

# NONPROFIT FUND TERMS AND CONDITIONS

## Status of Contribution

Nonprofit Funds established at Silicon Valley Community Foundation (the “community foundation”) are component funds of the community foundation, a California nonprofit public benefit corporation recognized by the Internal Revenue Service as exempt from tax under Section 501(c)(3) of the Internal Revenue Code (IRC) and classified as a public charity under IRC Sections 509(a)(1) and 170(b)(1)(A)(vi). All assets contributed to funds will be marked either revocable (nonprofit investment funds) or irrevocable (nonprofit endowment funds) during the creation of the fund. All additional contributions to the fund and earnings will automatically follow the initial designation for the fund. All legal control and responsibility for the funds rest with the community foundation. Contributions other than cash must first be approved by the community foundation.

## Variance Power

All funds are subject to the community foundation’s “variance power,” as set forth in the community foundation’s bylaws (“bylaws”).

For nonprofit endowment funds, the power to modify is as follows. Notwithstanding any provision in the bylaws or in any instrument of transfer creating or adding to a fund of this corporation, and in accordance with Article IX,

Section 1 of the bylaws, the board of directors shall have the power to modify any restriction or condition on the distribution of funds for any specified charitable purposes or to specified organizations, if in the sole judgment of the community foundation’s board of directors (without the necessity of the approval of any trustee, custodian, or agency), such restriction or condition becomes, in effect, unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community served. The board of directors shall exercise this power at a meeting by the affirmative vote required in Article III, Section 11.

For nonprofit investment funds, so long as the charity maintains its exemption status as a charity under 501(c)(3) of the IRC, the charity’s board of directors may direct the expenditure of any or all of the principal or income from the fund, and the principal and accumulated income and interest of the fund may be returned, at any time, to the management and control of the charity at that board’s request. Should the charity lose its charitable tax exemption status, uses of the fund shall remain as designated herein so long as such uses are for charitable exempt purpose under applicable law.

### Investment of Assets

In contributing assets to the community foundation, charities give up the right to investment management of their fund. In particular, charities give up the right to choose investments, investment managers, brokers, or to veto investment choices for their gifts. Therefore, the board and investment committee of the community foundation have the right to make any or all investment decisions regarding gifts received, except that charities, their appointees and designees have advisory privileges with respect to fund investments. All assets contributed to funds will be managed in the community foundation's investment pools. Investment allocations among the community foundation's investment pools can be changed no more than once per year, unless a significant change to grantmaking or fund balance occurs and prudence requires a change. The community foundation may hold up to five percent (5%) of fund assets in non-interest bearing cash at any time. All income and capital gains or losses will be allocated to the fund on a monthly basis.

The community foundation shall not be liable for any loss of any kind that may arise in connection with the establishment and maintenance of the fund and the performance of its obligations under this agreement except for cases of its gross negligence or willful misconduct. The community foundation is not liable for any losses directly or indirectly caused by acts of war, acts of terrorism, labor disputes,

exchange or market decisions including the suspension of trading, market volatility, trade volume, or by government restriction. The charity covenants not to sue the community foundation and shall duly indemnify and hold harmless the community foundation from any liability that may arise hereunder except liability arising from the gross negligence or willful misconduct of the community foundation.

For nonprofit endowment funds, the community foundation shall hold, manage, invest and reinvest the fund, shall collect the income, and shall pay and disburse the distributable amount for public, educational and charitable purposes, in accordance with the policies of the community foundation to the charity. The payout is reviewed and set annually by the investment committee and is typically five percent of the trailing quarter averages. Requests for distributions as specified above shall be made in writing to the board of the community foundation. Such suggestions may be accepted or rejected, in whole or in part, by the board of directors of the community foundation in its sole and absolute discretion.

For nonprofit investment funds, the community foundation shall hold, manage, invest and reinvest the fund (according to the community foundation's investment policy guidelines), shall collect the income, and shall pay and disburse amounts to the charity in accordance with the policies of the community foundation upon the request of the charity.



## **Fees and Minimums**

Funds established at the community foundation are required to maintain a \$1,000 minimum balance and are subject to support and investment fees. The community foundation reserves the right to change its fee or minimum policies at any time.

## **Recommended Spending Policy**

Although not required, the community foundation recommends a minimum five percent (5%) annual distribution rate for all funds. For endowment funds, the community foundation's board of directors sets and monitors a required annual distribution rate that is typically five percent of the trailing quarter averages.

## **Fundraising Policy**

The community foundation cannot assist event organizers with any kind of public fundraising event to benefit a fund at the community foundation. However, a memorial fund can be established in honor of someone who has passed away. Requests for donations in the name of the deceased to the community foundation are required to use the following language in obituaries or solicitations for gifts: "Funds raised will be added to the [insert name] Fund at Silicon Valley Community Foundation, a 501(c)(3) organization. All checks should be made payable to the [insert name] Fund/Silicon Valley Community Foundation."

## **Fund Inactivity**

If an advisor is no longer willing or able to advise the fund's distribution or if the advisor's recommendations cannot be fulfilled in the sole discretion of the community foundation, the community foundation's board will exercise its responsibility for grantmaking. If grant recommendations are not received for a period of two consecutive years, the community foundation's staff will attempt to contact the fund advisor at least three times via certified mail and allow 30 days for a response. If contact cannot be made, the community foundation's board will advise an annual payout to support the community grantmaking program in accordance with community foundation spending policies. If two more years pass with no contact from the advisor, the fund in its entirety will be transferred to the Community Endowment fund. A fund must have advisor inactivity for a total of four years before being transferred to the Community Endowment fund.

## **Fund Closure**

An advisor may recommend closing a nonprofit investment fund by granting up to 100 percent (100%) of the fund balance back to the charity so long as the charity is an exempt organization recognized under IRC 501(c)(3). Such recommendations must be received in writing and, if approved, funds will be disbursed in accordance with the community foundation's articles of incorporation and bylaws, current agreements, and laws and regulations. Nonprofit Endowment Funds are permanent and cannot be closed. Closing a fund will occur as follows: 80 percent (80%) of the current



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balance will be granted within 10 business days of the request date. The remaining balance of the fund, including any residual net earnings, will be granted within the following 30 days.

### **Conflict of Terms**

In the event of an inconsistency between these terms and conditions and any terms and conditions appearing elsewhere in connection with any fund, these terms and conditions, as interpreted by the community foundation, shall govern, and the community foundation reserves the right to take any actions at any time which, in its discretion, it deems reasonably necessary or desirable for the proper administration of any fund or the community foundation or to comply with applicable law.

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**Please contact the community foundation at [donate@siliconvalleycf.org](mailto:donate@siliconvalleycf.org) or 650.450.5444 if you have questions about these terms and conditions.**