

Project Transfer Agreement

This is a Project Transfer Agreement (“Agreement”), dated as of _____, 20____, between Client, a California nonprofit corporation, and _____, a _____ nonprofit corporation (“Transferee”).

Background

A. Client is a nonprofit [_____] that [_____]. In line with that mission, Client through its fiscal sponsorship program provides infrastructure and services to projects that further these charitable goals.

B. The project known as _____ (“Project”) is a fiscally sponsored project of Client. The Project Director for Project and Client signed a Fiscal Sponsorship Agreement on _____, 20____ (“Fiscal Sponsorship Agreement”). Project is governed by the Fiscal Sponsorship Agreement and by Client’s operating policies and procedures, as provided in the Fiscal Sponsorship Agreement.

C. Transferee is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code (“Code”). Transferee’s mission is to _____.

D. In furtherance of their tax-exempt purposes, Client wishes to transfer to Transferee, and Transferee wishes to accept from Client, Project’s assets and liabilities, on the terms set out in this Agreement.

Client and Transferee agree as follows:

1. Transfer of Project

1.1 Project Assets

On the Effective Date (as defined in Section 2.1), Client will transfer to Transferee all of Client’s right, title, and interest in and to the assets listed on **Exhibit A** (“Project Assets”). Project Assets include all cash and cash equivalents held by Client as restricted assets dedicated exclusively to Project (“Project Cash”).

1.2 Excluded Assets

Notwithstanding Section 1.1, Client is not transferring, and Transferee is not acquiring, any of the programs, properties, assets (including cash), goodwill, or rights of Client of whatever kind and nature, real or personal, tangible or intangible, which are not Project Assets.

1.3 Project Liabilities

In connection with transfer of Project Assets, on the Effective Date, Transferee will assume all of the liabilities and obligations related to Project, including, without limitation, those listed on **Exhibit B** (“Project Liabilities”).

2. Effective Date of Transfer

2.1 Effective Date

The transfer of the Project Assets and assumption of Project Liabilities will take place on a date determined by Client in its sole discretion (“Effective Date”), as promptly as practicable and in any event within 10 days following satisfaction or waiver of the conditions set out in Sections 7 and 8.

2.2 Termination of Existing Agreement

As of the Effective Date, the Fiscal Sponsorship Agreement will terminate.

3. Cash Transfers, Reserve Fund, and Reconciliation

3.1 Funds Received Prior to Effective Date

Client will continue to deduct fiscal sponsor fees from donations received on behalf of Project prior to the Effective Date, in accordance with the Fiscal Sponsorship Agreement.

3.2 Initial Cash Transfer on Effective Date

Client will calculate Project Cash as of the Effective Date. On the Effective Date, Client will transfer to Transferee the total amount of Project Cash, less a withheld amount ("Reserve Fund"), by check or wire transfer of immediately available funds. The Reserve Fund will equal \$_____ or an amount equal to _____% of Project Cash, whichever is greater.

3.3 Reserve Fund

Client will retain the Reserve Fund amount for a period of [90] days following the Effective Date ("Holdback Period"). Client may use the Reserve Fund to cover outstanding Project-related liabilities, pay expenses related to the Project, reflect adjustments following the financial reconciliation process set out in Section 3.4, or to satisfy indemnification claims under Section 10.3 that arise during the Holdback Period.

3.4 Financial Reconciliation

Client will perform an internal financial reconciliation of Project Assets and Project Liabilities during the Holdback Period. Client and Transferee agree and acknowledge that Project Assets (including Project Cash) and Project Liabilities will be subject to adjustment for accounting or administrative error, payment of liabilities related to Project which remained outstanding as of the Effective Date, or similar reasons. Following the reconciliation, Client will (a) notify Transferee and increase or decrease, as applicable, the Reserve Fund amount by the amount of the adjustment if Client determines that an adjustment is necessary; and (b) transfer to Transferee, by check or wire transfer of immediately available funds, any remaining cash in the Reserve Fund. If the Reserve Fund amount is insufficient or unavailable to satisfy the amount due to Client following determination of the adjustment, then Transferee will pay to Client the amount of any shortfall within [10] days after Client notifies Transferee in writing. Transferee acknowledges and agrees that, absent manifest error, Client's books and records relating to the financial reconciliation under this Section 3.4 will be deemed correct, accurate, and binding on Transferee.

4. Representations and Warranties of Client

Client represents and warrants to Transferee as follows:

4.1 Organization

Client is a nonprofit public benefit corporation duly organized, validly existing, and in good standing under the laws of California and has all necessary corporate power and authority to own, lease, and operate its properties and to carry on its business as currently conducted.

4.2 Authority; Binding Nature of Agreement

Client 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 Client. This Agreement, assuming it constitutes the valid and binding obligation of Transferee, 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.

4.3 No Conflict

Neither the execution and delivery of this Agreement by Client nor the consummation by Client of the transactions contemplated by this Agreement will: (a) result in a violation by

Client of any provision of the articles of incorporation or bylaws of Client; (b) result in a violation by Client or entitle the other party to terminate any contract included in Project Assets, [except as described in **Schedule 4.3**]; or (c) result in a violation by Client of any law or governmental regulation applicable to Client, except, in each of (a), (b), and (c), where such violation or termination would not have a material adverse effect on the Project.

4.4 Title to and Condition of Assets

Client has good title to or a valid leasehold interest in all Project Assets, free and clear of liens, except for: (a) liens which do not materially detract from the value of or materially interfere with the present use of Project Assets; and (b) liens for taxes not yet due and payable.

4.5 Litigation

As of the date of this Agreement, there is no lawsuit or other legal proceeding relating to Project pending (or, to the knowledge of Client, being overtly threatened in writing) against Client before any court of competent jurisdiction or arbitrator.

4.6 No Additional Representations or Warranties

Client provides Project Assets to Transferee on an "as is" basis and makes no further representation or warranty of any kind, express or implied, relating to Project Assets, including without limitation, implied warranties of the condition, quality, merchantability, fitness for any particular purpose, collectability, non-infringement, or enforceability of any Project Assets.

5. Representations and Warranties of Transferee

Transferee represents and warrants to Client as follows:

5.1 Organization

Transferee is a corporation duly organized, validly existing, and in good standing under the laws of _____ and has all necessary corporate power and authority to own, lease, and operate its properties and to carry on its business as currently conducted and proposed to be conducted following the Effective Date. Transferee is qualified as exempt from federal tax under Section 501(c)(3) of the Code and as a public charity under Sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code.

5.2 Authority; Binding Nature of Agreement

Transferee 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 Transferee. This Agreement, assuming it constitutes the valid and binding obligation of Client, constitutes the valid and binding obligation of Transferee, enforceable against Transferee 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.

5.3 No Conflict

Neither the execution and delivery of this Agreement by Transferee nor the consummation by Transferee of the transactions contemplated by this Agreement will: (a) result in a violation by Transferee of any provision of the articles of incorporation or bylaws of Transferee; (b) result in a violation by Transferee or entitle the other party to terminate any contract to which Transferee is a party; or (c) result in a violation by Transferee of any law or governmental regulation applicable to Transferee, except in each case where such violation or termination would not have a material adverse effect on Transferee or Project.

5.4 Litigation

As of the date of this Agreement, there is no lawsuit or other legal proceeding relating to Transferee or Project pending (or, to the knowledge of Transferee, being overtly threatened in writing) against Transferee before any court of competent jurisdiction or arbitrator.

6. Employment Matters

6.1 Termination of Employees by Client

At least [14 days] prior to the Effective Date, each employee of Project identified on **Exhibit C** ("Project Employees") will provide a letter of resignation to Client, which will become effective on the Effective Date. Project Employees who do not submit such letters of resignation will be terminated by Client as of the Effective Date.

6.2 Termination of Client Benefits

Upon termination of employment with Client, except as may be required by law, Project Employees will cease to be eligible to participate in any health care, life insurance, long-term disability, retirement, and other benefits made available to employees of Client, and neither Client nor any employee benefit plan of Client will have any further liability or responsibility in respect of Project Employees. For clarity, Client will not be responsible for payment of any severance or termination benefit to any Project Employees.

7. Conditions to Client's Obligations

The obligations of Client to complete the transactions contemplated by this Agreement are subject to the satisfaction or waiver, on or prior to the Effective Date, of each of the following conditions:

7.1 Accuracy of Representations and Warranties

The representations and warranties of Transferee contained in this Agreement will be accurate in all respects as of the Effective Date, except that any inaccuracies in such representations and warranties will be disregarded if such inaccuracies (considered collectively) do not have a material adverse effect on Project.

7.2 Performance of Covenants

Transferee will have performed in all material respects all covenants required to be performed by it under this Agreement on or prior to the Effective Date.

7.3 Bill of Sale and Other Documents

Client shall have received from Transferee the signed Bill of Sale and Assumption Agreement in the form of **Exhibit D** ("Bill of Sale and Assumption Agreement") and any other documents relating to Project Assets as Client may reasonably request.

7.4 No Government Actions

No injunction or other order preventing the transactions contemplated by this Agreement will have been issued since the date of this Agreement by any court of competent jurisdiction and will remain in effect; and no law that makes the transactions contemplated by this Agreement illegal will have been enacted since the date of this Agreement and will remain in effect.

7.5 Tax-Exempt Status

As of the Effective Date, Transferee will be qualified as exempt from federal tax under Section 501(c)(3) of the Code and as a public charity under Sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code, and will have provided evidence of such qualification to Client as Client may have reasonably requested, such as a copy of Transferee's determination letter from the Internal Revenue Service acknowledging such status. There will have been no material change in the character, purposes, activities, or method of operation of Transferee from those on which its determination letter was based.

8. Conditions to Transferee's Obligations

The obligations of Transferee to complete the transactions contemplated by this Agreement are subject to the satisfaction or waiver, on or prior to the Effective Date, of each of the following conditions:

8.1 Accuracy of Representations and Warranties

The representations and warranties of Client contained in this Agreement will be accurate in all respects as of the Effective Date, except that any inaccuracies in such representations and warranties will be disregarded if such inaccuracies (considered collectively) do not have a material adverse effect on Project.

8.2 Performance of Covenants

Client will have performed in all material respects all covenants required to be performed by it under this Agreement on or prior to the Effective Date.

8.3. Bill of Sale

Transferee shall have received from Client the signed Bill of Sale and Assumption Agreement and any other documents relating to Project Assets as Transferee may reasonably request.

8.4. No Government Actions

No injunction or other order preventing the transactions contemplated by this Agreement will have been issued since the date of this Agreement by any court of competent jurisdiction and will remain in effect; and no law that makes the transactions contemplated by this Agreement illegal will have been enacted since the date of this Agreement and will remain in effect.

9. Covenants

9.1 Third-party Consents

Prior to the Effective Date, Client will cooperate to obtain consents of third parties as may be required to assign to Transferee any contracts included in Project Assets.

9.2 Use of Project Assets

After the Effective Date, Transferee will use Project Assets, including Project Cash, only for Project-related purposes and to further its mission and tax-exempt purposes under Section 501(c)(3) of the Code and other applicable laws. For clarity, Transferee will not use Project Assets to influence legislation in violation of the Code, to participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office, to induce or encourage violations of law or public policy, or to cause any private inurement or improper private benefit to occur.

9.3 Project Branding and Materials

After the Effective Date, Transferee will ensure that all Project materials and external communications, including without limitation any website, letterhead, registration forms, grant proposals, fundraising solicitations, donation acknowledgments, and contracts, do not indicate that Project is a sponsored project of Client. Client may, in its public materials, describe Project as a former project of Client. For clarity, Transferee may use and disclose Project's historical financial information and donor lists in furtherance of its mission and operations.

9.4 Revenue and Correspondence

After the Effective Date, if Client receives funds that represent grants or other revenue of Project and which are included in Project Assets, then Client will forward such amounts to Transferee. Client will also forward to Transferee any correspondence or other communications, including without limitation any written or email inquiries about Project or correspondence relating to accounts payable or other items included in Project Liabilities.

9.5 Administrative Responsibilities

After the Effective Date, Transferee will be solely responsible for all tax reporting and for performing all accounting, payroll, and credit card processing functions for Project.

9.6 Insurance

Transferee will obtain and maintain insurance coverage for Project's operations, properties, and Project Employees which is customary for an operation of the type and scope of Project

and Transferee, which will be effective from and after the Effective Date. Upon Client's request, Transferee will provide proof of such coverage.

9.7 Confidentiality

Except as may be required by law, neither Transferee nor Client will use or disclose to any third party any confidential or proprietary information provided by the other, including without limitation information about Project Employees, trade secrets and proprietary information, budget and other financial data, Project plans and strategies, technical data and research, and know-how ("Confidential Information"), for any purpose other than carrying out its obligations under this Agreement, without first having obtained the prior written consent of the disclosing party. Confidential Information does not include information that is generally available to the public, information already known by the receiving party before entering into this Agreement, or information the receiving party independently develops.

9.8 Public Disclosures

For all public disclosures, except as may be required by law, Client and Transferee will consult with each other before issuing any press release or otherwise making any public statement or disclosure. Neither Client nor Transferee will make any such public statement or disclosure without the prior approval of the other.

9.9 Books and Records

Client may retain an archival copy of any books and records included in Project Assets and will keep confidential any confidential or proprietary information included in those books and records in accordance with Section 9.7.

9.10 Further Assurances

After the Effective Date, each of Client and Transferee will, at the request of and without cost or expense to the other, execute and deliver such agreements and take such other actions as may reasonably be requested in order to more effectively consummate the transfer of Project Assets, assumption of Project Liabilities, and the other transactions contemplated by this Agreement. Such agreements may include, without limitation, documents assigning and recording with the United States Patent and Trademark Office and any other appropriate agencies registered patents, trademarks, and other intellectual property rights included in Project Assets.

10. Indemnification

10.1 Survival of Representations and Warranties

All representations and warranties of Client and Transferee contained in this Agreement will terminate and expire on, and will cease to have any further force or effect following, the 18-month anniversary of the Effective Date.

10.2 Indemnification by Client

From and after the Effective Date, Client will defend, indemnify, and hold Transferee, its directors, officers, employees, agents, and assigns harmless against any liabilities, losses, damages, and expenses, including reasonable attorneys' fees and expenses (collectively, "Losses") resulting from any material inaccuracy in the representations and warranties of Client set out in Section 4.

10.3 Indemnification by Transferee

From and after the Effective Date, Transferee will defend, indemnify, and hold Client and its affiliates, directors, officers, employees, agents, and assigns harmless against any Losses resulting from: (a) any material inaccuracy in the representations and warranties of Transferee set out in Section 5; (b) Project Liabilities; or (c) the operation of the project.

11. General Provisions

11.1 Entire Agreement

This Agreement, together with its exhibits, expresses Client's and Transferee'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 Transferee relating to its subject matter.

11.2 Amendment

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

11.3 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.

11.4 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.

11.5 Assignment

Neither party may, directly or indirectly, assign its rights or delegate its duties under this Agreement to anyone else without the prior written consent of the other party, except that Client may assign all of its rights and obligations under this Agreement without the Transferee's prior written consent to any of its affiliates or in connection with a merger, acquisition, reorganization, sale or transfer of substantially all of its assets (other than Project Assets), or other operation of law.

11.6 Third-Party Beneficiaries

Except as specifically provided in Sections 10.2 and 10.3, this Agreement is for the exclusive benefit of Client and Transferee, and not for the benefit of any third party including without limitation any Project Employees or any affiliate, donor, vendor, or client of Client or Transferee.

11.7 Notices

Notices, approvals, and consents under this Agreement must be in writing and delivered to Client and Transferee by mail, courier, fax, or email to the contact persons identified on the signature page.

11.8 Governing Law; Jurisdiction

This Agreement is governed by California law. Transferee and Client consent to the exclusive jurisdiction of the state and federal courts for the City and County of San Francisco, California.

11.9 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 PDF of executed counterparts constitutes effective delivery.

* * * * *

This Agreement was signed by the parties as of the date stated in its first paragraph:

CLIENT

[CORPORATE NAME OF TRANSFEREE]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Client contact person

Transferee contact person

Name:

Name:

Title:

Title:

Email:

Email:

Telephone:

Telephone:

Exhibits

- Exhibit A: Project Assets
 - Exhibit B: Project Liabilities
 - Exhibit C: Project Employees
 - Exhibit D: Form of Bill of Sale and Assumption Agreement
- [Schedule _:]

Exhibit A

Project Assets

Financial

1. Project Cash
2. [Any marketable securities]
3. Any grants receivable dedicated exclusively to Project
4. [Any accounts receivable exclusive to Project clients, and credit balances, advances, and deposits received or attributed exclusively to Project clients]
5. [Income under any royalty agreements]
6. *[List other financial assets, if any]*

Tangible property

1. Any equipment, servers, computers, software installed on such computers (including the related licensing and support agreements for the use of such software), materials, supplies, furniture, or furnishings purchased with Project funds and used exclusively for the Project.
2. *[List other tangible property, if any]*

Intellectual property

1. Project's [copyrights,] [patents,] trademarks, and logos:
[_____]
2. Project's website domain name, content, and URL:
[_____]
3. Goodwill exclusive to the Project
4. Project's social media accounts, including the following:
 - a. Facebook: [_____]
 - b. *[List other social media accounts, if any]*

Contracts

1. [Grant agreement, dated _____, 20____, between Client and _____]
2. [Website hosting agreement, dated _____, 20____, between Client and _____]
3. [_____, dated _____, 20____, between Client and _____]
4. *[List other Project agreements, if any]*

Books and records

1. Program and financial records, donor list and contribution history, contact database, [customer/client/member lists,] correspondence, and other documents relating exclusively to the Project
2. Newsletters, brochures, mailing lists, marketing materials, fundraising materials, handbooks, and other written materials used exclusively for Project

[List other Project Assets, if any]

Exhibit B

Project Liabilities

1. All obligations under all contracts included in Project Assets
2. Any account payables related to Project

[List other Project Liabilities, if any]

Exhibit C

Project Employees

[List names of Project Employees]

Exhibit D

Form of Bill of Sale and Assumption Agreement

This is a Bill of Sale and Assumption Agreement dated as of _____, 20__ between Client, a California nonprofit corporation, and _____, a _____ (“Transferee”).

Background

Client and Transferee have entered into a Project Transfer Agreement, dated as of _____, 20__ (the “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 Project Assets to Transferee, and Transferee has agreed to assume Project Liabilities from Client. This document is the Bill of Sale and Assumption Agreement contemplated by Sections 7.3 and 8.3 of the Agreement.

Client and Transferee agree as follows:

1. Project Assets

Client assigns, transfers, conveys, grants, and delivers to Transferee any and all of Client’s right, title, and interest in Project Assets.

2. Project Liabilities

Transferee assumes and agrees to pay, perform, and discharge when due, all Project Liabilities.

3. Further Assurances

After the Effective Date, each of Client and Transferee will from time to time, at the request of and without cost or expense to the other, execute and deliver such agreements and take such other actions as may reasonably be requested in order to more effectively consummate the transfer of Project Assets, assumption of Project Liabilities, and the other transactions contemplated by this Agreement.

* * * * *

Client and Transferee signed this Bill of Sale and Assumption Agreement as of the Effective Date.

CLIENT

[corporate name of Transferee]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____