

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 fundraisers or fundraising counsel in the organization’s development plans.

Provisions mandated by amendments to the law effective January 1, 2005 (identified in the text below in *italics* and by citation to statute) must be included in all contracts with both commercial fundraisers [*Govt. Code sec. 12599*] and fundraising counsel [*Govt. Code sec. 12599.1*]. The new provisions also require that a contract must be signed by the authorized contracting officer for the fundraiser and by an official of the charity authorized to sign by the organization’s governing body. In addition, the contract must be available for inspection by the Attorney General.

The model contract also covers key issue areas which are not mandatory. Since each organization is different, not all of these elective provisions may apply universally.

TERM OF THE AGREEMENT

This Agreement is made and entered into *effective this ___ day of _____, 200__ (the “Effective Date”)* [*Govt. Code sections 12599(i)(6) and 12599.1(f)(5)*], by and between ABC, Inc., a California corporation (ABC), whose principal address is _____ and Nonprofit, Inc.(NP), a California nonprofit public benefit corporation, whose principal address is [*insert legal name and address as registered with the California Attorney General unless exempt from registration*], acting *by and through its duly authorized officers.* [*Govt. Code sections 12599(i)(1) and 12599.1(f)(1)*]

IDENTIFICATION OF PARTIES TO AGREEMENT

1. NP is a nonprofit public benefit corporation formed and operated for charitable purposes, including but not limited to [describe program service].
2. ABC is a for-profit corporation engaged in the business of commercial fundraising for charitable purposes.
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. [Govt. Code sections 12599(i)(6) and 12599.1(f)(5)]

2. Cancellation of Agreement

(a) *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 ABC. If mailed, service shall be by certified mail, return receipt requested, and cancellation shall be deemed effective upon the expiration of five calendar days from the date of mailing. 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 any deduction for costs or expenses. NP shall be entitled to recover all funds collected after the effective date of cancellation.

[Govt. Code sections 12599(i)(10) and 12599.1(f)(8)]

(b) *Following the initial ten (10) day cancellation period, NP reserves the right to terminate this Agreement, upon thirty days written notice to ABC; that, if mailed, service of the notice of termination shall be by certified mail, return receipt requested, and shall be deemed effective upon the expiration of five calendar days from the date of mailing. In the event of termination under this subsection, NP shall be liable for services provided by ABC up to 30 days after the effective date of the notice. [Govt. Code sections 12599(i)(11) and 12599.1(f)(9)]*

(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 ABC or its agents, employees or representatives (i) make any material misrepresentations in the course of solicitations or with*

respect to NP or other material matter subject to this Agreement; (ii) are found by NP to have been convicted of a crime arising from the conduct of a charitable solicitation punishable as a misdemeanor or a felony;
(iii) otherwise conducts its fundraising activities in a manner that 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. [Govt. Code sec. 12599(i)(12)]

(d) 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 respective obligations of fundraiser and charitable organization [Govt. Code sections 12599(i)(3) and 12599.1(f)(3)]

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 [include statement of charitable purpose for which solicitation campaign, event or service is being conducted [Govt. Code sec. 12599(i)(2) and 12599.1(f)(2)] and method of solicitation, e.g. telemarketing, direct mail, events]. The first solicitation campaign, fundraising event, or service under this contract 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 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 NP in connection with fundraising activities on its behalf.
- (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 exercise control and approval over the content and frequency of any solicitation. [Govt. Code sec. 12599(i)(8) and 12599.1(f)(7)]* 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.

[PLEASE NOTE: It is unlawful in California to tape telephone conversations without consent (*Penal Code sec. 632*), so if recording, calls must begin with an announcement that the call is being recorded, e.g. for quality control purposes.]

- (h) ABC shall provide NP at least every three (3) months with a list of all donors (or purchasers, if the solicitation is a sales solicitation), including a contribution history for each donor (purchaser) 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.
- (i) *[If the fundraiser proposes to make any payment in cash or in kind to any person or legal entity to secure any person's attendance at, or sponsorship, approval, or endorsement of, a charity fundraising event, the maximum dollar amount of those payments shall be set forth in the contract. [Govt. Code sec. 12599(i)(9).]*

6. Control of funds.

Each contribution in the control or custody of ABC shall, in its entirety and within five working days of its receipt:

(1) be deposited in an account at a bank or other federally insured financial institution that is solely in the name of NP and over which NP has sole control over withdrawals; or

(2) be delivered to NP in person, by U.S. express mail, or by another method of overnight delivery.

[Govt. Code sec. 12599(i)(7)]

[For fundraising counsel substitute: *a statement that fundraising counsel will not at any time solicit funds, assets, or property for charitable purposes, receive or control funds, assets, or property solicited for charitable purposes, or employ, procure, or engage any compensated person to solicit, receive or control funds, assets or property for charitable purposes. [Govt. Code sec. 12599(f)(6)]*

7. Compensation of fundraiser.

- a. ABC will prepare and submit a campaign operating budget for approval by NP prior to beginning any solicitation campaign, event or service under this contract.
- b. *[If the fundraiser is to be paid a fixed fee, a statement of the fee to be paid to the fundraiser and a good faith estimate of what percentage the fee will constitute of the total contributions received. The contract must clearly disclose the assumptions upon which the estimate is based, and the stated assumptions based on all the relevant facts known to the fundraiser regarding the solicitation to be conducted by the fundraiser. [Govt. Code sec. 12599(i)(4)]*

[For fundraising counsel, Govt. Code sec. 12599.1(f)(4) requires: a clear statement of the fees and any other form of compensation, including commissions and property that will be paid to fundraising counsel.]

- c. *If a percentage fee is to be paid to the fundraiser, a statement of the percentage of the total contributions received that will be remitted to or retained by the charitable organization, or, if the solicitation involves the sale of goods or services or the sale of admissions to a fundraising event, the percentage of the purchase price that will be remitted to or retained by the charitable organization. The stated percentage shall be calculated by subtracting from contributions received and sales receipts not only the fundraiser's fee, but also any additional amounts that the charitable organization is obligated to pay as fundraising costs. [Govt. Code sec. 12599(i)(5)]*

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

- 8. Indemnification of NP. ABC shall indemnify, defend and hold NP harmless from any and all 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 mailed as provided for service of cancellation of agreement in paragraph 2(d) above, as follows:

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 portion 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 _____

Contract must be signed by an official of the charitable organization who is authorized to sign by the organization's governing body. [Govt. Code sec. 12599(i) and 12599.1(f)]

ABC, INC.

By _____
Its [President] _____

By _____
Its _____

*Contract must be signed by authorized contracting officer of fundraiser/fundraising
counsel. [Govt. Code sections 12599(i) and 12599.1(f)]*