



## Memorial Fund Contract Agreement

THIS CONTRACT AGREEMENT is hereby entered into on the \_\_\_\_\_ day of \_\_\_\_\_ of the year 20\_\_\_\_, by and between CHARITYSMITH National Society of Memorial Funds, a California corporation ("CHARITYSMITH"), and \_\_\_\_\_, a Fund Administrator for the \_\_\_\_\_ Memorial Fund ("Client").

1. **Contract Documents:** This Contract consists of the following documents:

- (1) This Contract
- (2) CHARITYSMITH Commission and Statement of Work (Attachment A)
- (3) IRS Federal Tax Exempt Letter (Attachment B)

These documents constitute the entire agreement between the Parties and supersede all prior oral or written statements or agreements.

2. **Precedence Among Contract Documents:** In the event of a conflict between or among the terms of the Contract Documents, the terms in the Contract Document with the highest relative precedence shall prevail. The order of precedence shall be the order of documents as listed in Paragraph 1, above, with the first-listed document having the highest precedence and the last-listed document having the lowest precedence. If there are multiple Contract Amendments, the most recent amendment shall have the highest precedence and the oldest amendment shall have the lowest precedence.

3. **CHARITYSMITH Duties:** CHARITYSMITH shall provide the services for the creation and administration of the Client's memorial fund as described in Attachment A, CHARITYSMITH Commission and Statement of Work.

4. **Establishment of the Memorial Fund:** Client is establishing a memorial fund as a division of CHARITYSMITH: National Society of Memorial Funds and agrees to abide by all CHARITYSMITH rules and regulations.

5. **Memorial Fund Compliance:** The fund must work in conjunction with CHARITYSMITH Nonprofit Foundation's stated purpose as indicated by the commission from the State of California and the Internal Revenue Service Code under section 501(c)3. CHARITYSMITH's commission is "the creation, administration, and distribution of memorial funds" (see Attachment A).

- a. Client agrees that moneys deposited to the memorial fund are to be used in accordance with federal tax law specifically relating to section 501(c)3 of the tax code.
- b. Client agrees that s/he, and family members, will not receive benefits from CHARITYSMITH or from the above stated memorial fund.
- c. Client agrees that moneys donated to the above stated memorial fund are to be used in strict accordance with the CHARITYSMITH mission as stated by the IRS and must be used exclusively in furtherance of charitable purposes. As such, all donations to the memorial fund must be dedicated to the purpose of commemorating the deceased by supporting charitable causes, students, artists, or athletes with the financial means to achieve their stated goals.

- d. All memorial fund scholarships, grants, and other awards are subject to approval by CHARITYSMITH's scholarship approval committee and/or Executive Director.
- e. Client agrees to receive and document all cash donations with a credible witness, above the age of 18 years of age, who will sign the appropriate Documentation of Cash Donation Form as available at [www.charitysmith.org/manageyourfund](http://www.charitysmith.org/manageyourfund).
- f. Client agrees to maintain updated contact information with CHARITYSMITH and will advise CHARITYSMITH of altered contact information within 7 days of any change in email address, telephone number, and/or mailing address for a minimum of one fund administrator.
- g. Client agrees to maintain a minimum of \$500 in the memorial fund account at all times. If the balance drops below \$500 the client is aware Wells Fargo will charge the account a monthly fee, which is the fund's responsibility.

## 6. Investment Requirement:

CHARITYSMITH, in accordance with best practices for nonprofit fiduciary management, has established a long term investment account on the UST fiduciary trust platform to invest funds in a responsible manner instead of only receiving interest from the Wells Fargo savings accounts. This account has a moderate risk allocation as determined by the BAML CIO and the fiduciary investment decisions are outsourced to UST. CHARITYSMITH uses Pension Metrix, a third-party administrator, to manage the reporting on these funds. Client agrees to participate in the rules based donor allocation policy outlined below:

- a. Memorial Funds with a balance less than ten thousand USD are allocated 100% in cash equivalents in the Wells Fargo Savings Account.
- b. Memorial Funds with a balance between \$10k - \$50k are allocated 75% in cash equivalents in the Wells Fargo Savings Account and 25% into the UST Moderate Investment allocation.
- c. Memorial Funds with a balance \$50k+ are allocated 50% in cash equivalents in the Wells Fargo Savings Account and 50% into the UST Moderate Investment allocation.

CHARITYSMITH requires two weeks advance notice of donation requests from Clients to transfer funds from the UST Investment platform to the Wells Fargo savings account to use for charitable purposes as needed by the Client.

## 7. Memorial Fund Administration:

- a. Client agrees to submit website edit requests by email directed to: [brenda@charitysmith.org](mailto:brenda@charitysmith.org).
- b. Client agrees to provide CHARITYSMITH with the initial pictures and text for the webpage within 30 days of the creation of the Fund. After the initial website setup, then Client is entitled to one hour of website edits per year as part of the annual fee. Client further understands that additional website edits will be charged at a rate of \$50 USD per hour.
- c. Client agrees to request the distribution of memorial fund award checks by printing and completing the online form available at [www.charitysmith.org/manageyourfund](http://www.charitysmith.org/manageyourfund). This form should be submitted following the instructions on the top of the form for approval and processing. Pending approval of the scholarship or grant, the check will be issued within 14 business days.
- d. Client agrees to release CHARITYSMITH of liability for donations that are not received due to mail failure, failure of online donation systems, bank error, or other failures beyond CHARITYSMITH's control whether foreseen or unforeseen.

- e. Client agrees that CHARITYSMITH is responsible for donations from the time of deposit as defined by deposit of mailed check, processing of credit card donation, or deposit of donation via online contribution.
  - f. Client agrees to provide a detailed description of the memorial fund's purpose and any scholarship or grant guidelines.
  - g. Client understands that the memorial fund is protected from obsolescence. If, in the sole judgment of the Board of Directors, the purposes for which the fund was created ever become unnecessary, incapable of fulfillment, or inconsistent with the charitable purposes of CHARITYSMITH, then the Board of Directors shall modify any restriction or condition on the use or distribution of the fund monies.
  - h. Client agrees to purchase event specific insurance for fundraising events produced by the Client in the event of any loss or claim with respect to the Client's operations and activities. Client will provide a Certificate of Insurance providing CHARITYSMITH with additional insured status which shall be shown as:  
CHARITYSMITH  
13100 Filly Lane  
Truckee, CA 96161  
Certificate shall state: "This insurance shall act as primary insurance to that of the additional insured as respects operations of the named insured." Minimum coverage limits include \$1,000,000 General Aggregate Limit/\$500,000 Each Occurrence Limit.
8. **Client Fees:** The Client shall pay CHARITYSMITH in the manner and in the amounts specified in the Contract Documents. CHARITYSMITH reserves the discretionary right to adjust any and all Fee amounts stated in this Contract based on its operating costs.
- a. Client agrees to pay a fund establishment fee of \$850 USD at the time of fund establishment. This fee is in exchange for services provided as documented in Attachment A.
  - b. Client agrees that the fund establishment fee of \$850 is nonrefundable.
  - c. Client agrees that the fund establishment fee of \$850 will be paid at the time the memorial fund is created.
  - d. The Client will pay CHARITYSMITH an annual administrative fee of \$602.00 USD for a continuation of services. This fee is due annually and will be charged in the month the memorial fund was established. The first administrative fee will be due 12 months after the start date of the fund. Failure to pay any fees within 30 days of the due date will result in termination of this contract and all related services.
  - e. If the memorial fund receives more than \$14,000 worth of donations in the 12-month period after the fund is established or renewed, the Client agrees a donation processing fee of 4.3% will be assessed on all donations in excess of \$14,000.00 USD. For single donation checks of \$10,000 or above, the processing fee is 2.3%. The applicable fee(s) will be deducted one time at the end of each month. The balance will reset with each annual renewal and no fees will be charged until the fund once again receives an excess of \$14,000.00 USD in 12 months, with the starting date being the month in which the annual administrative fee is paid.
  - f. Failure to pay any fees may also result in a \$50.00 late fee at CHARITYSMITH's sole discretion. CHARITYSMITH reserves the right to do so without possible penalty and without waiving any additional rights or legal remedies it may have to pursue payment due. These payment terms expressly survive termination of this contract.
9. **Voluntary Termination of Contract:** This contract is entered into voluntarily by both parties, CHARITYSMITH and Client, and may be terminated at anytime by written, signed notification by either party. Upon termination of the contract, the remaining funds may be distributed by the Fund Administrator to an award recipient following

the standard procedure. As an alternative, the funds may be transferred to a 501(c)3 nonprofit foundation with goals and objectives consistent with those described for the stated fund.

- a. If Client terminates this agreement without cause, Client shall not be entitled to reimbursement for any fees already paid; and CHARITYSMITH shall be entitled to offset any monies due to it from Client against the fund balance.

**10. Termination of Contract by Failure of Communication and/or Account Renewal Default:** In the event that a fund is not renewed within 60 days of the renewal date, and/or CHARITYSMITH is unable to make contact with the Fund Administrator, then termination of this contract will occur automatically. If the Fund Administrators have not made contact with CHARITYSMITH to arrange other options, the account will be considered in Default and remaining funds will be transferred as the Board of Directors deems appropriate based on the fund's stated purpose.

**11. Attorney Fees and Costs:** If either party brings an action for any dispute, relief or collection against the other party, declaratory or otherwise, arising out of the arrangement described herein, the losing party shall pay to the prevailing party a reasonable sum for attorney fees and costs actually incurred in bringing such action, all of which shall be deemed to have accrued upon the commencement of such action and shall be paid whether or not such action is prosecuted to judgment. For the purpose of this Section 10, attorney fees shall include without limitation fees incurred in connection with arbitration (including arbitrator(s) fees), discovery, post judgment motions, contempt proceedings, garnishment and levy.

**12. Limitation on Liability:** Except in case of willful misconduct, or gross negligence, the Parties' liability to each other for damages or other amounts arising out of or in connection with CHARITYSMITH's website, the services or other material or information provided by CHARITYSMITH hereunder, or any other aspect of this agreement, shall not exceed the total amount of payments made or due by Client to CHARITYSMITH during the one (1) year period prior to the claim or demand. Except in case of willful misconduct or gross negligence, in no event shall the Parties be liable for any incidental, indirect, consequential, exemplary, punitive or special damages, or any damages for lost profits, lost data or lost business, even if the Parties have been advised as to the possibility of such damages. CLIENT RELEASES AND AGREES TO HOLD CHARITYSMITH HARMLESS FROM AND AGAINST ANY CLAIMS, DEMANDS OR LIABILITY that may arise in connection with or as a result of use or misuse, whether or not authorized by Client, of Client's website or CHARITYSMITH's services.

**13. General:**

- a. The complete or partial invalidity or unenforceability of any provision herein shall in no way affect the validity or enforceability of such provision for any other purpose or the remaining provisions in this agreement.
- b. This agreement shall be binding on the parties, their respective successors and permitted assigns, heirs and/or legal representatives.
- c. The waiver by any party of a breach or default by the other party of any provision of this agreement shall not be construed as a waiver of any succeeding breach or default by the other party, nor shall either party's delay or omission to exercise or avail itself of any right or remedy hereunder or by law operate as a waiver of any such right or remedy.
- d. This agreement is governed by and shall be construed in accordance with the terms of the State of California without regard to any rules governing conflicts of laws. The parties agree to submit to the jurisdiction of the County of Nevada, State of California courts for all purposes relating to the terms and conditions herein.
- e. Intellectual Property: Client acknowledges that intellectual property rights subsisting in the CHARITYSMITH services (including CHARITYSMITH's website content) and services are owned by CHARITYSMITH or third parties. Member agrees that it acquires use, not ownership rights, in the intellectual property and Member is responsible for complying with all applicable intellectual property laws.

14. **Client's Website Content** Client shall be solely responsible for its own content submitted for inclusion on www.charitysmith.org and the consequences of submitting and publishing its Content (defined as: any materials or information that Client submits for inclusion or on the CHARITYSMITH). Client affirms, represents, and warrants that it owns or has the necessary licenses, rights, consents, and permissions to publish any Content submitted to CHARITYSMITH, and Client grants a license to CHARITYSMITH for all patent, trademark, trade secret, copyright or other proprietary rights in and to such Content for publication on www.charitysmith.org pursuant to this Contract. For clarity, Client retains all of its ownership rights in its own Content. However, by submitting the Content Client hereby grants CHARITYSMITH a worldwide, non- exclusive, content royalty-free license to use, reproduce, distribute, and display the Content in connection with CHARITYSMITH's website, marketing purposes and services.
15. **Client's Contact Information:** Client represents and warrants to CHARITYSMITH that all the information provided by it to CHARITYSMITH to register as a Client and participate in CHARITYSMITH's services is correct and current. Client agrees to provide CHARITYSMITH with current, accurate and complete contact and billing information when registering for services, and to promptly notify CHARITYSMITH in writing of any changes to that information.
16. **Contract Signers:** All notices permitted or required to be given by one Party to the other and all questions about the contract from one Party to the other shall be addressed and delivered to the other Party's Contract Signer. The name, post office address, street address, telephone number, fax number, and email address of the Parties' respective initial Contract Signer are set out below. Either Party may change the name, post office address, street address, telephone number, fax number, or email address of its Contract Signor by giving timely written notice to the other Party.

**For CHARITYSMITH:**

CHARITYSMITH  
 Attn: Brenda Zimmerman  
 Executive Director  
 13100 Filly Lane  
 Truckee, California 96161  
 Email: Brenda@charitysmith.org  
 Phone: 866 558 2064  
 Fax: 530.999-2023

**For the Client (required info):**

Fund Administrator Name: \_\_\_\_\_  
 Memorial Fund: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City, State, Zip: \_\_\_\_\_  
 Email: \_\_\_\_\_  
 Phone: \_\_\_\_\_  
 Fax: \_\_\_\_\_

17. CHARITYSMITH has the right to change, alter or vary the scope or extent of the services offered upon notice to you provided, however, that CHARITYSMITH shall not materially degrade the services provided. Client expressly understands and agrees CHARITYSMITH's services are provided on an "as-is" and "as available" basis and that Client's use is at its own risk. While CHARITYSMITH has taken reasonable care in making its services available to Client, CHARITYSMITH makes no representation or warranty as to the accuracy of the Content or the suitability of the services, including without limitation, all Content on www.charitysmith.org.

**18. Signature and Agreement to Terms:**

The undersigned represent and warrant that they are authorized to bind their principals to the terms of this agreement.

**In Witness where of,** the Client and CHARITYSMITH have executed this Contract in duplicate originals, with one

original being retained by each party.

**Memorial Fund**

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Signature Date

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Printed Name Title

**CHARITYSMITH**



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Signature Date

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Brenda L. Zimmerman Executive Director  
Printed Name Title

## ATTACHMENT A

### The CHARITYSMITH Commission and Statement of Work

**The CHARITYSMITH Commission:** CHARITYSMITH Nonprofit Foundation's stated purpose as indicated by commission from the State of California and the Internal Revenue Service Code under section 501(c)3 is the creation, administration, and distribution of memorial funds.

CHARITYSMITH will provide the Individual or Corporation creating the memorial fund, hereafter referred to as Client, with the following services.

#### 1. Memorial Fund Administration:

- a. CHARITYSMITH agrees to provide client with documentation of state and federal acknowledgement of 501(c)3 status, and to provide notice of change in such status within 30 days should such a change occur.
- b. CHARITYSMITH agrees to provide client with copies of bylaws upon request.
- c. CHARITYSMITH agrees to respond to email communication in a timely manner, not to exceed 5 business days.
- d. CHARITYSMITH agrees to respond to telephone communication in a timely manner, not to exceed 5 business days.
- e. CHARITYSMITH agrees to hold secure and private the contact information provided by the Fund Administrators of the memorial fund.

#### 2. Memorial Fund Webpage:

- a. CHARITYSMITH agrees to purchase a suitable URL for the establishment of the memorial fund. This URL is to be purchased for a single year and is renewed annually for the duration of existence of the memorial fund at CHARITYSMITH.
- b. CHARITYSMITH agrees to create, maintain and host a single page website for the memorial fund for the duration of existence of the memorial fund at CHARITYSMITH.
- c. CHARITYSMITH agrees that the single page website will include: unlimited text, up to 6 pictures, DonationPay donation button, and scholarship application managed by our contractor GoingMerry. Additional pages, forms, video formatting, extra photos, etc. may be available for an additional fee.
- d. CHARITYSMITH agrees to provide client with 60 minutes duration of textual website updates per year. Additional edits will be charged at a rate of \$50 per hour.

#### 3. Memorial Fund Bank Account and Donations:

- a. CHARITYSMITH agrees to establish a new savings account at Wells Fargo Bank for the memorial fund when sufficient funds have been donated. This account will be subject to the rules and fees of Wells Fargo Bank.
- b. CHARITYSMITH agrees that the funds deposited into the memorial fund are to be used solely for fulfilling the



mission and purpose of the memorial fund or used for CHARITYSMITH administrative costs expressly described herein.

- c. CHARITYSMITH agrees to provide donors with receipt(s) for tax record purposes for all donations.
- d. CHARITYSMITH agrees to assume responsibility of donations upon deposit of donation via online contribution, deposit of mailed check, or receipt of processed credit card donations.
- e. CHARITYSMITH agrees to uphold the standards and commitment described in IRS Tax Code Section 501(c)3.
- f. CHARITYSMITH agrees to keep secure records of all donations, donors, award recipients, and fund administrators.
- g. CHARITYSMITH agrees to receive, document, deposit, and acknowledge donations to the memorial fund.
- h. CHARITYSMITH agrees to provide Client with accounting reports, consisting of monthly donation summaries, on or around the 15<sup>th</sup> day of each month for the previous month.

**4. Memorial Fund Disbursements and Awards:**

- a. CHARITYSMITH agrees to provide the Fund Administrator with copies of applications for awards from the memorial fund within 14 days of their receipt.
- b. CHARITYSMITH agrees to provide award checks, made payable to the annual recipient of the memorial fund award, in an amount that is no greater than the moneys available in the memorial fund at the time of the request, in the form of a check. This check will be provided within 14 days of the receipt of the scholarship request form.
- c. CHARITYSMITH acknowledges and agrees to make disbursements for the memorial fund in accordance with the following requirements including, without limitation, no disbursements “awards” be made without the written consent of the Fund Administrator (unless the fund is in Default); implement adequate internal controls over awards; ensure all awards are made to appropriate “charitable causes” as defined by the Internal Revenue Service and fall within CHARITYSMITH’s guidelines and mission.