

**[CLIENT]
WORKING DOCUMENT
AFFILIATE AGREEMENT TERMS DEVELOPMENT**

A. PARTIES

Parties: [____], a California non-profit corporation (“HQ”) located in [____], California, and Regional Affiliate, a _____ non-profit corporation (“Affiliate”), located in _____, _____.

B. BASIC AGREEMENT

Grant of Affiliation: HQ will grant to Affiliate the non-exclusive, non-transferrable right to be affiliated with HQ and operate Client programs in a geographic region specified in the Affiliate Agreement (the “Agreement”). Affiliate will be known as and will hold itself out publicly as “_____ [Region]” for as long as the Agreement remains in effect.

Term and Renewal: The initial term of the Agreement will be three years. The Agreement is renewable for three-year additional terms unless otherwise terminated according to its terms. If Affiliate elects to renew, Affiliate must deliver to HQ a written request to renew no later than 90 days before the expiration of the current term. The Agreement may be renewed only if Affiliate is in compliance with all terms and conditions in the Agreement.

Membership Fee: [To be determined]

Geographic Limitation: Affiliate may operate only in its region, as defined under the Agreement, except as part of a national, statewide or multi-regional effort directed or approved by HQ. HQ will not grant any additional affiliations in Affiliate’s region without first consulting with Affiliate, but may conduct operations independently or in conjunction with Affiliate in Affiliate’s region.

C. OPERATIONS AND SUPPORT

Affiliate Core Activities: Affiliate will conduct Client programs and activities within its region in accordance with the Agreement. These programs will initially include the [____] Program, including [____] programs such as Client’s [____] Program. Affiliate may introduce and conduct other programs and activities upon the written approval of HQ.

NOTE: The Agreement will detail basic requirements for new Affiliate programs (e.g., the program must be mission related, must address an existing need in the community, etc.).

Responsibility: Affiliate will have sole responsibility for the planning, management and implementation of its programs and operations, including but not limited to establishing a budget, hiring and managing employees, recruiting volunteers, maintaining facilities and

equipment, paying expenses, performing contracts (including warranties) and for all other liabilities that it may incur in its operations.

Compliance with Operations Manual:

Affiliate will comply with the policies and procedures set out in the Operational Manual (the "Operations Manual"), provided by HQ to Affiliate at time of entry into the Agreement and as may be amended by HQ at its discretion.

Employee/Volunteer Requirements:

Affiliate will implement employee and volunteer policies and procedures, and will conduct or permit to be conducted training programs for its employees and volunteers, in accordance with the Operations Manual and applicable law.

Affiliate may adopt any policies which are not inconsistent with the Agreement, the Operations Manual, its articles of incorporation, its bylaws, its 501(c)(3) tax-exempt status and any other HQ guidelines, including but not limited to the authority to hire and promote personnel, set salaries, and establish appropriate roles and responsibilities for employees and volunteers.

Contracts with Other Parties:

Affiliate may be required to enter into contracts with HQ and other parties as HQ deems necessary to carry out certain Client programs overseen by HQ.

Affiliate Metrics:

Affiliate will be responsible for meeting the operational and fundraising metrics set out in Exhibit A.

Failure to Meet Metrics:

If Affiliate fails to meet any of the metrics described in Exhibit A, HQ may (but is not required to) take responsive actions, including but not limited to placing Affiliate on improvement status and/or terminating the Agreement. These actions may include: work with Affiliate to develop and implement an improvement plan; direct Affiliate's management to take actions specified by HQ to correct deficiencies; require Affiliate to provide additional information or reports specified by HQ; limit Affiliate's activities to specified programs; prohibit Affiliate from participating in national, statewide or multi-regional operational or fundraising efforts; and require Affiliate to reimburse HQ for any costs incurred by HQ in taking improvement actions and for any other damages or expenses resulting from Affiliate's noncompliance.

HQ Services:

HQ will make available to Affiliate certain services ("HQ Services") described in Exhibit B.

Compensation for HQ Services:

Affiliate will compensate HQ for such services on the basis set out in Exhibit B.

HQ Support to Affiliate:

HQ will have no obligation to provide financial or, except as provided in the Agreement, other assistance to Affiliate. Any financial or other support provided by HQ will be in its sole discretion and will not create any right in Affiliate to further support. HQ will not be obligated to provide comparable support to other affiliates.

HQ Core Activities: HQ will perform the program management, systems management, branding, external affairs and other functions (“HQ Core Activities”) described in Exhibit C.

D. FUNDRAISING

Affiliate Funding: Affiliate will be solely responsible for funding its operations.

Affiliate Fundraising: Affiliate may engage in fundraising activities within its region. Affiliate may not directly target general fundraising solicitations to persons or organizations outside of its region, but may make specific solicitations outside of its region with the consent of HQ. Affiliate will comply with the fundraising policies set out in the Operations Manual.

HQ Fundraising: HQ may, at its sole discretion, conduct national, statewide or multi-region fundraising campaigns independently or in conjunction with one or more Affiliates, including soliciting donors in the region. HQ may also, at its sole discretion, assist Affiliate in local fundraising campaigns within Affiliate’s region.

E. INTELLECTUAL PROPERTY AND BRANDING

Trademarks and Copyrights Affiliate may use specified HQ marks on a royalty-free, non-exclusive, non-transferrable, worldwide, revocable basis, for the limited purposes of identifying itself as an affiliate of HQ or as otherwise provided in the Agreement. Affiliate will not use HQ’s marks in a manner that is inconsistent with the values and mission of Client. Affiliate in its use of HQ trademarks will comply with trademark use guidelines set out in the Operations Manual. Affiliate may use HQ’s marks for limited commercial activities, such as on products Affiliate sells as part of its fundraising efforts, as provided in the Agreement.

Affiliate will acknowledge that it has no interest in HQ’s marks other than the rights granted under the Agreement and that HQ will remain the sole and exclusive owner of all right, title and interest in the marks. Affiliate will agree that any goodwill or reputation that arises from its use of HQ’s marks will inure to the benefit of HQ.

HQ will maintain all Client marks in a manner as HQ will determine in its sole discretion. HQ will not be obligated to file any application for registration of any trademark or to secure any rights in any trademarks, maintain any trademark registration or provide any assistance, except for the obligations expressly undertaken by HQ in the Agreement.

Affiliate Website: During the term of the Agreement, Affiliate may operate a website with the URL [www. \[region\].org](http://www.[region].org). If such URL is unavailable, Affiliate may use a similar URL, subject to approval by HQ.

Patents: Affiliate will assign any patents it obtains to HQ.

- Marketing by HQ:** HQ will be responsible for managing the brand and quality control at a national level.
- Marketing by Affiliate:** Affiliate may engage in public relations and marketing activities on its own behalf, provided that such activities do not conflict with HQ's mission, damage its reputation, or conflict with HQ public relations or marketing activities.
- Affiliate will not hold itself out as an agent or representative of, permit its employees, agents, and representatives to speak on or act on behalf of or purport to speak or act on behalf of HQ or any other affiliate, including but not limited to statements that purport to be official positions of HQ or another affiliate.
- Public Relations:** Affiliate will not, except as may be required by law, issue any press release or comparable communication concerning the Agreement without HQ's consent.

F. RECORDKEEPING AND REPORTING

- Periodic Reporting:** Affiliate will collect data and provide to HQ periodic reports as specified in the Agreement, and such other documents and data as HQ may request.

QUESTION: What types of information should be included in Affiliate reports to HQ (e.g., data regarding Affiliate's operations, performance against metrics, fundraising, financial position)?

QUESTION: How often should Affiliate submit these periodic reports (e.g., annually within 30 days of end of fiscal year)? Do you want to require an annual compliance certificate?

- Notice:** Affiliate will provide prompt written notice to HQ of any changes in Affiliate's status as a nonprofit corporation in good standing under local law or as a public charity tax-exempt under Section 501(c)(3) of the Internal Revenue Code; any changes in Affiliate's Board of Directors or officers; the filing of any litigation or other claim against Affiliate by a vendor, creditor, client or any other person; Affiliate's loss of any material license; and any other event or development which could cause any of the foregoing to occur or could negatively affect Affiliate's ability to carry out Client programs, perform Affiliate's obligations under the Agreement or Affiliate's financial condition generally.

- Recordkeeping:** Affiliate will maintain records related to all of its operations in accordance with the Operations Manual, including but not limited to Board minutes and other appropriate corporate documents, such that HQ can evaluate compliance with the Agreement.

- Inspection:** Affiliate will permit HQ and its agents to inspect Affiliate's facilities and records upon reasonable notice by HQ.

- Accounting:** Affiliate will comply with GAAP for nonprofit organizations in all of its accounting functions and with all applicable financial reporting

requirements under federal and state law. Affiliate will cooperate with HQ in the preparation of all HQ financial statements, audits and tax returns.

Fiscal Year: The fiscal year for Affiliate will be January 1 to December 31.

G. NON-PROFIT STATUS

Non-Profit and Tax Exempt Status: Affiliate will maintain its non-profit status under the laws of the state of its incorporation. Affiliate will maintain tax-exempt status as a 501(c)(3) organization. Affiliate will certify in writing to HQ that all of its activities are within the permitted purposes under its 501(c)(3) status annually within 30 days after fiscal year end and upon request by HQ.

HQ will maintain group tax-exempt status for itself and all affiliates, with Affiliate providing such information or taking any actions as may be requested by HQ to meet group exemption requirements.

Lobbying: Affiliate will not engage in lobbying, electioneering, or other political activities or otherwise attempt to influence legislation without HQ's consent.

H. COMMUNICATION

Periodic Meetings: Affiliate and HQ will meet periodically at such times and places as HQ will determine in its sole discretion to discuss Affiliate's development as an organization, performance and plans.

Affiliate Performance Review/Audit Meetings: During the initial three-year term of the Agreement, HQ may conduct comprehensive yearly performance reviews/audits. Thereafter, HQ may conduct such comprehensive reviews following renewal notice by the Affiliate. HQ may, at its sole discretion, require Affiliate to meet more frequently if Affiliate is on improvement status or otherwise as requested by HQ.

Client Multi-Party Meetings: Affiliate at its expense will participate in all national, statewide and multi-regional meetings among other affiliates and HQ, as requested by HQ.

Confidentiality: Affiliate will maintain the confidentiality of information furnished to it by HQ that is expressly designated by HQ as confidential.

I. RELATIONSHIP

Legal Relationship: Affiliate and HQ will be independent contracting parties and separate legal entities. The Agreement and its performance will not create a partnership, joint venture, employment, fiduciary or similar relationship for any purpose. Except as necessary for HQ to maintain Client's group tax-exempt status, neither party has the power or authority to act for the other and will not bind or obligate the other to a third party or commitment in any manner.

Dispute Resolution: Affiliate and HQ will seek to resolve any disputes or problems under the Agreement through discussion, including, as appropriate, interaction between senior leaders of each organization. If HQ determines that such discussion has failed to resolve the issue, Affiliate will, at HQ's sole discretion, be required to enter mandatory arbitration with HQ.

J. INDEMNITY

Indemnification by Affiliate: Affiliate will indemnify, defend, and hold harmless HQ from all claims arising from Affiliate's operations, including but not limited to system installations, contract performance and employment practices, and from losses due to Affiliate's breach of the Agreement.

Indemnification by HQ: HQ will indemnify, defend, and hold harmless Affiliate from all claims arising from HQ's operations relating to the performance of HQ Services and HQ Core Activities.

K. INSURANCE

Insurance: Affiliate will procure and maintain insurance policies to the extent not maintained by HQ on behalf of the Affiliate, and will add HQ as an additional insured on such policies, as specified in the Operations Manual. Such policies may include but are not limited to property, general liability, automobile, volunteer accident and directors and officers liability coverages.

L. LIABILITY AND REMEDIES

Limitation of Liability: Neither party will be liable to the other party for any incidental, special, consequential, exemplary, punitive, or indirect damages arising out of or otherwise related to the Agreement.

Governing Law: The Agreement will be governed by California law.

Jurisdiction: Exclusive jurisdiction and venue for any disputes arising under the Agreement will lie in the state and federal courts of [____], California.

M. TERMINATION

Termination: HQ may immediately terminate the Agreement by giving written notice upon the occurrence of any of the following actions by Affiliate: misuse of HQ's marks or other intellectual property; loss of non-profit or tax-exempt status; dissolution, liquidation or cessation of operations; the commencement of any proceeding under any bankruptcy or insolvency law; attempted assignment of the Agreement; any activity which, in HQ's sole opinion, reflects materially and unfavorably upon HQ's reputation; or misrepresentations in any statement or document to HQ.

If Affiliate otherwise breaches the Agreement, HQ may terminate the Agreement after notice and failure by Affiliate to cure the breach within 90 days.

The Agreement may also be terminated upon the joint consent of both parties.

Effect of Termination: Upon termination or expiration of the Agreement, HQ and Affiliate will cooperate in transition activities and will use reasonable efforts to minimize interruption and any adverse impacts of the termination. Affiliate will no longer identify itself as affiliated with HQ, and will immediately adopt a corporate and trade name and website that does not include the words “[_____]” or “[_____].” Affiliate will immediately discontinue using HQ’s marks. Affiliate will return to HQ any and all property belonging to HQ.

Affiliate Termination Remedies: Affiliate will under no circumstances be entitled to any form of compensation or indemnity from HQ or to obtain an injunction, specific performance or other equitable remedy as a consequence of the termination or expiration of the Agreement for any reason.

N. GENERAL PROVISIONS

Assignment by Affiliate: Affiliate will not assign its rights or delegate its duties under the Agreement without HQ’s prior written consent, which HQ may grant or withhold in its sole discretion. For the avoidance of doubt, a subcontract used in the course of Affiliate’s ordinary operations will not be considered an assignment by Affiliate.

Assignment by HQ: HQ may assign or transfer its interest in the Agreement or engage in any merger, consolidation, sale of assets, reorganization or other transaction at its sole discretion.

Discrepancies: In the event of any discrepancies, inconsistencies or differences of interpretation between the Operations Manual and the Agreement, the Agreement will control.

Compliance with Law: Affiliate will comply with all applicable law in its activities under the Agreement. Affiliate will make all filings and maintain, at its own expense, all permits, electrical contractor or other licenses and other governmental approvals that may be required in its region in connection with its performance of the Agreement.

Amendment of Agreement: The Agreement may only be amended by a written instrument signed by both Affiliate and HQ which states that it is an amendment to the Agreement.

Amendment of Services: HQ may adjust the service offerings described in Exhibit A of the Agreement at its sole discretion, provided that, prior to any such amendment, HQ will seek Affiliate input on the proposed amendment. HQ may adjust the fees charged to Affiliates for agreed services at its sole discretion.

**Amendment of
Operations Manual:**

HQ may change or amend the Operations Manual at its sole discretion. Such changes will become effective sixty days after HQ advises Affiliate of the changes. HQ will make an up-to-date version of the Operations Manual available to Affiliate.

* * * * *

EXHIBIT A

AFFILIATE PERFORMANCE METRICS

Affiliate will be required to satisfy the following metrics in complying with all of its obligations under the Agreement. This exhibit may be tailored to contain performance requirements specific to each Affiliate.

1. Minimum number of full-time employees
2. Maintenance of key personnel (Executive Director, etc.)
3. Minimum number of [_____] over the past [specified period] (CA affiliates only)
4. Maintenance of key contracts, including compliance with the Agreement
5. Development and implementation of operating and fundraising plans
6. Minimum fundraising over the past [specified period]
7. Achievement of financial ratio targets
8. Achievement of self-sufficient funding [not applicable to affiliates in their initial terms]
9. Holding of regular Board of Directors meetings and proper keeping of meeting minutes
10. Satisfaction of relevant state licensing and insurance requirements
11. Material compliance with standards and policies defined in the Operations Manual

NOTE: *This document summarizes proposed provisions of the [Client] Affiliate Agreement. The terms described here are under consideration and are provided as preliminary information and for discussion purposes only.*

EXHIBIT B

HQ SERVICES TO AFFILIATES

HQ will provide the following services to Affiliate [determine compensation for services]:

1. Furnishing [_____] equipment for Affiliate operations
2. Assisting Affiliate with contracting where scale adds value, including but not limited to procuring [_____] equipment, office furniture and supplies, and insurance
3. Advising Affiliate on local fundraising where previous HQ relationships exist
4. Providing program materials to Affiliate, including Client document templates and large-scale document printing
5. Advising Affiliate with local event planning
6. Provision of website template to Affiliate, and hosting of Affiliate website
7. Advancing funds to Affiliate for projects with pending rebates or incentives, at HQ's sole discretion
8. [Human resources support]

NOTE: *This document summarizes proposed provisions of the [Client] Affiliate Agreement. The terms described here are under consideration and are provided as preliminary information and for discussion purposes only.*

EXHIBIT C

HQ CORE ACTIVITIES

HQ will perform the following functions in managing Client's national operations:

1. [_____]
2. Coordination of any national, statewide or multi-regional fundraising event by HQ
3. Information technology management, including maintenance of the donor list and [_____] software
4. IRS reporting, including filing for group tax exemption
5. Lobbying and government relations on a national, statewide or multi-regional scale, to the extent permitted by applicable law
6. Maintenance and enforcement of Operations Manual and related policies
7. Coordination of any national, statewide or multi-regional Client event
8. Provision and maintenance of national website
9. Provision of centralized accounting services
10. Legal assistance

NOTE: *This document summarizes proposed provisions of the [Client] Affiliate Agreement. The terms described here are under consideration and are provided as preliminary information and for discussion purposes only.*