

BASIC COMPONENTS OF A FUNDRAISING REPRESENTATION AGREEMENT

This “model contract” is provided by the Attorney General to help charities that are considering the use of commercial fund-raisers in the organization’s development plans. Since each organization is different, the model contract below covers key issue areas and not all provisions may apply to your nonprofit public benefit corporation.

TERM OF THE AGREEMENT

This Agreement is made and entered into effective this ___ day of _____, 2000 (the “Effective Date”), by and between ABC, Inc., a California corporation (ABC) and Nonprofit, Inc.(NP), a California nonprofit public benefit corporation, whose principal address is [insert address as registered with the California Attorney General unless exempt from registration], acting by and through its duly authorized officers.

IDENTIFICATION OF PARTIES TO AGREEMENT

1. NP is a nonprofit public benefit corporation formed and operated for the benefit of [describe charitable beneficiaries], including but not limited to [describe program service].
2. ABC is a for-profit corporation engaged in the business of commercial fundraising for nonprofit corporations and other parties.
3. Subject to the terms of this Agreement, NP desires to engage the services of ABC and ABC desires to engage in fundraising activities on behalf of NP.

DESCRIBING THE TERMS OF EMPLOYMENT

1. Term of agreement. This Agreement shall commence on the Effective Date hereof and shall continue until _____ unless terminated prior thereto in accordance with the terms of this Agreement.
2. Cancellation of Agreement
 - (a) Within ten (10) days following date of execution, NP shall have the right to cancel Agreement, without cost, penalty or liability for a period of ten days following the date of execution, by serving a written notice of cancellation on the commercial fundraiser or fundraising counsel. If mailed, service shall be by certified mail, return receipt requested,

and cancellation shall be deemed effective upon receipt by the commercial fundraiser or fundraising counsel. The notice shall be sufficient if it indicates that NP does not intend to be bound by Agreement.

Any funds collected after effective notice that Agreement has been canceled shall be deemed to be held in trust for the benefit of NP without deduction for cost or expenses of any nature. NP shall be entitled to recover all funds collected after the date of cancellation.

- (b) Following the initial ten (10) day cancellation period, NP reserves the right to terminate this Agreement, upon thirty days prior written notice to ABC with payment due for the services and staff time delivered to the effective date of termination;
- (c) Following the initial ten (10) day cancellation period, NP reserves the right to terminate this Agreement, without payment or compensation of any kind to ABC, at any time upon written notice to ABC, if in the reasonable judgment of NP, ABC or its agents, employees or representatives (i) make any material misrepresentations with respect to NP, its fundraising activities or any other material matter subject to this Agreement; (ii) commit a felony or misdemeanor in connection with any fundraising activities, including but not limited to fundraising activities pursuant to this Agreement; (iii) otherwise conducts its fundraising activities in a manner or method which causes or could cause public disparagement of NP's good name or goodwill; or (iv) discloses confidential information in violation of Section 9 of this Agreement.
- (d) In addition to NP's right to terminate this Agreement under subparagraph (b) above, either party may terminate this Agreement in the event of a material breach of this Agreement by the other party which continues without cure for thirty (30) or more days following the giving of notice of such breach to the breaching party.

3. Description of obligations of fundraiser and charitable organization

In connection with ABC's fundraising activities on behalf of NP, ABC shall have the right to use NP's good name and good will. NP shall cooperate with ABC for the purpose of soliciting donations [describe with specificity the stated purpose for which solicitation campaign being conducted and method of solicitation, e.g. telemarketing, direct mail, events], the first of which fundraising events shall occur on _____.

[Set forth detailed schedule of fundraising activities, e.g. number of mailings,

telephone campaigns, events].

The schedule of fundraising activities may be changed by mutual agreement.

4. Regulatory requirements. This Agreement is subject to the issuance of all necessary governmental permits, registrations and approvals with respect to fundraising activities contemplated by this Agreement in a timely manner by all governmental agencies having regulation over such activities. ABC shall not commence fundraising activities until compliance with all required permits, registrations and approvals.

[If entering into contract with commercial fundraiser for charitable purposes (CFR), set forth name of surety issuing the bond, aggregate amount of bond, bond number, and effective and termination dates.]

5. Description of fundraising methods

- (a) ABC shall comply with all applicable laws and regulations of the State of California in the conduct of its business and its fundraising activities on behalf of NP.
- (b) In connection with all sales and solicitation activities, ABC, its agents, servants, representatives and employees shall not misrepresent NP's name and activities in any way. NP will provide ABC with a description of its organization and its activities which may be used in connection with sales and solicitations.

For public safety membership organization contracts substitute: In connection with all sales and solicitation activities ABC, its agents, servants, representatives and employees shall not represent directly or indirectly that they are [firefighter, law enforcement, etc.] personnel, nor shall the NP's name or activities be misrepresented in any way. NP will provide ABC with a description of its organization and its activities which may be used in connection with sales and solicitations.

- (c) ABC, its agents, servants, representatives and employees shall in connection with all sales and solicitations clearly state that they represent ABC in connection with fundraising activities on behalf of NP.
- (d) All sales or solicitation activity undertaken by ABC pursuant to the terms of this Agreement shall be performed by ABC, its agents, servants, representatives and employees by [letter, personal contact or telephone].

- (e) ABC shall provide all proposed solicitation materials to NP for review prior to use and shall not use said materials without the express written consent of NP, through its president, which consent may be withheld at NP's sole discretion.
- (f) NP shall monitor the solicitation efforts made by ABC and reserves the right to direct, instruct and otherwise limit ABC's solicitation services for the purpose of preserving and protecting NP's good name.
- (g) ABC shall record all solicitation calls made to California residents and shall maintain these recordings for a period no less than one (1) year. NP shall have access to all such recordings as well as access to monitoring or observing solicitation calling.
- (h) ABC shall provide NP at least every three (3) months with a list of all customers, contributors and donors to the solicitation efforts, including a contribution history for each customer, contributor and donor in a format to be reasonably designated from time to time by NP. Such contributor, donor and customer list shall at all times remain the property of NP and shall constitute confidential information which will be preserved and protected by ABC in accordance with the terms of this Agreement. At no time shall ABC have the right to sell or otherwise negotiate the contents of the list.

6. Control of funds.

Each contribution in the control or custody of ABC shall, in its entirety and within five days of its receipt, be deposited in an account at a bank or other federally insured financial institution which shall be in the name of NP. NP shall maintain and administer the account and shall have sole control of all withdrawals.

[For fundraising counsel substitute: It is understood that funds belonging to NP shall at no time be in the custody of ABC.]

7. Compensation of fundraiser.

- a. The payment of ABC's professional service fee is not contingent upon the full objective being secured, nor is the fee increased in the event the objective is oversubscribed.
- b. ABC will prepare and submit a campaign operating budget for approval and periodic inspection by NP.

- c. For the services described herein, NP agrees to pay ABC a fee of _____ (\$_____), according to the following schedule:

\$_____ upon signing of this agreement and balance in _____ equal, biweekly installments of \$_____ each.

[Outline more detailed schedule of payments as needed to include allowable expenses]

- d. *[If entering into a percentage-based contract, include a statement of the guaranteed minimum percentage of the gross receipts from contributions which the charity will receive or, if applicable, the percentage of purchase price from sale of goods, services or tickets to a fundraising event which the charity will receive. The stated percentage excludes any amount paid by the charity as fundraising costs; and*

A statement of the percentage of gross revenue which the fundraiser will be compensated. The stated percentage includes any amount the fundraiser is to be reimbursed as payment for fundraising costs. If the fundraiser's compensation is not contingent on the number of contributions or amount of revenue raised, the compensation should be stated as a reasonable estimate of the percentage of gross revenue. The contract should clearly disclose the assumptions on which the estimate is based; and the assumptions should be based on all of the relevant facts known to the fundraiser regarding the solicitation to be conducted by the fundraiser.]

8. Indemnification of NP. ABC shall indemnify, defend and hold NP harmless from any and all costs, claims, losses and/or damages, of whatever kind and nature, arising from, out of or in connection with the performance by ABC of its obligations under this Agreement, including but not limited to reasonable attorneys' fees incurred by NP in defending itself from any and all such claims.
9. Nondisclosure of confidential information. ABC agrees that it will not, without first receiving written authorization signed by an officer or director of NP, during the term of this Agreement or at any time after the termination of this Agreement, remove from NP's premises or otherwise divulge to any other person or entity the contents of any records or any other information of any kind relating to the business of NP, including but not limited to (i) *donor and customer lists, telephone numbers and other information pertaining to donors and customers*; (ii) finances, plans, or other information relating to the operation of NP generally; and (iii) other private and confidential information which is a unique asset of NP or information which, if known to

competitors or others outside of NP, would be harmful to NP.

ABC agrees to deliver to NP upon termination of this Agreement any and all such information in any form then in its possession or under its control. ABC acknowledges that such information is confidential and is the sole property of NP. The foregoing restrictions on disclosure of confidential information shall not apply to disclosures required to be made to any public body or other regulatory agency governing the activities of NP or ABC.

10. Breach of agreement. ABC acknowledges that a breach of Paragraph 9 may result in irreparable and continuing damage to NP and the business of NP for which there will be no adequate remedy at law and agrees that, in the event of any breach or threatened breach of said paragraph, NP shall have the right to seek injunctive relief from a court of competent jurisdiction to prevent a continuing or threatened breach of agreement and such other and further relief as may be proper. In addition to other damages awarded, NP shall be entitled to a judgment for court costs and reasonable attorneys fees.
11. Notice to parties to agreement. Wherever under this agreement a provision is made for notice of any kind, such notice shall be in writing and signed by or on behalf of the party giving or making same and it shall be deemed sufficient notice and service thereof when such notice is personally delivered, or two (2) days following deposit in U.S. Mail registered or certified, postage prepaid, or one (1) day following deposit with a bonded overnight courier, fees prepaid, to the parties at the following addresses:

To NP:

[mailing address]

and

To ABC:

[mailing address]

Either party may designate a different address to which notice shall be sent in writing in accordance with this section.

12. Applicable law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California. In the event that any portion of this Agreement is held to be unenforceable, such portions shall not limit or otherwise modify or affect any other portions of this Agreement.
13. Benefit. This Agreement shall be binding upon the parties hereto and their respective successors and assigns.

14. Assignment. This Agreement may not be assigned by either party without the express written consent of the other.
15. Amendment. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and may not be modified, amended or otherwise altered, except by written consent signed by both parties.

IN WITNESS WHEREOF, the undersigned have executed this Agreement effective as of the date above written.

NONPROFIT, INC.

By _____
Its [President] _____

By _____
Its _____

ABC, INC.

By _____
Its [President _____] _____

By _____
Its _____