AS IS" and "AS AVAILABLE."
- c. Charity Bytes, its subsidiaries, officers, directors, and employees specifically disclaim any implied warranties of title, merchantability, performance, fitness for a purpose and non-infringement. Charity Bytes does not warrant that any information is complete or accurate, that the service will be uninterrupted or error free or that any information is free of viruses and/or rogue or malicious programming. In addition, no advice or information (oral or written) obtained by you from Charity Bytes shall create any warranty.
- d. Charity Bytes shall not be liable for any damages or losses (including, but not limited to, loss of money, goodwill or reputation, profits, or other intangible losses or any special, indirect, or consequential damages) resulting directly or indirectly from:
  - i. your use of or your inability to use our Service;
  - ii. guidance given to you by Charity Bytes;
  - iii. errors or delays associated with the Service;
  - iv. inaccuracies in the Service;
  - v. damages to your computer or other device from use of the Service;
  - vi. any Food Item;
  - vii. the content, actions, or inactions of third parties;
  - viii. any disciplinary action taken with your account;
  - ix. the way that your products and account are displayed on the Service;
  - x. your need to modify practices, content, or behavior or your loss of or inability to do business, as a result of changes to this User Agreement or Charity Bytes' policies.
  - xi.

## **12. INDEMNIFICATION**

You agree to defend and indemnify Charity Bytes and its owners, shareholders, subsidiaries, affiliates, officers, employees, partners, and licensees, and hold them harmless from any and all claims and expenses, including attorney's fees, arising from or related in any way to your use of Charity Bytes services, any breach of this user agreement, any food items, or failure to abide by applicable law.

## **13. SEVERABILITY**

If any portion of these terms is found to be invalid or unenforceable, the remaining portions of the terms shall continue to be valid; provided, however, that a court having jurisdiction may revise such provision to the extent necessary to make such provision valid and enforceable consistent with Charity Bytes's original intention.

## **14. CONFIDENTIALITY**

Charity Bytes agrees to use a commercially reasonable level of care to preserve the confidentiality of any user information that is provided to Charity Bytes as the result of the user's access to and use of the Service. All user information is subject to Charity Bytes's Privacy Policy.

## **15. ENTIRE AGREEMENT**

The User Agreement, the User Privacy Notice, and all current Charity Bytes policies set forth the entire understanding and agreement between you and Charity Bytes and supersede all prior understandings and agreements of the parties.

## **16. CHANGES TO THE AGREEMENT**

Charity Bytes reserves the right, at its sole and absolute discretion, to change, modify, add to, supplement or delete any of the terms and conditions of this Agreement, effective with or without prior notice. Your continued use of the Service following your receipt of any revision to this Agreement constitutes your acceptance of any and all such changes, solely with respect to the time period after the date of such changes.

## **17. WAIVER AND CONFLICT**

The failure of Charity Bytes to exercise or enforce any right or provision in this User Agreement shall not operate as a waiver. As it relates to the Services, if there is ever a conflict between this User Agreement and any other terms or policies, then this User Agreement will control.

## **18. AGREEMENT TO ARBITRATE**

You and Charity Bytes each agree that any and all disputes or claims that have arisen or may arise between you and Charity Bytes relating in any way to or arising out of this User Agreement or your use of or access to the Service shall be resolved exclusively through final and binding arbitration, rather than in court, except that you may assert claims in small claims court, if your claims qualify and so long as the matter remains in such court and advances only on an individual (non-class, non-representative) basis. The Federal Arbitration Act governs the interpretation and enforcement of this Agreement to Arbitrate.

The arbitration will be conducted by the Australian Centre for International Commercial Arbitration (ACICA) under its rules and procedures. The arbitration shall be held in Australia, Brisbane or at another mutually agreed location. The arbitrator will decide the substance of all claims in accordance with the laws of the Commonwealth of Australia, including recognized principles of equity, and will honour all claims of privilege recognized by law. The arbitrator's award shall be final and binding and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

## **19. APPLICABLE LAW**

- a. You agree that the laws of the Commonwealth of Australia, without regard to principles of conflict of laws, will govern the User Agreement and any claim or dispute that has arisen or may arise between you and Charity Bytes, except as otherwise stated in the User Agreement.

- b. Unless you and Charity Bytes agree otherwise, or in the event that the Agreement to Arbitrate above is for any reason held to be unenforceable, you agree that any claim or dispute that has arisen or may arise between you and Charity Bytes must be resolved exclusively by a state or federal court located in Queensland, Australia. You and Charity Bytes agree to submit to the personal jurisdiction of the courts located within Queensland, Australia for the purpose of litigating all such claims or disputes.

## **20. TERMINATION**

This Agreement will remain in full force and effect while you use the Service and/or have a Charity Bytes account. You may terminate your license to the Service by providing written notice to Charity Bytes. Notwithstanding any of the preceding terms, Charity Bytes reserves the right, without notice and in its sole discretion, to terminate your license to use the Service and block or prevent your future access to, and use of, the Service. After your account is terminated for any reason, all terms of this User Agreement survive such termination, and continue in full force and effect, except for any terms that by their nature expire or are fully satisfied.