

Asset Transfer Agreement

This is an Asset Transfer Agreement (“**Agreement**”), dated as of _____, 20___, between Client, a California nonprofit public benefit corporation, and [_____] a California nonprofit public benefit corporation (“**ABC**”).

Background

A. Client is a volunteer-driven organization whose mission is to [_____]. In pursuit of that mission, Client has [_____].

B. ABC, established in [_____], has a mission to [_____]. In line with that mission, ABC [_____]. ABC collaborated with Client to [_____].

C. In light of these shared missions and activities, Client believes its mission is best achieved by transferring its operations, assets, and liabilities to ABC. In accordance with Section 5911 of the California Corporations Code, Client wishes to transfer to ABC, and ABC wishes to accept from Client, all of Client’s assets. In connection with the transfer, ABC will assume all of Client’s liabilities.

Client and ABC agree as follows:

1. Transfer

1.1 Transfer of Assets

At the Closing (defined below), Client will transfer to ABC all of Client’s right, title, and interest in its assets, including, without limitation, those listed in **Exhibit A (“Transferred Assets”)**.

1.2 Assumed Liabilities

At the Closing, ABC will assume all of Client’s liabilities and obligations, including, without limitation, those listed in **Exhibit B (“Assumed Liabilities”)**.

1.3 Closing

The transfer of the Transferred Assets and the assumption of the Assumed Liabilities will occur at a closing (“**Closing**”), as soon as practicable following satisfaction or waiver of the conditions set out in Sections 5 and 6, on a date mutually agreed by ABC and Client (“**Closing Date**”).

1.4 Taxes

ABC will be responsible for all applicable transfer or other taxes due in connection with the transfer of the Transferred Assets.

2. Client Representations and Warranties

Client represents and warrants to ABC as follows:

2.1 Organization

Client is a nonprofit public benefit corporation duly incorporated, validly existing, and in good standing under the laws of California, and has all necessary corporate power and authority to conduct its programs and activities. Client is current in its registration and reporting requirements with the California Attorney General’s Registry of Charitable Trusts.

2.2 Corporate Power and Authority

Client has the requisite power and authority to enter into this Agreement and to carry out the transactions contemplated by this Agreement. The execution and delivery of this Agreement has been duly authorized by all requisite action on the part of Client.

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2.3 Binding Agreement

This Agreement, assuming it constitutes the valid and binding obligation of ABC, constitutes the valid and binding obligation of Client, enforceable against Client in accordance with its terms, subject to laws: (a) relating to bankruptcy, insolvency, and the relief of debtors; and (b) governing specific performance, injunctive relief, and other equitable remedies.

2.4 No Conflict

The execution, delivery, and completion by Client of the transactions contemplated by this Agreement will not: (a) result in a violation by Client of any provision of the articles of incorporation, bylaws, or other organizational documents of Client; (b) result in a breach of, or entitle the other party to terminate, any contract to which Client is a party; (c) result in any lien, security interest, charge, or encumbrance on any of the Transferred Assets (collectively, "**Encumbrances**") or any acceleration of debt repayment; (d) require any consent, order, approval, authorization, or other action of, or any filing with or notice to, any governmental authority prior to the Closing, except as contemplated by Section 4.5(a); or (e) result in a violation of law. All contracts included in the Transferred Assets may be assigned without consent of the other party.

2.5 Title to Transferred Assets

Client has good title to, or a valid leasehold interest in, all Transferred Assets, free and clear of Encumbrances or other restrictions of any kind, except for liens for taxes not yet due and payable. At the Closing, ABC will acquire good and valid title to or a valid leasehold interest in all of the Transferred Assets, free and clear of Encumbrances of any kind.

2.6 Condition of Tangible Assets

All tangible personal property included in Transferred Assets is in good repair and working order, excluding ordinary wear and tear, and is adequate for the uses to which it is being put.

2.7 Financial Statements

Client has provided to ABC copies of profit and loss statements for the fiscal years ended June 30, 2018, 2017, and 2016, and balance sheets dated June 30, 2018, 2017, and 2016 ("**Financial Statements**"). Each of the Financial Statements was prepared in accordance with sound accounting practices customary for an organization of the nature and size of Client, and correctly and completely presents, in all material respects, the financial activities and position of Client.

2.8 Absence of Changes

Since June 30, 2018: (a) Client has conducted its business in the ordinary course consistent with past practice; (b) no event or development has had or is reasonably likely to have a material adverse effect on Client; and (c) the Transferred Assets have not have suffered any material damage or destruction, whether nor not covered by insurance.

2.9 No Undisclosed Liabilities

Except as stated in the Financial Statements, Client does not have any material liability or obligation of any nature relating to or affecting its programs or activities, except for liabilities and obligations incurred in the ordinary course of business consistent with past practice.

2.10 Restrictions on Transferred Assets

All donor-imposed or other restrictions on Client's use of any Transferred Assets are described in Exhibit A.

2.11 Contracts

Client is not a party to any material contracts, other than contracts included in the Transferred Assets and its [_____] Agreement with [_____] ("**[_____] Agreement**"). All contracts included in the Transferred Assets are valid, binding, and in full force and effect. No party to any such contract is in material breach of or has threatened to terminate such contract. Client has delivered to ABC true and complete copies of each such contract.

2.12 Intellectual Property

Client has not registered or submitted any applications to register any trademarks, patents, service marks, and copyrights. All trade names and marks used by Client are included in the Transferred Assets.

2.13 Taxes

Client has filed when due all tax returns and other reports required of it under all federal, state, and local tax laws. All such returns and reports are correct and complete. Client has paid in full any and all taxes or other related amounts due.

2.14 Compliance with Law

Client has complied in all material respects in the last 12 months with all applicable federal, state, and local laws, regulations, and ordinances.

2.15 Permits

Client is in possession of and compliance with all permits, licenses, and other authorizations of any governmental authority necessary for it to own, lease, and operate the Transferred Assets and to carry on [_____].

2.16 Litigation

There is no lawsuit or other legal proceeding pending or being overtly threatened, against Client before any court or arbitrator.

2.17 Brokers

No broker, finder, or agent is entitled to any brokerage, finder's, or other fee or commission in connection with the transactions contemplated by this Agreement based on arrangements made by or on behalf of Client.

2.18 Full Disclosure

To Client's knowledge, none of the representations and warranties of Client contained in this Agreement or its exhibits contains any untrue statement or omits a material fact necessary to make such statements not misleading.

3. ABC Representations and Warranties

ABC represents and warrants to Client as follows:

3.1 Organization

ABC is a nonprofit public benefit corporation duly incorporated, validly existing, and in good standing under the laws of California, and has all necessary corporate power and authority to conduct its programs and activities. ABC is current in its registration and reporting requirements with the California Attorney General's Registry of Charitable Trusts.

3.2 Corporate Power and Authority

ABC has the requisite corporate power and authority to enter into this Agreement and to carry out the transactions contemplated by this Agreement. The execution and delivery of this Agreement has been duly authorized by all requisite corporate action on the part of ABC.

3.3 Binding Agreement

This Agreement, assuming it constitutes the valid and binding obligation of Client, constitutes the valid and binding obligation of ABC, enforceable against ABC in accordance with its terms, subject to laws: (a) relating to bankruptcy, insolvency, and the relief of debtors; and (b) governing specific performance, injunctive relief, and other equitable remedies.

3.4 No Conflict

The execution, delivery, and completion by ABC of the transactions contemplated by this Agreement will not: (a) result in a violation by ABC of any provision of the articles of incorporation, bylaws, or other organizational documents of ABC; or (b) result in a violation of law.

3.5 Brokers

No broker, finder, or agent is entitled to any brokerage, finder's, or other fee or commission in connection with the transactions contemplated by this Agreement based on arrangements made by or on behalf of ABC.

3.6 No Knowledge of Inaccuracies

ABC is not aware of any facts or circumstances that would render false any of Client's representations or warranties in this Agreement.

4. Pre-Closing Covenants

Between the date of this Agreement and the Closing Date, unless otherwise agreed by the parties in writing:

4.1 Continued Operation

Subject to Section 6613 of the California Corporations Code, Client will use commercially reasonable efforts to operate in the ordinary course, including, without limitation, preserving the Transferred Assets, not taking any action that would materially increase the Assumed Liabilities, and maintaining adequate insurance coverage.

4.2 Access to Information

Client will give ABC reasonable access to books, records, and other information as ABC may reasonably request.

4.3 Notification of Certain Matters

Client will promptly notify ABC of: (a) any material damage to or destruction of the Transferred Assets; (b) pending or threatened termination of any contract included in the Transferred Assets; (c) any event or occurrence that would materially increase the Assumed Liabilities; and (d) any pending or threatened lawsuit or other legal proceeding.

4.4 Approvals and Third-Party Consents

Client will use commercially reasonable efforts to obtain all approvals and third-party consents required to transfer the Transferred Assets and assign to ABC all contracts and other rights included in the Transferred Assets.

4.5 Notice to Attorney General

As promptly as practicable following the date of this Agreement, Client will: (a) give the notice required by Section 5913 of the California Corporations Code to the California Attorney General in connection with the transactions contemplated by this Agreement; and (b) use reasonable efforts to lift any restraint, injunction, or other legal bar to the transactions contemplated by this Agreement. ABC will provide information and take actions as reasonably requested by Client in connection with these efforts.

4.6 Proposed Dissolution

Promptly after the date of this Agreement, Client intends to request approval from the California Attorney General to complete a voluntary dissolution as soon as practicable following the Closing. ABC will provide information and take actions as reasonably requested by Client in connection with these efforts.

4.7 [_____] Agreement

Client will use commercially reasonable efforts to terminate the [_____] Agreement as of the Closing. Following the Closing, Client will work with [_____] to facilitate the transition of [_____] to ABC.

5. ABC's Conditions to Closing

ABC is obligated to complete the transactions contemplated by this Agreement only if all the following conditions are met (or waived by ABC) as of the Closing:

5.1 Accuracy of Representations and Warranties

The representations and warranties of Client contained in Section 2 will be accurate in all material respects.

5.2 Performance of Covenants

Client will have performed in all material respects all covenants required to be performed by it prior to or at the Closing.

5.3 No Legal Prohibition

No injunction, order, or law prohibiting the transactions contemplated by this Agreement will be in effect.

5.4 Attorney General Approval

The advance notice period for the notice described in Section 4.5(a) will have elapsed without objection from the California Attorney General, or the California Attorney General will have otherwise approved (or waived objection to) the transactions contemplated by this Agreement.

5.5 No Material Adverse Effect

There will have been no events or developments that have had or are reasonably likely to have a material adverse effect on Client's programs or activities.

5.6 Bill of Sale

ABC will have received from Client the signed Bill of Sale and Assumption Agreement in the form of **Exhibit C** ("Bill of Sale").

6. Client's Conditions to Closing

Client is obligated to complete the transactions contemplated by this Agreement only if all the following conditions are met (or waived by Client) as of the Closing:

6.1 Accuracy of Representations and Warranties

The representations and warranties of ABC contained in Section 3 will be accurate in all material respects.

6.2 Performance of Covenants

ABC will have performed in all material respects all covenants required to be performed by it prior to or at the Closing.

6.3 No Legal Prohibition

No injunction, order, or law prohibiting the transactions contemplated by this Agreement will be in effect.

6.4 Attorney General Approval

Client will have obtained the approval (or waiver of objection) of the California Attorney General to complete the transactions contemplated by this Agreement. The advance notice period for the notice described in Section 4.5(a) will have elapsed without objection from the

California Attorney General, or the California Attorney General will have otherwise approved (or waived objection to) the transactions contemplated by this Agreement.

6.5 Bill of Sale

Client will have received from ABC the signed Bill of Sale.

7. Post-Closing Covenants

7.1 Use of Transferred Assets

Following the Closing, ABC may use the Transferred Assets only to [_____] or to otherwise further Client's original mission. This includes, without limitation, [_____] consistent with Client's past practice.

7.2 Donor Restrictions on Transferred Assets

Following the Closing, ABC will comply with donor-imposed or other restrictions, if any, on the use of any of the Transferred Assets.

7.3 Further Assurances

ABC and Client will sign those other documents and take those other actions as the other party may request in order to effect, account for, and document the transactions contemplated by this Agreement.

8. General Provisions

8.1 Fees and Expenses

ABC and Client will pay their own fees and expenses in connection with this Agreement.

8.2 Entire Agreement

This Agreement, together with its exhibits, expresses the final, complete, and exclusive agreement between ABC and Client, and supersedes all prior or contemporaneous written and oral agreements, arrangements, negotiations, communications, course of dealings, or understandings between ABC and Client.

8.3 Amendment

This Agreement may be amended only as stated in and by a writing signed by both ABC and Client that recites that it is an amendment to this Agreement.

8.4 Severability

If any provision in this Agreement is held invalid or unenforceable, the other provisions will remain enforceable, and the invalid or unenforceable provision will be considered modified so that it is valid and enforceable to the maximum extent permitted by law.

8.5 Waiver

Any waiver under this Agreement must be in writing and signed by the party granting the waiver. Waiver of any breach or provision of this Agreement will not be considered a waiver of any later breach or of the right to enforce any other provision of this Agreement.

8.6 No Assignment

Neither party may assign its rights or delegate its obligations under this Agreement to anyone else without the prior written consent of the other party.

8.7 No Third-Party Beneficiaries

This Agreement is for the exclusive benefit of ABC and Client and not for the benefit of any third party, including, without limitation, any employee, affiliate, contractor, or vendor of ABC or Client.

8.8 Notices

Notices, approvals, and consents under this Agreement must be in writing and delivered by mail, courier, fax, or e-mail to the contact persons identified on the signature page. These contact persons and addresses may be changed by written notice to the other party.

8.9 Governing Law

This Agreement will be governed by California law.

8.10 Counterparts

This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which will be taken together and deemed to be one instrument.

* * * * *

ABC and Client have signed this Agreement as of the date stated in its first paragraph:

Client

By: _____

Name: _____

Title: _____

Address:

[_____]

[_____]

Email: _____

Fax: _____

ABC

By: _____

Name: _____

Title: _____

Address:

[_____]

[_____]

Email: _____

Fax: _____

Exhibits

Exhibit A: Transferred Assets

Exhibit B: Assumed Liabilities

Exhibit C: Bill of Sale

Exhibit A: Transferred Assets

[attach]

Exhibit B: Assumed Liabilities

[attach]

Exhibit C: Bill of Sale and Assumption Agreement

This is a Bill of Sale and Assumption Agreement dated as of _____, 20__ between Client, a California nonprofit public benefit corporation, and [_____], a California nonprofit public benefit corporation ("ABC").

Background

Client and ABC have entered into an Asset Transfer Agreement, dated as of _____, 20__ ("Agreement"). Unless otherwise defined, capitalized terms used in this document have the meanings set out in the Agreement. Under the Agreement, Client has agreed to transfer all of its assets and liabilities to ABC, and ABC has agreed to accept the assets and assume all of the liabilities of Client.

Client and ABC agree as follows:

1. Assets

Client assigns, transfers, conveys, grants, and delivers to ABC all of Client's right, title, and interest in the Transferred Assets.

2. Liabilities

ABC assumes and agrees to pay, perform, and discharge when due, all of the Assumed Liabilities.

3. Further Assurances

ABC and Client will sign those other documents and take those other actions as the other party may request in order to effect, account for, and document the transactions contemplated by this Agreement.

* * * * *

Client and ABC signed this Bill of Sale and Assumption Agreement as of the Closing Date.

Client

ABC

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____