

Amended and Restated Resource Sharing Agreement

This is an Amended and Restated Resource Sharing Agreement (“Agreement”), dated as of _____ (“Effective Date”), between [_____] (“ABC”), a [_____] and Client, a California nonprofit corporation and tax-exempt charitable organization under Section 501(c)(3) of the Internal Revenue Code (“IRC”).

Background

ABC is a [_____]. Client is a nonprofit whose mission is to [_____].

ABC and Client wish to share certain resources, and otherwise carry out their relationship in line with tax and other legal requirements relating to activities of tax-exempt organizations, on the basis set forth in this Agreement.

ABC and Client agree as follows:

1. Services Generally

1.1 Services

ABC may perform administrative and professional services for Client (collectively, “Services”) as set out in Sections 2 and 3.

1.2 Reimbursement by Client

Client will reimburse ABC for Services in an amount not exceeding the cost to ABC of such Services. For goods or services purchased from third parties, ABC will pass through the cost to Client. For employee time devoted to providing Services to Client, ABC will keep time records showing the time worked for each party, and calculate the reimbursement amount based on the time dedicated to service provision. ABC will use a similar labor- or usage-based methodology in determining any employee benefit, equipment, overhead or similar component of ABC’s cost in providing Services. ABC, however, may not include cost items relating to [_____]. In all cases the reimbursement amount must be fair and reasonable and not exceed ABC’s fair share of the cost.

1.3 Information

ABC will make available to Client sufficient information with each invoice to support the reimbursement computation and provide to Client upon request any other information, receipts, or other documents Client may request concerning calculation of reimbursement amounts.

1.3 Failure to Bill

If ABC fails to bill Client for costs that are payable by Client under this Agreement on or before the last day of the tenth month after the end of the fiscal year in which the expenses were incurred, the failure to bill will be deemed a waiver of the right to reimbursement and a gift to Client the unreimbursed amounts.

2. Administrative Services

2.1 Services

ABC may have access to volume purchasing and similar arrangements relating to procurement of information technology equipment, telecommunications services,

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shipping, and other goods and services. ABC may make such arrangements available to Client and otherwise provide administrative services to Client (collectively, "Administrative Services").

2.2 Cost Reimbursement

Client will reimburse ABC for Administrative Services on a monthly basis for ongoing services and on a purchase-by-purchase basis for procurements. ABC will determine its cost for a particular engagement in line with the principles set out in Section 1. It will invoice Client each month or promptly following each procurement, as the case may be.

2.3 Payment

Client will pay undisputed invoices within 30 days of receipt of the invoice.

3. Professional Services

3.1 Services

ABC has expertise and resources not possessed by Client. ABC may make such resources available to Client by providing project-specific services ("Professional Services") to Client in the course of Client's execution of its projects. Client may from time to time request such Professional Services. ABC and Client will document any resulting engagements through a scope of work or other document.

3.2 Cost Reimbursement

Client will reimburse ABC for Professional Services on an engagement-by-engagement basis. ABC will determine its cost for a particular engagement in line with the principles set out in Section 1. It will promptly invoice Client following completion of the engagement.

3.3 Payment

Unless otherwise set out in the scope of work document, Client will pay undisputed invoices within 30 days of receipt of the invoice.

4. Operating Matters

4.1 Access to ABC Facilities

Client benefits from access to ABC expertise both formally through Services as contemplated elsewhere in this Agreement and informally through everyday conversations and other interaction. To those ends, ABC welcomes Client staff to ABC facilities and events. ABC also permits Client employees to use ABC facilities including conference rooms and kitchen space. ABC will not charge Client for providing this access that facilitates professional interaction and support for Client staff.

4.2 Work Product and other Property Ownership

Any intellectual property created for Client by ABC personnel providing Services will be the property of Client. ABC assigns any and all rights it may have in this property to Client. Any intellectual property owned by Client and used by ABC personnel while working for Client will remain the property of Client. Similarly, any intellectual property created by Client personnel for ABC will be the property of ABC. Client assigns any and all rights it may have in this property to ABC. Any intellectual property owned by ABC and used by Client personnel while working for ABC will remain the property of ABC.

5. Use of ABC Name

5.1 License

ABC grants Client a royalty-free, non-exclusive, non-transferable, revocable license to use the name "ABC" ("Name") in Client's corporate name and in materials, websites,

and other vehicles where Client uses its corporate name. Client may also permit clients and third parties to identify and publicize their relationship with Client as provided in the contracts with such parties. Client will not combine the Name with any other trademark, word, symbol, letter, design, or mark. ABC will take such steps as Client reasonably requests to assist Client in monitoring the use of the Name, including making available to ABC samples of Client uses of the Name. ABC may object to any proposed or actual use of the Name; Client will terminate such use of within ten (10) days after receipt of written notice of disapproval. Client acknowledges that it has no interest in the Name other than the rights granted under this Agreement and that ABC will remain the sole and exclusive owner of all right, title, and interest in the Name. Client acknowledges that any goodwill that arises from its use the Name will inure solely to the benefit of ABC.

5.2 Claims or Challenges

Client will not contest, oppose, or challenge ABC's ownership of the Name. Client will do nothing to impair ABC's ownership or rights in the Name. Client will not oppose ABC's registration or use of the Name, alone or with other words or designs, in any jurisdiction. Client will promptly notify ABC should Client learn of use by a third party of any mark that is confusingly similar to the Name or that may dilute or otherwise lessen the value of the Name. ABC will have the sole right, but not obligation, to bring infringement or other claims relating to the Name. Client will cooperate fully with ABC to protect ABC's rights in the Name in the event of any legal or equitable action taken by ABC, and defend against any legal or equitable action challenging ABC's rights in the Name. Client will assist ABC in complying with any formalities to protect the Name under U.S. or foreign law, such as registering the Name, registering this Agreement, or recording Client as a registered user.

5.3 Termination

ABC may at any time revoke the license contemplated by Section 5.1 and require Client to discontinue use of the Name in Client's corporate name and otherwise. Such a revocation will be effective 60 days after ABC gives Client a written notice of revocation under this Section 5.3. Upon effectiveness of revocation, Client will not use the Name in its corporate name or operate under a name that could reasonably lead the public to confuse the two entities or believe they were related, and will take other related actions as reasonably requested by ABC. ABC and Client will cooperate in transition activities and will use reasonable efforts to minimize interruption and any adverse impacts of the revocation.

6. Recordkeeping

6.1 Separate Accounts and Statements

ABC and Client will maintain separate bank accounts, funds, and assets, and will prepare separate financial statements.

6.2 Recordkeeping

ABC and Client will each maintain separate records relating to their activities under this Agreement, in a manner such that the other can evaluate compliance with this Agreement. Each will make those records available for review by the other on reasonable notice during the term of this Agreement and for a period of three years after its termination.

7. Legal Relationship

7.1 Independent Entities

ABC and Client are and will remain independent contracting entities. This Agreement and its performance do not create a partnership, joint venture, fiduciary relationship,

agency relationship, or similar relationship for any purpose between ABC and Client. This Agreement is not a management contract and Client is not delegating management of its own affairs to ABC.

7.2 No Authority to Act for Other

Neither ABC nor Client will hold itself out as an agent or representative of, or purport to speak or act on behalf of, the other; nor will either have the power or authority to act for the other, or to bind or obligate the other to a third party or commitment, in any manner. ABC and Client will hold themselves out as separate, independent entities.

7.3 Contractor Relationship

ABC will perform administrative and professional services as an independent contractor and in a timely and professional manner consistent with industry standards and applicable law. ABC will have sole discretion over, and sole responsibility for, the planning, method, means, sequencing, time, and place of the work ABC performs for Client under this Agreement.

7.4 Contracting with Other Parties

ABC and Client may each be required to enter into contracts with third parties in order to carry out their respective missions and programs. These contracts will be the sole responsibility of the entity entering into the contract; neither entity assumes any liability for or guarantees the performance of the other in conjunction with any of these contracts or any other activity, absent its express written Agreement.

7.5 Confidentiality

ABC and Client will each keep confidential and will not disclose or use for its benefit or the benefit of any third party, other than in connection with its activities under this Agreement, any non-public information obtained from the other, without obtaining the other's prior written consent, except to the extent that disclosure of confidential information is required by law. Confidential information may include, without limitation, information about personnel, funders, strategies and financial results, and information ABC or Client may obtain through ordinary course interactions among their respective staffs. Confidential information does not include information generally available to the public, information already known by the receiving party before entering into this Agreement, or information independently developed. All confidential information furnished under this Agreement will remain the property of the furnishing party.

8. Compliance

8.1 Tax-Exempt Status

ABC will operate so as (i) not to interfere with Client's accomplishment of its tax-exempt purposes; (ii) not to jeopardize Client's compliance with federal and state laws governing nonprofit tax-exempt organizations; and (iii) not to cause any inurement or improper private benefit from joint use of resources. It is the intention of ABC and Client that the method of calculating Client's payments to ABC as set out in Sections 1 - 3 will conform in all material respects with tax requirements. ABC and Client will cooperate in making adjustments in payment amounts as may be appropriate to ensure fairness and reasonableness in the arrangement.

8.2 Taxes

ABC and Client will each have individual and sole responsibility for all tax filings, returns, and payments required by any federal, state, or local tax authority in connection with each organization's provision of staff and receipt of payments under this Agreement. Client will not withhold income, social security, or Medicare taxes on behalf of any Fellows or any ABC employees providing Client with Services.

8.3 External Audits

ABC and Client will each reasonably cooperate with one another in providing information relating to activities under this Agreement in connection with any financial, regulatory, tax, funder or other audit, or similar matter, in which the other is engaged.

9. Indemnification

9.1 Indemnification by Client

Client will defend, indemnify and hold ABC and its directors, officers, employees, agents, and assigns (collectively, "ABC parties") harmless against all third party claims, liabilities, losses, damages, expenses, and attorneys' fees that may be suffered or sustained by any ABC party arising directly or indirectly from: (i) any breach by Client of its obligations under this Agreement; (ii) claims by any person employed by Client; or (iii) claims by Client clients, funders, creditors, suppliers, or others with whom Client has a programmatic or business relationship. Client has no obligation to indemnify any ABC party to the extent the liability is solely caused by such ABC party's gross negligence or willful misconduct or any breach by ABC of its obligations under this Agreement.

9.2 Indemnification by ABC

ABC will defend, indemnify and hold Client and its directors, officers, employees, agents, and assigns (collectively, "Client parties") harmless against all third party claims, liabilities, losses, damages, expenses, and attorneys' fees that may be suffered or sustained by any Client party arising directly or indirectly from: (i) any breach by ABC of its obligations under this Agreement; (ii) allegations that Client's use of the Name infringes or misappropriates the rights of a third party; (iii) claims by any person employed by ABC; or (iii) claims by ABC clients, creditors, suppliers, or others with whom ABC has a business relationship. ABC will have no obligation to indemnify any Client party to the extent the liability is solely caused by such Client party's gross negligence or willful misconduct or any breach by Client of its obligations under this Agreement.

9.3 Procedures

Client's and ABC's indemnification obligations under this Section 9 are subject to the indemnified party (a) providing prompt written notice of any claim for which defense is sought; (b) tendering control of such defense to the indemnifying party; and (c) providing reasonable assistance and information. Nothing in this Section 9.3 precludes or restricts the indemnified party's right to participate in any such defense at its own expense.

10. Dispute Resolution

10.1 Initial Procedure

If there is any dispute between ABC and Client relating to interpretation and application of this Agreement, senior executives authorized to resolve the dispute for each party will meet to discuss the dispute and will make good faith efforts to resolve the dispute through discussion.

10.2 Escalation to Senior Management

If the executives are unable to resolve the dispute, then the chief executive officers or equivalents of each entity will each meet in person to discuss and attempt to resolve the dispute.

10.3 Mediation

If the dispute cannot be resolved under Sections 10.1 and 10.2 within 45 days after the meeting of the executives, ABC and Client will, unless otherwise agreed at the time, submit the dispute to mediation by the [_____] in [_____], under its mediation

procedures, or to any other mediation firm that is acceptable to both ABC and Client. ABC and Client will share equally the cost of such mediation. If the dispute cannot be resolved through mediation, ABC and Client reserve the right to exercise such rights and remedies as each may have under law.

10.4 Injunctive Relief

Notwithstanding this dispute resolution or any other provisions of this Agreement, each of ABC and Client may, without first engaging in the process contemplated by this Section 10, seek injunctive or other equitable relief to prevent or stop a breach by the other party of any confidentiality or intellectual property obligations set out in this Agreement.

11. Termination

11.1 Duration

The term of this Agreement will begin on the Effective Date and will continue until terminated under any of the provisions of this Section 11.

11.2 Termination for Convenience

ABC and Client may each on its own terminate this Agreement by providing written notice of that decision to the other. Such a termination will be effective ninety (90) days after delivery of the notice by the terminating party.

11.3 Termination for Breach

If either ABC or Client materially breaches any of its obligations under this Agreement, the other party may give written notice of the breach. If the party in breach fails to cure the breach within 30 days after receipt of this notice, the non-breaching party may terminate this Agreement by providing written notice of intent to terminate, with the termination date effective 10 days after delivery of the notice.

11.4 Effect of Termination; Orderly Transition

Upon termination of this Agreement, the parties will pay to one another any amounts due under this Agreement through the date of termination within 30 days, and any outstanding advances will remain payable on the dates stated on the relevant documentation. ABC and Client will each return to the other, at its own expense and as directed by the other, any Confidential Information belonging to the other. Both parties will cooperate in good faith to bring all activities under this Agreement to an orderly conclusion in order to minimize adverse impact on the communities they both serve.

12.6 Survival

The provisions of Sections 4.2, 6.2, 7, 8, and 9 – 12 will survive termination of this Agreement regardless of the reason for termination.

12. General Provisions

12.1 Entire Agreement

This Agreement, together with the exhibits to this Agreement, is the entire Agreement between ABC and Client and supersedes all prior or contemporaneous communications, representations, understandings, and agreements, either oral or written, relating to the subject matter of this Agreement.

12.2 Amendment

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

12.3 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 so that it is valid to the maximum extent permitted by law.

12.4 Assignment

Neither ABC nor Client may assign its rights or obligations under this Agreement to anyone else without the prior written consent of the other party, except that either may assign all of its rights and obligations under this Agreement without prior written consent in connection with a merger, acquisition, reorganization, sale or transfer of substantially all of its assets, or by other operation of law.

12.5 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 provision of this Agreement.

12.6 Third Party Beneficiaries

Except as specifically provided in Section 9, 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, client, or vendor of ABC or Client.

12.7 Further Assurances

ABC and Client will sign those other documents and take those other actions as the other may request in order to affect the relationships and activities contemplated by this Agreement and to account for and document those activities.

12.8 Governing Law; Jurisdiction

This Agreement is governed by California law. ABC and Client each consent to the jurisdiction of the state and federal courts for [_____], California.

12.9 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 will constitute effective delivery.

ABC and Client signed this Agreement as of the Effective Date.

ABC

By: _____

Name: _____

Title: _____

CLIENT

By: _____

Name: _____

Title: _____