Considerations in Gift Agreements

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Goals

A. Clarity in mission. Clarity in imperatives. Clarify in goals.

B. Clarity in the relationship of the organization with funders.

C. Thoughtful, comprehensive dialogue between technocrats of the organization, the development leaders with financial and legal

D. Assist donors in creating gifts that support the organization and its mission and allow donors to feel that they are supporting their charitable goals.

E. Consider the types of gifts, restrictions, risk management, administration authority, return benefits and long-term management.

F. Easily understood and clearly set forth the various aspects of the gift,

G. Forward thinking: covering issues that may arise in the future.

H. Review your gift acceptance policy and procedures and gift agreement templates.

Considerations for Gift Agreements, Gift Acceptance and Procedures Policies

1. **Gifted Property**

    1.1 Type of Property

    1.2 Charitable Deduction

    1.3 Substantiation

2. **Common Gift Restrictions**. What expectations does a donor have about the gift now and discussion about how that will play out in the future.

3. **Purpose**

    3.1 Is gift purpose consistent with charity's mission?

    3.2 Issues of earmarking and control can undermine the charitable gift. Donors often want to make a gift or bequest to Charity X, with the understanding that it will transfer a portion of the funds to Charity Y or use the funds to hire a specific person.

        (a) Where funds are earmarked for a particular entity or person, the gift is made to that person for tax purposes.

(b) Donors were successful in deducting a gift after "expressing interest" that the charity support the composition of a work by a particular composer, because the charity did not commit to commission such a work, and charity and donors agreed that the gift would be used at the discretion of the charity (PLR 200250029).

(c) Lee Bass made a $20 million gift to Yale University to establish a program in Western civilization, and wanted to approve the people who would teach it. Ultimately, Yale returned the money.

(d) Saving language: "This contribution is made with the understanding that the donee organization has complete control and administration over the use of the donated funds".

3.3 Donors also do not realize that perpetuity is a very long time. The organization and donor need an agreed upon plan for changed circumstances.

3.4 What is paramount in the gift agreement- the donee or the purpose.

3.5 Communication about disbursements.

3.6 Donors who want to be appointed to a committee.

3.7 Donors who want an ongoing consultation right on certain matters, programs or policies.

3.8 New CEO or donor relationship manager.

3.9 Commitment to donor, but while building a flexible mindset.

3.10 Bankruptcy/ Creditor Protection. The donor's intent remains paramount to achieve donor's goals and protect against unseen events. The court will review each bequest to determine whether it comprises a restricted asset or if it can be allocated to payment of creditors. If properly documented the restrictions generally control both for endowed and purpose restrictions.

4. **Endowment**

4.1 To a donor, an endowment is a sum of money given to a charity for charitable purposes, with only the "income" being spent and "principal" being preserved.

(a) To an accountant, it is a fund which is "permanently restricted". To a lawyer, it is an institutional fund not wholly expendable on a current basis under the terms of the gift instrument.

(b) A "true" endowment is one established or created by the donor. A board-restricted endowment (or "quasi-endowment") is created when the board takes unrestricted funds and imposes a spending restriction.

4.2 General, Programmatic or Specific Endowments

(a) Any changes to the general UPMIFA rules related to investment and expenditures.

(b) Programmatic are subject to general policy subject to Board modifications.

(c) Specific: Expenditures one year after fully funded, no expenditure, setting minimum distributions and termination.

4.3 Spending Rule

(a) OR 128 Uniform Prudent Management of Institutional Funds provides that expenditure of an amount greater than 7% of FMV averaged over 3 years. A donor can set alternative expenditure only by specifically including it in the gift instrument. May want to include that in times of emergency can be more.

(b) Make changes to these statutes in the gift agreement.

5. **Investment Restrictions**

5.1 What about retaining the right to direct the investment of the contributed funds? Properly structured, this may be only an "insubstantial" right, not significant enough to affect the deduction (PLRs 8152072 and 200445023-4) – but if the rights are too significant, the gift may be non-deductible (see, Fund for Anonymous Donors, 79 AFTR 2d 97-2520, rev'd 83 AFTR 2d 99-1976).

5.2 Investment restrictions imposed by donor may create "fiduciary duty – prudent investment" issues for the charity's board of directors. In California, a board may be relieved of certain of its fiduciary duties if a donor authorizes (or requires) a certain investment (Cal. Corp. Code sec. 5240(c)).

6. **Naming Gifts**

6.1 Fun Historical Facts. Compiled by Joseph Bull, JD.

(a) In 1713 Elihu Yale donated 32 books to the Collegiate School. In 1718 he gave 417 books, the proceeds of 9 bales of goods and a portrait of King George. The equivalent today is $335,000. In 1718, the Collegiate School changed its name to Yale University in honor of the gifts.

(b) In 1636, the General Court of Massachusetts Bay Colony voted to create the New College. Puritan minister John Harvard died in 1638 leaving 329 titles and half of his estate to the New College. In honor of the gift the college changed its name to Harvard College. The current equivalent value of the gift is about $229,000.

(c) William Booth, an English Methodist preacher, founded the Salvation Army along with his wife Catherine in 1878. He is perhaps best known for a response he gave to someone who questioned what he thought of accepting gifts of tainted money. General Booth replied, "T'ain't enough."

6.2 Managing Naming and Recognition. Naming rights are a common way to recognize major donors. An organization should have a corporate sponsorship and naming rights policy to manage the

7. **Naming and Gift Recognition Policies**

7.1 Term

(a) Number of years

(b) Naming for the lives of the donor and their children or grandchildren

(c) Perpetual if the donor's family continues to contribute a fixed percentage of the building's maintenance, upkeep, and future renovations.

(d) First refusal to make a new gift that would name a replacement building

7.2 Clarify the facility over which the naming rights exist. What else will be named? What other facilities at the organization offer naming recognition: endowments, physical spaces, programs, departments.

7.3 What signage and recognition is specified.

7.4 What level of funding is required for each naming opportunity type. When must payment be received?

7.5 How will a corporate name change be managed?

7.6 Act of God, Violence, Terrorism> Should the facility be destroyed by natural disaster, fire, or act of violence, the name will remain on the new facility only if insurance and contributions from the donor's family equal the construction costs of the new facility.

7.7 Removal of Name. Under what circumstances will the name be removed? If the donor, whether an individual or a corporation, engages in activity that could damage the reputation of the organization, the organization must retain the right to remove the name of the offending donor.

(a) What types of acts would trigger a release from naming recognition? Some defining language is needed, but the board needs latitude in making difficult decisions.

(b) What behavior is a concern?

(i) Criminal

(ii) Immoral

(iii) Unsavory: sexism, racism, lying, questionable ethics/ civil suit

(c) How will the donor be notified and what opportunity will they have to communicate with the board or relevant committee. If donor is deceased is there a designee who will be notified under the donor agreement.

(d) Each organization must determine its philosophy regarding potential donors. Is each case determined on a case-by-case basis? Are there any clear rules?

(i) Seaton Hall University has a "Koslowski Hall", University of Missouri-Columbia has the "Kenneth Lay Professorship" and the University of Alabama-Birmingham has the "Richard Scrushy Building".

(e) In the event of a disgraced donor should the charity take further action?

(i) Sackler Family: They are the principal owners of Purdue Pharma, the manufacturer of OxyContin, which is seen as the root of the nation's opioid epidemic. They are also prodigious philanthropists all over the world, primarily to higher education and art museums. After it was revealed that members of the Sackler family played a prominent role in promoting sales of OxyContin, many organizations announced that they would no longer accept gifts from the Sackler family. Some of the organizations kept previous Sackler gifts for their intended purposes while others redirected Sackler gifts to opioid addiction treatment centers.

(ii) Jeffrey Epstein: The now deceased disgrace financier who rubbed elbows with some of the world's richest and most powerful people was convicted on sex trafficking of girls as young as 14. He was also a high profile philanthropist. Most of his giving was for current use funds which were used for their intended purpose. After he was arrested, most of the charities that Epstein supported contributed their remaining gifts to victims' shelters and organizations that fight human trafficking.

8. **Consequences of a Default**. Gift instruments should address what happens if the charity (or donor) "defaults" on their promise. Often, the remedy for a charity's failure to follow a purpose restriction is to require a "gift over" to another charity.

9. **Who Has Standing to Enforce?** Donors may wish to ensure they have "standing to sue" if the charity does not abide by the purpose or spending restrictions. Absent such language in the gift instrument, however, the donor may not be able to enforce the terms of his gift. Some states have held that unless the donor reserves a right to enforce in the gift instrument, only the state Attorney General has legal standing. Other states have concluded that a donor does have standing (LB Research and Education Foundation v. UCLA Foundation, (June 15, 2005 decision of California Court of Appeals); Smithers v. St. Luke's Roosevelt Hospital Center, 723 NYS2d 426 (2001)). In Oregon, generally only the DOJ has standing.

10. **Managing Changed Circumstances**

10.1 Purpose and endowment restrictions are common and generally welcomed by charities as long as they are in line with the organization's charitable goals and programs.

10.2 What happens when later the restriction becomes outdated?

10.3 Uniform Prudent Management of Institutional Funds Act (UPMIFA)

(a) It applies to funds held by nonprofit organizations and contains language that mirrors both cy pres and equitable deviation.

(b) UPMIFA establishes 4 safe harbors for modifying donor restrictions on a gift.

(i) Donor Consent: If the donor consents to the modification in writing so long as the modification continues to serve a charitable purpose of the organization.

(ii) The appropriate court, based on the request of the nonprofit organization, modifies a donor restriction that

(A) has become impracticable or wasteful,

(B) impairs the management or investment of the fund; or

(C) because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund.

(D) This modification required AG notice.

(iii) The appropriate court, based on the request of the nonprofit organization, may modify either the charitable purpose of an institutional fund or a donor restriction if either becomes unlawful, impracticable, impossible to achieve, or wasteful and if the modification is consistent with the charitable purposes expressed in the gift agreement.

(iv) For funds less than $25,000 that were donated more than 20 years ago, the nonprofit organization may, after 60-days' notice to the state's attorney general, modify a donor restriction that it determines is unlawful, impracticable, impossible to achieve, or wasteful, provided that the modification is consistent with the charitable purposes expressed in the gift agreement.

(v) Gift Agreement:

(A) The gift agreement can contain provisions in which the donor appoints a designee to consent if they are incapacitated or deceased.

(B) The gift agreement should contain a changed circumstances paragraph that contains the UPMIFA language safe harbor language of "unlawful, impracticable, impossible to achieve, or wasteful."

(C) The gift agreement should contain a provisions giving the BOD the power to modify the restrictions in the event that has become impracticable or wasteful, impairs the management or investment of the fund; or because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund so long as the modification is consistent with the overall purpose expressed in the gift instrument.

(D) "Most charities have gift acceptance policies (GAPs). I've never seen a GAP I liked," so says Jonathan Tidd, an Arizona attorney who has a long, distinguished career in advising nonprofits on charitable gift planning issues and is a member of the CGP Hall of Fame. In his observation, most GAPs address peripheral issues and do not address the most relevant issues related to actual acceptance of a gift.

11. **Adopting and Implementing a GAP**

11.1 "A GAP has one purpose, which is to keep the charity and its development officers out of trouble in the charity's dealing with donors." – Jonathan Tidd

11.2 The GAP intended to reflect the established mission and goals and programming organizational leadership, development leadership, financial risk analysis and legal input will meet the needs of the organization.

11.3 Who will lead the process? Likely two people: a fundraiser and someone in legal or wo has a risk management mind-set.

11.4 Be forward looking: potential problems and state how the organization will respond to them.

11.5 Obtain board approval.

11.6 Exceptions should rarely be made.

12. **Gift Acceptance Policies; Types of Assets. A good GAP provides:**

12.1 Discipline in gift acceptance based on rationale considerations of risk, expertise, and staffing.

12.2 Define what gifts will be accepted.

12.3 Establishes clear roles and responsibilities regarding who is able to negotiate and approve gifts and restrictions.

12.4 State the detail the mechanisms and due diligence for accepting each asset type of asset.

12.5 Sets responsibilities for due diligence expenses.

12.6 States who the organization will use as its charitable fiduciary

12.7 States how gifts will be recognized for donor recognition purposes and financial accounting purposes.

12.8 Outline donor's responsibility to obtain appraisal and have their own counsel. State that the donor's best interest will always be followed, and the organization will not exert undue influence in a donor's decision-making.

12.9 Sets forth the template for gift agreements and requires all gifts over a certain dollar amount or type of gift be subject to such agreement.

12.10 Sets forth the template for a pledge agreement. Defines maximum allowable pledge period and how accumulating funds will be managed until the pledge is fully paid. Provides when a pledge can be relied upon. Under the doctrine of Detrimental Reliance. Even without consideration, a charity can enforce a pledge if it relies to its detriment on the pledge. Examples are a charity breaking ground on a facility, extending a scholarship offer, and other donors making pledges based on the big donor's pledge. It should also provide whether pledges are enforceable against the donor's estate. Place a deadline on when a pledged endowment must be fully funded.

13. Gift Acceptance Policies; Restrictions

13.1 Endowment Funding:

(a) General Endowed Funds: If the organization has one or more general endowment funds, it should set forth what the funds are used for, distribution levels and what the organization would do if it were to no longer use the endowment for its programming.

(b) Specific Endowed Funds: If the organization allows specifically endowed funds, it should have a set of guidelines that set forth how to determine minimum endowment levels and list the current levels for various types of endowments. Endowed fund levels should be set so that the annual distribution at a specified percentage from a specific endowed fund will provide the funding necessary to cover the purpose of the endowed fund.

14. Gift Agreements.

14.1 Gift Terms If There Is Not a Gift Agreement.

(a) Look to the gift instrument, which includes all sources of intent –"a will, deed, grant, conveyance, agreement, memorandum, writing, or other governing document (including the terms of any institutional solicitations from which an institutional fund resulted)...." Gift terms may also be found in oral representations, development officer notes, etc., but the enforceability (and accuracy) of this "evidence" can be sketchy. In any case, it leads to confusion and tension in donor relations.

14.2 Key Terms. A gift agreement is a contract and is bound by contract law. Its purpose is to protect both the charity and the donor with a thorough recitation of what was agreed to and what both parties expect.

(a) An introductory section, describing the transaction, the donor's intent, and the donor's connection to the charity in general terms.

(b) Charity's administration policies and procedures (spending, fees, etc.) should be referenced in gift instrument and available to donors.

(c) Define the donor. Will the donor be an individual or their private foundation or donor advised fund. It is impermissible for a private foundation or DAF to fulfill a personal, binding pledge.

(d) The type of asset.

(e) The FMV of the asset(s).

(i) Certain restrictions (especially those affecting the charity's ability to sell the gift asset) can impact valuation. For example, a gift of a patent, subject to a condition that the university could not sell the patent for three years, is deductible – but the prohibition reduces the FMV of the gift (Rev Rul 2003-28). The appraisal rules require that the appraiser describe any restrictions imposed on the gift, and consider if they impact valuation. Exercise caution when placing restrictions on bequests – the estate will include the full value of the property, but the charitable deduction may be reduced if there are significant restrictions.

(f) The purpose and all restrictions of the gift should be clearly stated. Purpose restrictions may be imposed at time of gift. However, if the donor retains continuing authority to change the purpose of the contribution, the gift may be incomplete due to his having retained the power to direct the disposition or enjoyment of the property (see Pauley, 459 F2d 624 (1972)).

(g) The dates and timing of a multi-year pledge need to be precisely stated.

(h) Anything received by the donor.

(i) From the charity. If a charity provides "return benefits" to a donor, it must under disclose any goods or services provided (IRC sec. 6115). Also, the charity must include a description and good faith estimate of the value of any goods and services provided to the donor on its receipt (IRC sec. 170(f)(8)).

(ii) Otherwise. A gift is not deductible as a charitable contribution if the donor expects to receive "substantial return benefits." See Ottowa Silica v. US, 699 F2d 699 (1983) (gift of land to school district would lead to construction of roads, increasing value of retained land); and Singer Co. v. US, 449 F2d 413 (1971) (bargain sales of sewing machines to schools were done for purpose of increasing market for machines).

(i) The gift agreement should clearly state if it is binding or not as agreed to by both parties.

(j) If endowments are created, include a section on the organization's endowment investment, management, and spending policies.

(k) The gift agreement should specify what will happen if the purpose is no longer part of the organizations programming or otherwise cannot be fulfilled. Is the done or the purpose paramount? Does the donor have a designee to provide consent. If a certain number of years has passed and the donor or designee are not available, then does the board have power to modify while being consistent with general purpose. No reversions are possible. Should the board otherwise transfer the funds to an organization that can fulfill the purpose? Conditional gifts should not be approved without significant consideration.

(l) If the organization ceases to exist then the gift will be transferred to another charity should the organization by board resolution.

(m) Describe what updates will be provided to the donor.

(n) State whether the gift will be announced publicly or if the donor wishes no publicity.

(o) If the organization is subject to its state's Freedom of Information/Open Records statue, it should be stated so that there are no future surprises for the donor.

(p) Basic Contract Clauses

(i) Merger Clause: the gift agreement should state that it is the full and final expression of their agreement and that it takes the place of any previous oral or written communications.

(ii) Situs Clause: the state whose laws govern the gift agreement should be clearly stated. This is generally the state where the charity is located.

GIFT AGREEMENT
BETWEEN
____
AND
____________ CHARITY

This Gift Agreement is between ________________ ("Donors") and Education Charity (the "EDU ") to contribute funds in the amounts and upon the terms and conditions hereinafter set forth effective _________. [If the Donors intend to make recommendations to their donor advised fund, a separate intention statement should be signed.]

1. **Amounts and Purposes of the Contribution:** Donors will contribute to EDU the sum of $_____ to establish endowed funds, $______ in a capital gift, and _____current use funds, for a total gift of $_____, to support EDU as described below. Donor wishes to pledge a gift to EDU in the amount of $___ due on ______ (or with payments made on the attached Schedule A.)

2. **Endowment Gifts**

2.1 $___ will establish the _______ Endowment, the annual distribution from which will support, pay for _________________. Expenditures will be made at the sole discretion of the __________ and may include, but are not limited to, _______________and program support. Donor understands that distributions from the Fund will not begin until the end of the fourth quarter after the Fund has been established.

3. **Capital Gift**

3.1 $_______ will be placed in the ______ Fund as further described in the ____ Capital Fund Information Sheet attached as Schedule B. These funds are currently and fully expendable to pay for the construction of ________________. Construction shall include any and all site preparation.

4. **Current Use Gifts**

4.1 $________ will be used to support the daily operations of EDU.

5. **Gift Fulfillment**

5.1 It is the Donors' intention to fulfill the gift as follows:

5.2 personally fulfill this commitment during calendar year 20xx.

(a) personally fulfill this commitment over a __ year period with payments of $__,000 paid annually/semi-annually/quarterly/monthly and with the first installment remitted by ________. EDU will send statements periodically that summarize the status of this commitment.

(b) fulfill this commitment through a combination of current gifts of $_____ over a ___ year period, a charitable remainder trust that will be created in 20__ for

$___________, and the remainder from their estate. Donors' failure to include a bequest in their Will, trust, other testamentary documents, or beneficiary designation shall not release Donors' executors, administrators, or other personal representatives from the contractual obligation created by this Gift Agreement. [The final sentence may be deleted should the parties agree that this agreement is not binding.]

5.3 Contributions will be in cash, cash equivalents, or securities traded on a public exchange. Other assets of the Donors may be used to fulfill this commitment upon prior discussion with and approval by EDU.

5.4 If the minimum funding requirement for any of the endowments set forth in Section 2 above is not met by ________, 20__, any gifts received to that date shall instead be held for current use consistent with the purpose of the proposed endowment.

5.5 Any other individual or organization may make additional gifts to the endowments created in Section 2 above, and any such gifts will be subject to the terms of this Gift Agreement.

6. **Naming Opportunities and Rights**

6.1 The endowments created in Section 2 above shall be named as set forth in that section, subject to approval by EDU's Board of Directors.

6.2 Subject to approval by EDU's Board of Directors, naming opportunities will be reserved in the facilities described in Sections 3.1 and 4.2 above to the Donors. The specifics of such naming rights will be detailed in a separate agreement.

6.3 All naming opportunities will follow and be subject to EDU's Naming Rights Policy as currently published and as modified from time to time by the Board of Trustees. The Naming Rights Policy can be reviewed at -_________________and a hard copy is available at the Donors' request.

6.4 The Naming will remain in effect for the lesser of ______ years or the useful life of the existing building/room/geographical area (the "Applicable Term"). Additionally, EDU will provide recognition and signage as described in Schedule C, and the Donor will, at its sole expense, maintain the signage and keep it in good repair. Should these facilities be destroyed by fire, natural disaster, another casualty, or an act of violence or terrorism, and if EDU is able to rebuild the facility with insurance proceeds or governmental grants, the Donors' names will be similarly placed in and around the newly built facility.

6.5 Any Donor request to change the Naming must be approved in writing by EDU, which may approve or deny such request in its sole discretion. In the event the Naming is changed under the provisions of this Section, the cost of effectuating such change will be borne solely and entirely by Donor, and any and all costs and expenses incurred by EDU in connection with effectuating such change will be paid by Donor promptly upon request. Any change to the Naming provided for herein is subject to the approval of the Board of Directors.

7. **Default and Termination**

7.1 Default by Donor.

(a) Events of Default. The occurrence of one or more of the following matters will constitute a default by Donor ("Donor Default"):

(i) Donor's failure to pay the Gift or other amounts when due to EDU if such failure continues for a period of 30 days after written notice from EDU to Donor, specifying the failure and demanding that it be cured.

(ii) The unlikely event that Donor (or its senior officers or directors, if a company) commits acts of misconduct that are illegal, unethical, immoral and/or scandalous, or has previously committed such acts that have not yet become public knowledge, that are deemed by EDU to be detrimental to the reputation, image, mission or integrity of EDU

(iii) Donor's failure to perform or comply with any other material term or condition of this Agreement, or its material breach of any representation or warranty made herein, if such failure or breach continues for a period of 30 days after written notice from the Member to Donor, specifying the failure or breach and demanding that it be cured.

(b) Rights and Remedies of EDU upon Donor Default. Upon the occurrence of a Donor Default, EDU will have the right to do any one or more of the following: (i) enforce the specific remedies provided for herein; (ii) recover all damages provided by law or in equity; (iii) exercise any other right or remedy at law or in equity, including seeking an injunction or order of specific performance; (iv) at EDU's discretion, terminate the Naming and consider an alternative recognition for the Gift; and/or (v) terminate this Agreement and, at EDU's discretion, remove the Naming.

(c) Default by Member.

(i) Events of Default. The occurrence of EDU's failure to perform or comply with any material term or condition of this Agreement, except for a Length of Term Naming Default (defined below), or its material breach ("EDU Default).

(ii) Rights and Remedies of Donor upon Member Default. Upon the occurrence of a EDU's Default, Donor will have the right, to the extent allowed by Oregon law, to do any one or more of the following: (i) enforce the specific remedies provided for herein; (ii) recover all damages provided by law or in equity; (iii) exercise any other right or remedy at law or in equity, including seeking an injunction or order of specific performance; and/or (iv) terminate this Agreement.

(iii) Default with Respect to Length of Naming. In the unlikely event the Naming is in effect for less than the Applicable Term due to a default by EDU ("Length of Term Naming Default"), EDU may cure the Length of Term Naming Default by granting an alternate naming right acceptable to Donor with a value approximately equal to the amount of the Gift divided by the Applicable Term and then multiplied by the number of years remaining to reach the Applicable Term. Alternatively, the Member may cure the Length of Term Naming Default by an arrangement mutually agreed upon by the parties or their successors, heirs, or assigns.

8. Further Terms and Conditions of Contributions

8.1 Enforceable Agreement. The parties agree and acknowledge that the terms and provisions contained in this gift agreement (are/are not) binding on the Donors, their estates, and their successors and assigns and that they (are/are not) enforceable by EDU through judicial proceedings. Notwithstanding, EDU shall be bound by the terms of this gift agreement if and when the gifts set forth herein are completed and fulfilled by the Donors. No person who is not a party hereto (or a successor or assignee of such party) shall have any rights under this gift agreement, either as a third-party beneficiary or otherwise.

Donors acknowledge that this gift agreement creates a personal obligation. Satisfaction of Donors' obligations under this gift agreement by a private foundation, a donor advised fund, or a supporting organization may subject both the Donors and the entity that made the payment to excise taxes and penalties.

8.2 Endowment. The investment and management of, as well as expenditures from, the endowments established by this gift shall be in accordance with EDU's endowment policies and procedures as approved by its Board of Trustees. These policies and procedures can be reviewed at _____________-, and a hard copy is available at the Donors' request. As authorized by the Board of Directors, a fee may be assessed against endowment portfolios for EDU's costs of development and fund management.

8.3 Modification of Purpose.

(a) Need to Modify. The parties realize issues may arise in the future as to what are the proper uses of these gifts. In this connection, and notwithstanding any other provisions of this agreement, it is the Donors' intent to give EDU discretion and latitude in determining proper uses in accordance with the specific uses and general nature of these gifts

(b) Procedure for Modification. In the years and decades to come, circumstances may change in a manner that cannot be predicted today. It is desired that the endowments established herein should benefit EDU in perpetuity and that while the Donor and/or her designee are living and have capacity, they shall have the power to consent to a change in purpose or expenditure. The gift to EDU is paramount and the donor desires that the gift be retained by EDU. Should such unforeseen circumstances arise in the future so that the need for any of the endowments created herein should cease to exist or so diminish as to provide unused distributions, or if the purpose of any of the endowments should ever become unlawful, impracticable, impossible to achieve, or wasteful, an alternate distribution EDU shall have to authority to modify the purpose with my consent. If I am unable to provide such consent due to my death or or incapacity, EDU shall seek the consent of my designee _____________________ who shall have the power to consent on my behalf. Further, my designee shall have standing to enforce the terms of this Gift Agreement.

If my designee is unable to consent due to death or incapacity or my designee cannot be reasonably located, the Board of Directors of EDU shall modify the purpose of the gift in a manner as nearly aligned with the original intent of the contribution as good conscience and need dictate.

If EDU is unable to find a similar purpose, then EDU shall grant the remaining funds to ___________ Charity.

8.4 Assignment. Should EDU cease to exist so as to render it impossible to utilize these endowments as herein set forth, these endowments will be transferred to another such charitable entity to further the original purposes of these endowments as determined by the Board of Directors.

8.5 Unexpended Funds. From time to time, circumstances may arise whereby a portion of the annual distribution from an endowment established herein remains unused at the end of EDU's fiscal year. In such a case, the unused endowment distribution shall be held in a current use account to be expended in a manner aligned with the original terms of the contribution in a subsequent fiscal year. Under no circumstance shall any unused endowment distribution be viewed as fungible and expended for another purpose.

8.6 Reports. EDU agrees to provide updates on endowment performance and expenditures as well as information related to the other gifts established in this gift agreement to Donors through the usual and customary channels used for donor communications.

8.7 Public Announcements. Any press release and specific articles relating to this Gift must be mutually agreed upon by Donor and EDU prior to being released to the media. Additionally, all recognition events, promotion, and other publicity regarding the terms of this Agreement will be developed in consultation with Donor. Furthermore, Donor acknowledges that any use of the EDU logo is strictly prohibited without prior written approval of EDU. [ALTERNATIVE: Per the request of the Donors, a gift announcement will not be shared by EDU in its publications and websites or other media.]

9. **Miscellaneous.**

9.1 Notice. Any notices required or permitted hereunder must be in writing and will be deemed given: (a) three business days after it is deposited and post-marked with the United States Postal Service, postage prepaid, certified mail, return receipt requested, (b) the next business day after it is sent by overnight carrier, (c) on the date sent by email transmission with electronic confirmation of receipt by the party being notified, or (d) on the date of delivery if delivered personally. The parties may change their respective notice address by sending to the other party a notice of the new address. Notices should be addressed as follows:

To EDU:	______________________________ Attn:__________________________ ______________________________ ______________________________ Phone: ______________________________ Email:
with a copy to:	Attorney Attn:__________________________ ______________________________ ______________________________ Phone: ______________________________ Email:

To DONOR: ________________________________
Attn:____________________________
____
________________________________ Phone:
______________________________ Email:

9.2 Assignment. Donor has no right to assign its rights or obligations under this Agreement without the express written approval of the Member, which will not be unreasonably withheld.

9.3 Counterparts. This Agreement can be executed in multiple counterparts, each of which is declared an original. Modification.

9.4 Amendment. This gift agreement is intended by the parties to be the full and final expression of their agreement; it supersedes any and all oral or written agreements and understandings heretofore made relating to the subject matter of this gift agreement; and it may only be amended by a written instrument signed by all parties hereto.

9.5 Governing Law. This agreement and the rights and obligations of the parties hereto shall be governed by, and construed and interpreted in accordance with, the laws of the State of Oregon.

IN WITNESS WHEREOF, the parties have executed this gift agreement as of the ______day of ____________, 2025.

____________________________________ ______________________________________

______________, Donor ________________, Donor

EDU Charity

BY: ________________________________ BY: ______________________________

___________________ ____________________

President Development Director