

Commercial Fundraiser Agreement

This is a Commercial Fundraiser Agreement (“Agreement”), dated as of _____, 20__, between _____, a [California nonprofit corporation] (“Client”) and _____, a[n] _____ (“Contractor”).

BACKGROUND

A. Client is a tax-exempt charitable organization under Section 501(c)(3) of the Internal Revenue Code (“Code”). Its mission is *[insert mission]*.

B. Contractor is an independent entity engaged in the business of fundraising for nonprofit corporations. Client wishes to engage Contractor for fundraising services, and Contractor wishes to provide such services, on the basis set out in this Agreement.

C. This Agreement is intended to be and is a written contract between a commercial fundraiser and a charitable organization within the meaning of Section 12599(i) of the California Government Code (“Code”).

D. This Agreement has three exhibits. The first exhibit, a document attached as **Exhibit A** and referred to as the “Plan,” sets out the specifics of the arrangement, including the timeframe, charitable purpose, activities and services, budget and reporting requirements, fee computation and expenses, insurance requirements, and contact persons. The second exhibit, attached as **Exhibit B**, is a form to be used to document any adjustments in the Plan as provided by Section 1.4 of this Agreement. The third exhibit, attached as **Exhibit C**, is an exhibit identifying Client trademarks that may be used in connection with the relationship as provided by Section 4.

Client and Contractor agree as follows:

1. BASIC AGREEMENT

1.1 Services

Contractor will provide fundraising services (“Services”) as specified in this Agreement, including the Plan attached as **Exhibit A**.

1.2 Timeframe

Contractor will provide Services during the period stated in the Plan.

1.3 Fee

Client will pay Contractor fees as set out in the Plan.

1.4 Adjustments in Plan

If either Client or Contractor believes the Plan should be adjusted in any respect, it will so advise the other of the proposed changes. Client and Contractor will discuss the proposed adjustment and, if they agree on an adjustment, confirm and document the adjustment in the Plan Adjustment form attached as **Exhibit B**.

2. FUNDRAISING OBLIGATIONS AND ACTIVITIES

2.1 Standards and Personnel

Contractor will carry out the Services in accordance with this Agreement, applicable law, and the highest professional standards of diligence and conduct including, without limitation, in interactions with potential donors and with Client staff. If Client believes that Contractor personnel are not qualified or effective to perform the Services or is otherwise concerned about staffing or other aspects of Contractor’s performance,

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Client may so notify Contractor, and Contractor will promptly address the concern to Client's reasonable satisfaction.

2.2 Compliance with Law

Contractor will comply with all federal, California, and other applicable state and local applicable to Contractor's status as a commercial fundraiser and otherwise to its performance of the Services. By way of example and not of limitation, Contractor will comply with all registration, reporting, notice, disclosure, conduct, and recordkeeping requirements applicable to commercial fundraisers under the Code and will not make any misrepresentation or engage in any unfair or deceptive acts or practice as prohibited by the Code.

2.3 Budget and Expenditures

Contractor will submit to Client, no later than the date set out in the Plan, a reasonable operating budget for the Services. Client must give its written approval of the budget before Contractor begins solicitation activities under this Agreement. Contractor will not, without first getting Client's written approval, incur expenses for an event or activity that exceed the amount budgeted by more than \$500.

2.4 Representations About Client

Contractor, in soliciting funds or sales, will describe Client accurately and as set out in the Plan. Contractor staff will state to potential donors that such staff members represent Contractor in connection with fundraising activities on behalf of Client.

2.5 No Authority to Speak for or Commit Client

Contractor will not purport to speak or act on behalf of Client, including, without limitation, making statements that purport to be official positions of Client, or represent or imply that Contractor has the power or authority to bind Client to a third party or commitment in any manner.

2.6 Public Relations Activities

The Plan sets out the public relations plan for the campaign. For consistency of communication, Contractor will not issue any public statement relating to the campaign without first consulting and obtaining written approval from Client.

2.7 Approval

Contractor will not distribute or otherwise make available any solicitation or sale materials, or post any social media or other digital content, relating to Client (including, without limitation, any materials or content containing Marks as defined in Section 4.1), without first providing the material or content to Client and obtaining receipt of written approval from Client. Contractor will make such changes in materials and content as Client may request. Contractor may use Client's trademarks in such materials as approved by Client and in accordance with Section 4 of this Agreement.

2.8 Funds Deposit and Control

Contractor, in respect of each contribution to Client in the control or custody of Contractor, shall, in its entirety and within five working days of its receipt, (a) deposit the funds in an account at a bank or other federally insured financial institution which account must solely be in the name of Client; (b) deliver the funds to Client in person, by United States express mail, or by another method of delivery providing for overnight delivery; (c) or by another method as Client requests. Client will maintain and administer any such account and will have sole control over all withdrawals. Contractor acknowledges that, under the Code, Contractor will be a constructive trustee for all funds it collects on behalf of Client.

2.9 Monitoring and Control

As required by Section 12599(i)(8) of the Code, and in line with policy, brand, and reputational considerations, Client will retain control and approval over the content and frequency of all solicitation and sales activities of Contractor on behalf of Client. Client

may monitor such activities and direct or limit them as Client determines in its sole discretion.

3. COMMUNICATION

3.1 Contact Person

Client and Contractor will each appoint one individual to act as principal contact person and to coordinate activities. The initial appointees are identified in the Plan. Client and Contractor each may change its contact person at any time and will so advise the other.

3.2 Reports, Information, and Meetings

Contractor will provide to Client the reports set out in the Plan. Contractor will promptly provide such other information as Client may reasonably request, and promptly respond to email, text, and phone messages from Client. Client and Contractor will meet as provided in the Plan or as they otherwise agree. Such meetings may take place in person, on the phone, or electronically.

3.3 Donor Information

At Client's request, Contractor will provide Client with information on all potential donors contacted by Contractor in the course of carrying out the Services ("Donor Information"). Donor Information will include, without limitation, background information and contribution history, in a format reasonably acceptable to Client. Client will own all Donor Information. Donor Information will constitute confidential information under Section 3.5 of this Agreement. Contractor will not sell, transfer, or otherwise make available Donor Information to any other person, or use it for any purpose except as contemplated by this Agreement.

3.4 Notice of Regulatory and Other Developments

Contractor will promptly notify Client of: (a) any changes in its management team or key personnel responsible for carrying out the Services; (b) any legal action or investigation instituted or threatened against Contractor by the California Attorney General or other governmental agency or charitable organization relating to Contractor's fundraising activities for Client or any other person; or (c) any other development that has or could materially affect its ability to carry out the Services.

3.5 Confidentiality

Contractor will use Confidential Information (as defined below) only in connection with Contractor's activities under this Agreement and keep it confidential, using at least the same degree of care used to protect its own confidential information. "Confidential Information" means all information, in any form, furnished to or obtained by Contractor from Client including, without limitation, Donor Information, fundraising strategy and strategy, planning, budgeting, client, and employee information. It does not include information which: (a) is or becomes generally available to the public other than as a result of a disclosure by Client; (b) was known by Contractor prior to its being furnished by Client; (c) is or becomes available to Contractor on a non-confidential basis from a source other than Client; or (d) is independently developed by Contractor.

3.6 Publicity

Contractor will not identify Client as a client, in any advertising or other activities intended to promote Contractor, or in any website, press release, or public communication, including, without limitation, social media, without the prior written consent of Client.

3.7 Recordkeeping

Contractor will maintain records relating to the Services in a manner such that Client can evaluate Contractor's compliance with this Agreement and will promptly make those records available for review by Client on reasonable notice during the term of this Agreement and for a period of three years after termination or conclusion of the

Services. Contractor will reasonably and promptly cooperate with Client in providing information relating to its activities under this Agreement in connection with any financial or tax audit, litigation, or similar matter involving Client.

4. USE OF CLIENT'S TRADEMARKS

4.1 Client Marks

Client grants to Contractor a non-transferable, non-exclusive, non-sublicensable, revocable license to use, copy, and display the marks set out in **Exhibit C** ("Marks") for the limited purposes set out in the Plan. Contractor will comply with any reasonable trademark guidelines that Client may provide.

4.2 Ownership

Contractor acknowledges that: (a) it has no interest in the Marks other than the license granted under this Agreement; (b) Client will remain the sole and exclusive owner of all right, title, and interest the Marks; and (c) any and all goodwill in the Marks will inure solely to the benefit of Client.

4.3 Non-Permitted Associations

Contractor may not use Marks in any (a) offensive manner that could damage Client's reputation or (b) manner that suggests or implies endorsement of political views or religious beliefs, including, without limitation, in connection with any campaign activity for or against a political candidate or in connection with any lobbying activity.

5. REPRESENTATIONS AND WARRANTIES

5.1 Contractor Authority

Contractor represents and warrants to Client that: (a) Contractor has the requisite corporate power and authority to enter into this Agreement and to carry out the Services; (b) the individual signing this Agreement on behalf of Contractor is an "authorized contracting officer" for Contractor as contemplated by Section 12599(i) of the Code; and (c) neither the execution and delivery of this Agreement nor the performance of Services by Contractor will: (i) result in a violation by Contractor of any contract to which Contractor is a party; or (ii) result in a violation by Contractor of any law applicable to Contractor.

5.2 Contractor Compliance

Contractor represents to Client that: (a) Contractor has completed all registrations, reports, and obtained all governmental authorizations and approvals required by Sections 12599(b) and (c) of the Code for its performance of Services under this Agreement; (b) Contractor is not party to and is not aware of any legal action, proceeding or investigation by the California Attorney General or any other regulatory agency, or by other charitable organization that has retained Contractor, against Contractor or any of its directors, officers, or employees, relating to fundraising activities; and (c) no director or officer of Contractor, no person with a controlling interest in Contractor, and no person Contractor employs, engages, or procures to solicit for compensation, has been convicted by a court of any state or the United States of a crime arising from the conduct of a solicitation for a charitable organization or purpose punishable as a misdemeanor or felony.

5.3 Client Authority

Client represents and warrants to Contractor that: (a) Client has the requisite corporate power and authority to enter into this Agreement and to carry out the transactions contemplated by this Agreement and (b) the individual signing this Agreement on behalf of Client is an official for Client who has authorization from Client's governing body to sign as contemplated by Section 12599(i) of the Code.

6. RELATIONSHIP

6.1 Non-Exclusive

This Agreement is not an exclusive arrangement. Contractor and Client are free to do business with others. Contractor understands that Client may enter into commercial fundraiser, fundraising counsel, commercial co-venture, sponsorship, or other similar arrangements with other companies.

6.2 Contracts with Other Parties

Contractor may be required to enter into contracts with third parties in order to carry out the Services. These contracts will be Contractor's sole responsibility. Client will not will assume any liability for or guarantee the performance of the other in conjunction with any of these contracts.

6.3 Contractor Relationship

Contractor is and will be an independent contractor. Nothing in this Agreement creates an employment, joint venture, or similar relationship between Client and Contractor for any purpose. Except as may be required under Section 12599(i)(8) of the Code with respect to oversight of solicitation and sales activities, Contractor will have sole responsibility for its operations, including, without limitation, funding its business, paying its expenses, complying with legal obligations, and hiring and managing its employees.

6.4 Taxes, Contributions, and Benefits

Contractor will have sole responsibility for all tax returns and payments required by any federal, state, or local tax authority, and for paying all disability, unemployment insurance, workers' compensation contributions, and any other contributions and expenses that may be required in connection with Contractor's performance of the Services and receipt of fees under this Agreement. No Contractor employee will be entitled to or eligible for any benefits that Client makes available to Client's employees.

7. INSURANCE, INDEMNIFICATION, AND REMEDIES

7.1 Contractor Insurance

Contractor will promptly obtain insurance and proof of insurance as described in the Plan.

7.2 Indemnification by Contractor

Contractor will defend, indemnify and hold Client and its directors, officers, employees, agents, and assigns (collectively, "Client Parties"), harmless against all third party or other claims, liabilities, losses, damages, and expenses, including, without limitation, attorneys' fees, which a Client Party may suffer and which arise directly or indirectly from: (a) Contractor's performance of the Services under or in breach of this Agreement; (b) any inaccuracy in Contractor's representations and warranties set out in Section 5 of this Agreement; (c) Contractor's failure to comply with the Code or any other applicable laws in carrying out Services or otherwise; or (d) any claims by employees, subcontractors, creditors, tax authorities, or other persons in a relationship with Contractor. Contractor will have no obligation to indemnify a Client Party to the extent the liability is solely caused by a Client Party's gross negligence or willful misconduct.

7.3 Indemnification by Client

Client will indemnify, defend, and hold Contractor harmless from and against any and all third party claims, liabilities, losses, damages, and expenses, including, without limitation, attorneys' fees and expenses, resulting from any third party claim that the Contractor's use of Marks in accordance with the terms of this Agreement infringes such party's trademark, copyright, trade secret, or other intellectual property rights. Client will have no obligation to indemnify Contractor to the extent the liability is solely caused by such Contractor's gross negligence or willful misconduct.

7.4 Limitation of Liability

Client will not be liable to Contractor for any incidental, special, consequential, exemplary, punitive, or indirect damages arising out of or otherwise related to this Agreement. Client's total liability to Contractor under this Agreement will in no case exceed the fees payable by Client to Contractor under Section 1.3 of this Agreement.

8. TERMINATION

8.1 Early Cancellation

As provided by Section 12599(i)(10)(A) and (B) of the Code, at any time during the ten day period following the date of execution of this Agreement ("Cancellation Period"), Client may cancel this Agreement by providing written notice to Contractor of that cancellation decision. Such cancellation will be effective upon delivery of the notice.

8.2 Termination on Notice

As provided by Section 12599(i)(11)(A) of the Code, Client may terminate this Agreement at any time after the Cancellation Period by providing written notice of that decision to Contractor. Such a termination will be effective 30 days after delivery of the notice.

8.3 Termination for Conduct

As contemplated by Section 12599(i)(12) of the Code, Client may terminate this Agreement at any time after the Cancellation Period if Client reasonably believes that Contractor, its agents, employees, or representatives have (a) made any material misrepresentations in the course of carrying out the Services or with respect to Client; (b) committed a crime in the course of fundraising activities including, without limitation, the Services; or (c) otherwise engaged or is engaging in conduct, or has been alleged to have engaged in conduct including, without limitation, conduct involving harassment or discrimination, of a nature which causes or could cause public disparagement of Client's good name or goodwill or otherwise damage Client's reputation. Such a termination will be effective upon delivery by Client to Contractor of a written notice of termination.

8.4 Termination for Breach

If either party breaches any of its obligations under this Agreement, the non-breaching party may provide the breaching party with written notice of the breach. If the breaching party fails to cure the breach within 30 days after receipt of such notice, the non-breaching party may terminate this Agreement upon delivery to the breaching party of a written notice to that effect, with the termination effective upon delivery of such notice to the breaching party. The non-breaching party may in its reasonable discretion determine whether the breach has been cured.

8.5 Funds Collected after Notice of Cancellation or Termination

As provided by Section 12599(i)(10)(D) of the Code, Contractor will hold in trust for the benefit of Client any funds collected by Contractor after delivery of effective notice of cancellation, without deduction for costs or expenses of any nature. Contractor will, within three days of receipt, transfer to Client all funds collected after the effective date of cancellation or termination, together with any funds collected prior to such delivery and not yet transferred under Section 8.6 of this Agreement.

8.6 Financial Consequences of Cancellation or Termination

If Client cancels this Agreement under Section 8.1, Client will have no liability or payment obligations to Contractor. If Client terminates this Agreement under Section 8.2, Client will be responsible for fee and other payments, if any, due in respect of Services provided, if any, during the 30-day period following delivery of the termination notice. If Client terminates this Agreement under Section 8.3, Client will have no payment, compensation, or other liability to Contractor. If Client or Contractor terminates this Agreement under Section 8.4, then Contractor will be entitled only to

compensation for Services performed through the effective date of termination, less the amount of any claims by Client arising out of such termination, including, without limitation, claims for damages and transition costs. Client will pay undisputed fees within 30 days after the later of receiving Contractor's invoice or the effective date of termination.

8.7 Other Consequences of Termination

Client and Contractor will cooperate in good faith in transition activities to minimize adverse impacts of the termination. Contractor will promptly cease use of any Client Marks. Sections 2.5, 2.8, 3.5, 3.6, 3.7, 4, 7, and 9 of this Agreement will survive the termination of this Agreement.

8.8 Cumulative Remedies

Client's rights, powers, and remedies under this Agreement, including, without limitation, those relating to indemnification and termination, are cumulative and not alternative, and will be in addition to all rights, powers, and remedies given to at law or in equity. The exercise of one or more of these rights or remedies will not impair Client's right to exercise any other right or remedy.

9. GENERAL PROVISIONS

9.1 Entire Agreement

This Agreement, together with the Plan and its other exhibits, expresses Client's and Contractor's final, complete, and exclusive agreement, and supersedes any and all prior or contemporaneous written and oral agreements, arrangements, negotiations, communications, course of dealing, or understanding between Client and Contractor relating to its subject matter. If there are any differences between an exhibit and this Agreement, then this Agreement will control.

9.2 Amendment

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

9.3 Severability

If any provision of this Agreement is held illegal, invalid, or unenforceable, all other provisions of this Agreement will nevertheless be effective, and the illegal, invalid, or unenforceable provision will be considered modified such that it is valid to the maximum extent permitted by law.

9.4 Waiver

Any waiver of the provisions of 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 provision of this Agreement.

9.5 Assignment

Contractor may not assign its rights or delegate its duties under this Agreement to anyone else without the prior written consent of Client.

9.6 Third Party Beneficiaries

Except as specifically provided in Section 7 of this Agreement, this Agreement is for the exclusive benefit of Client and Contractor, and not for the benefit of any third party including, without limitation, any employee, donor, vendor, or client of Client or Contractor.

9.7 Contractor Staff and Subcontractors

For clarity, requirements set out in the Agreement applicable to Contractor apply to Contractor employees, subcontractors, agents, and representatives. Contractor will be responsible for ensuring such persons' conduct is consistent with this Agreement.

9.8 Notices

Notices, approvals, and consents under this Agreement must be in writing and delivered to Client and Contractor by mail, courier, fax, or email to the contact persons set out in the Plan. As required by Section 12599(i) of the Code, written notices of cancellation or termination that are mailed by Client must be by certified mail, return receipt requested, and shall be deemed effective upon the expiration of five calendar days from the date of mailing.

9.9 Governing Law

This Agreement is governed by California law including, without limitation, Sections 12599 – 12599.1 of the Code.

9.10 Injunctive Relief

Contractor acknowledges and agrees that: (a) any breach by Contractor of its obligations under Sections 3.5 or 4 of this Agreement will result in irreparable harm to Client which cannot be reasonably or adequately compensated in damages; (b) Client will be entitled to injunctive or other equitable relief in respect of such breach or imminent breach; and (c) Client will have all other rights and remedies to which it is entitled, at law or in equity, with respect to breach of Sections 3.5 or 4 of this Agreement, and otherwise with respect to the enforcement of all rights relating to the establishment, maintenance, or protection of Client’s Confidential Information and intellectual property.

9.11 Attorneys’ Fees

If there is any arbitration or legal action to enforce or interpret this Agreement, then the prevailing party will be entitled to recover from the non-prevailing party all costs and expenses, including reasonable attorneys’ fees and costs, incurred in the action or proceeding. Attorneys’ fees and costs will include paralegal fees, expert witness fees, and copy and delivery costs.

9.12 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. Transmission by fax or email of executed counterparts constitutes effective delivery.

* * * * *

This Agreement was signed by Client and Contractor as of the date stated in its first paragraph.

[insert legal name of Client]

[insert legal name of Contractor]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Exhibit A Fundraising Plan

Services

Timeframe	Date of execution of contract: Effective date: Termination date: Date solicitation activity to commence in California:
Statement of charitable purpose	
Client description and activities	
Description of Services	
Due date for budget proposal	
Maximum amount to be paid to person or legal entities to secure attendance, sponsorship, approval or endorsement	
Client bank account for funds deposit (if applicable)	
Public relations	[set out PR plan]
Use of Client name and Marks	[identify how contractor can use marks: website, written materials, clothing etc]
Reports by Contractor	

Fees and expenses

[Fixed fee]	Fixed fee: \$ Good faith estimate of what percentage fee will constitute of total contributions received: __% Assumptions upon which estimate is based:
[Percentage fee]	Percentage of total contributions received to be remitted to Client: __% If solicitation involves sales of goods or services or sale of admissions to event, percentage of purchase price to be remitted to Client: __%
Expenses and fundraising costs	

Contractor insurance

Contractor insurance requirements	[state insurance requirements]
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Bond information

Name of surety	
Aggregate amount	
Effective date	
Termination date	

Contractor data and contact person

Contractor address	
Contractor telephone number	
Contractor registration number	
Contractor contact person	Name: Title: E-mail: Telephone:

Client data and contact person

Client address	
Client telephone number	
Client registration number	
Client contact person	Name: Title: E-mail: Telephone:

**Exhibit B
Plan Adjustment**

Date of adjustment	
Reason for change(s)	
Modifications	

This document is a Plan Adjustment as contemplated by, and is an amendment to the Commercial Fundraiser Agreement, dated _____, 20__, between _____ and _____.

Agreed and confirmed as of the date stated above.

[insert legal name of Client]

[insert legal name of Contractor]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Exhibit C
Client Marks

[insert marks]