

## Grant Agreement

**This Grant Agreement (“Agreement”) is entered into this 9<sup>th</sup> day of November 2011 (“Effective Date”), by and between the Wikimedia Foundation, Inc. (“WMF”), a non-profit corporation organized under the laws of the State of Florida and having its principal place of business at 149 New Montgomery Street, 3rd Floor, San Francisco, California 94105, US, and Wikimedia Österreich - Gesellschaft zur Förderung freien Wissens (“Grantee”), a registered association under Austrian law having its seat at Glacisstraße 57/II, 8010 Graz, Austria (each individually a “Party” and collectively the “Parties”).**

WHEREAS, WMF’s goal is to develop, maintain and distribute multilingual open content to the public free of charge by operating several online collaborative wiki projects including Wikimedia Commons, Wikispecies, Wikinews, Wikiversity, Wikimedia Incubator and Meta-Wiki and, in the light of the international scope of these projects, WMF cooperates with nationally active associations (“Chapters”); and

WHEREAS, Grantee is an association independent from WMF, but sharing the same goals and, therefore, recognized as a Chapter by WMF; and WHEREAS, WMF and Grantee entered into an agreement dated July, 20, 2011 (“Chapter Fundraising Agreement”) to specify the separate responsibilities of WMF and Grantee in fundraising and to establish principles of a successful relationship, according to which, WMF shall direct local potential donors to Grantee 's fundraising website by using the IP address (and estimated geographic location) of visitors to Wikimedia sites and Grantee in return shall observe certain fundraising, donor privacy, and reporting practices, share revenues with WMF and support the global mission of Wikimedia, and

WHEREAS, the Parties intend to amend the mutual rights and obligations and, therefore, intend to replace the Chapter Fundraising Agreement,

NOW, THEREFORE, the parties hereto agree as follows:

### 1. Grant & Limitations on Use

#### 1.1

WMF is pleased to provide the Grantee with this Grant (as defined below in Section 2.1) to further its work in support of the Wikimedia movement's vision of a "world in which every single human being can freely share in the sum of all knowledge."

#### 1.2

WMF hereby agrees to provide the Grant to support the general activities of the Grantee. The Grantee acknowledges and agrees that the Grantee may determine the best use of the Grant as long as such use aligns with the approved Grantee’s Program Plan and does not contravene any local and US laws regarding use of the grant funds. In the event that either the Grantee or WMF identifies uses of the funds that contravene either Austrian or US law, grant funds shall not be used for that specific activity. The funds shall be used for other mutually agreed activities or returned to WMF.

#### 1.3

Notwithstanding Section 1.2, the Grantee may not use the Grant to build up Grantee’s reserve funds unless Grantee’s current reserves are less than six (6) months of Grantee’s average monthly operating expenditures in 2011, in which case Grantee may use up to fifteen percent (15%) of the Grant to build reserves.

## 1.4

The Grantee shall not use any portion of the funds granted herein, or any income therefrom:

- a) To undertake any activity for any purpose other than a charitable, scientific, literary, education or other purpose specified in the Internal Revenue Code Section 170(c)(2)(B);
- b) To cause any private inurement or improper private benefit to occur, or to take any other action inconsistent with Section 501(c)(3) of the Internal Revenue Code;
- c) To make any substantial attempt to influence legislation or carry on any voter registration drive in any nation or other political unit;
- d) To influence in any nation or other political unit the outcome of any election for or against any candidate for public office;
- e) To intentionally or negligently violate any U.S. or local law, including but not limited to laws prohibiting the support of terrorism, including United States Executive Order 13224 of 23 September 2001 Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism .

## 2. Amount & Payment Schedule

### 2.1.

“Grant” shall mean the amount stated in the Approval Notice, which shall be delivered to the Grantee upon approval of the Program Plan.

### 2.2.

The Grant shall be awarded in local currency.

### 2.3.

WMF shall be responsible for any costs (i.e. all applicable fees, duties, levies, charges and taxes of any kind) associated with the international wire transfer of the Grant.

### 2.4.

Subject to the provisions of this Agreement, the Grant shall be transferred to Grantee no later than January 1, 2012, unless other arrangements are agreed upon by the Grantee and WMF.

### 2.5.

Unless otherwise provided herein, the Grantee shall bear all expenses related to the Grant, once the Grantee has received the entire Grant. The Grantee agrees to pay any and all applicable fees, duties, levies, charges and taxes of any kind related to the Grant.

## 3. Prerequisites

Grantee acknowledges and agrees that disbursement of the Grant is conditional on Grantee's completion of the requirements of this Section. Prior to disbursement of the Grant, the Grantee must:

3.1.

Provide WMF with documentation of its status as a registered association.

3.2.

Ensure that Grantee is able to receive an international funds transfer from the WMF, e.g. by indicating a bank account at a bank in Austria.

3.3.

Ensure that it has met all local requirements for being an organization in good standing with Grantee's local authorities.

3.4.

Have a signed chapter agreement with the Wikimedia Foundation and be in compliance with the chapter agreement.

3.5.

Provide WMF with Grantee's financial statements of the past year.

3.6.

Complete and publish no later than October 1, 2011 on Grantee's website and on Meta.Wikimedia.org a Program Plan for the Term of the Grant including, but not limited to, major planned programs, events, or other activities that will be supported by the Grant between January 1, 2012 and December 31, 2012. Each item in the Program Plan should include a brief description, a projected timeline, and an estimated budget. The Program Plan should be in the Grantee's primary language(s) and in English.

3.7.

Receive written approval of the Grantee's Program Plan from WMF. That decision on approval falls within the sole discretion of WMF. WMF will not unreasonably withhold approval of the program plan. Usually, WMF is expected to provide its decision on approval within one month of the program plan submission.

If the Grantee should not receive a written approval of the Grantee's Program Plan from WMF for reasons whatsoever within 45 days of the program plan submission, the provisions regarding Revenue Sharing of the Chapter Fundraising Agreement shall be applicable until June, 30, 2012.

If a program plan is not approved, the Grantee shall receive sufficient funds in order to cover its expenses for the domain services, insurances, web-services, infrastructure as well as legal and tax services necessary for the term of this Agreement up to a maximum of EUR 25,000.

## 4. Term & Termination

### 4.1.

This Agreement shall commence up on the Effective Date. The rights and obligations of this Agreement shall remain in effect until December 31, 2012 and shall terminate without further action by either Party, unless terminated earlier in accordance with the provisions of this Agreement and subject to the survival of certain provisions in accordance with Section 6.14.

### 4.2.

WMF may, after thirty (30) calendar days notice to the Grantee of its intent to do so, terminate this Agreement in the event that

#### a.

Grantee has failed to make substantial progress in the completion of the Program Plan within the time periods set out in the Program Plan or if no such time period is specified, in a reasonable amount of time; provided that WMF notified the Grantee in writing about such failure and the Grantee has not made substantial progress within thirty (30) days after receipt of the written notice from WMF, about which the Grantee has to notify WMF;

#### b.

the Grantee has failed to comply with the terms of this Agreement and has not remedied such failure within thirty (30) calendar days, provided that WMF notified the Grantee in writing about such failure and the Grantee has not substantially rectified such default within thirty (30) days after receipt of the written notice from WMF specifying the particulars of the default or

#### c.

such termination is required in order to comply with mandatory laws of Austria, the United States of America, the States of Florida and/or the State of California.

In the event of termination under this Section, WMF may, in addition to any other legal remedies it may have, demand that the Grantee return any portions of the Grant, which are not expended until the termination becomes effective, to WMF, which the Grantee agrees it shall immediately return upon notice of such demand.

### 4.3.

The Parties may elect to renew this Agreement for an additional one (1) year period if the Grantee submits a written request to do so no longer than August 31, 2012 and WMF accepts and approves such request with a written Approval Notice. The Grantee acknowledges and agrees that acceptance and approval by WMF is dependent on the Grantee's completion of the prerequisites of Section 3 of this Agreement for the additional one (1) year period. The Grantee further acknowledges and agrees that the Amount of any approved grant for the additional one (1) year period may not be for the same amount granted under this Agreement and is dependent on the Program Plan submitted by the Grantee for the additional one (1) year period.

### 4.4.

Any portion of the Grant monies that is not used before the termination of this Agreement shall be handled in one of the following ways:

- a. If the Grantee and WMF enter a new grant agreement or renew this grant, any unused portions of this Grant shall be applied to the new grant or renewal;
- b. If the Grantee and WMF do not enter into a new grant agreement, the Grantee may request a three (3) month extension for use of the Grant. Approval of such a request is at WMF's sole discretion, whereas a denial has to be in writing and issued within thirty (30) days after the respective request form the Grantee; or
- c. The unused portion of the Grant shall be returned to WMF in a reasonable and timely manner and per WMF's instructions. In this event WMF shall be responsible for any costs (i.e. all applicable fees, duties, levies, charges and taxes of any kind) associated with the international wire transfer of the Grant.

## 5. Reporting requirements

The Grantee agrees to meet a high standard of reporting to the WMF movement and will publish all reports below on its website and on Meta.Wikimedia.org in a timely fashion. The Grantee shall:

5.1.

Publish the Program Plan before the commencement of the Grant in accordance to Section 3.7.

5.2.

Prepare quarterly Activity Reports that capture the activities of the chapter and uses of funds. The Activity Reports should be available in the chapter's home language(s) with a summary in English. The Activity Reports will be due one (1) month after the end of each quarter.

5.3.

The Grantee agrees to keep complete and accurate records of all expenditures made with the Grant until the termination of this Agreement and for thirty-six (36) months thereafter.

5.4.

In addition to the Financial Report required by Section 5.5, the Grantee agrees to permit WMF or its representative to examine the Grantee's books, ledgers, and records only to the extent necessary to verify the Grantee's use of the Grant, compliance with this Agreement, and the accuracy of the Financial Report. This examination shall occur during regular business hours on dates agreed upon by the Grantee and WMF. Grantee shall cooperate fully with any such examination.

5.5.

Prepare an annual Financial Report for the most recent and current fiscal year within six (6) months of the completion of the fiscal year. The Financial Report should be available in the chapter's home language(s) with a summary in English.

5.6.

Meet all local regulatory reporting requirements.

5.7.

The Grantee shall notify WMF immediately of any change in Grantee's status, key personnel, or funding that may impair the ability of the Grantee to fulfill its obligations under this Agreement.

## 6. Additional legal terms

6.1.

The relationship between the Grantee and WMF established by this Agreement is that of independent contractors, and nothing in this Agreement shall be construed to make either Party the partner, joint venturer, legal representative, or agent of the other Party.

6.2.

Neither Party shall have the right or authority to assume, create, or incur any liability or any obligation of any kind, either expressed or implied, in the name or on behalf of the other Party.

6.3.

Neither Party shall have the power to direct or control the day-to-day activities of the other Party.

6.4.

The Grantee, its directors, officers, employees, or volunteers, shall not be entitled to any privileges, immunities, compensation, or reimbursements from WMF (except as otherwise provided herein).

6.5.

The Grantee agrees to indemnify, defend, and hold harmless WMF, its officers, directors, employees, and agents, from and against all claims, liabilities, actions, charge, prejudice, damages, costs, losses, and expenses, including legal expenses and attorneys' fees, directly, indirectly, wholly, or partially arising from or in connection with any act or omission of the Grantee, its employees, or its agents, in applying for or accepting the Grant, in expending or applying the Grant or in carrying out the Program Plan or any other activity funded or financed by the Grant, the non-observance or breach of the representations and/or obligations of this Agreement by the Grantee, or a wrongful act or omission perpetrated by the Grantee or by any of its agents, provided that such claims, liabilities, actions, charge, prejudice, damages, costs, losses, and expenses were not directly or indirectly caused by WMF, its officers, directors, employees, and agents.

6.6.

In the event of a dispute between the Parties, both Parties agree to a mandatory mediation process (before going to a court) to be conducted in person before a certified mediator agreed by the Parties. Upon completion of good faith mediation and certification of an impasse by the mediator, either Party may bring suit no sooner than thirty (30) days following the certification of impasse.

6.7.

As a condition of this Agreement, Grantee agrees to report immediately to WMF any knowledge of, or reasonable suspicion of malfeasance, including the misappropriation of the Grant by the Grantee, its employee, volunteer, or agent. Upon reasonable suspicion of such malfeasance, WMF may have an audit performed on the financial operations of the Grantee, including the misappropriation of grant funds.

After such an audit, WMF may terminate this Agreement immediately and request full repayment of the Grant in the event that the reasonable proof of such malfeasance by the Grantee, or its employee, volunteer, or agent is collected.

6.8.

In the unlikely event of litigation, the Superior Court of San Francisco County or the United States District Court for the Northern District of California shall have exclusive jurisdiction and venue over all controversies in connection herewith, and the Parties hereby expressly consent to such exclusive and personal jurisdiction and venue. In the event that any action, suit, or proceeding is brought to enforce the terms of this Agreement, the prevailing Party shall be entitled to recover its costs of enforcement, including expert witness fees, reasonable attorney's fees and court costs, and costs and fees on appeal.

6.9.

This Agreement is subject to the laws of the United States of America and the State of California, without regard to conflict of law rules.

6.10.

Failure of either Party to enforce a right under this Agreement shall not act as a waiver of that right or the ability to later assert that right with respect to the particular situation involved.

6.11.

If any provision of this Agreement is found to be illegal or unenforceable, the other provisions shall remain effective and enforceable to the greatest extent permitted by law.

6.12.

No modification of this Agreement shall be effective absent a written amendment signed by both Parties or their designees.

6.13.

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes all prior written and oral agreements between the Parties regarding the subject matter of this Agreement. The Grantee represents and warrants that it is not relying on any statement or representation not contained in this Agreement. The headings of this Agreement are for convenience of reference only and shall not in any way affect the interpretation thereof.

6.14.

a.

Section 2.5, 5.2, 5.3, 5.4, 5.5, 5.6, 5.7 of this Agreement address the obligations of one or both Parties that may arise only after the expiration or termination of this Agreement. For that reason, each such Section shall survive the expiration of this Agreement by either Party for any reason unless until the terms of the specific clause are met or otherwise agreed separately in writing between the parties.

- b. Section 2.1, 4.2, 4.3, 4.4 and 6 define or otherwise govern the nature of the relationship between the Parties during the Term of this Agreement. Parts of these sections also govern the nature of the relationship between the Parties following the expiration or termination of this Agreement. For that reason, each such section shall survive the expiration or termination of this Agreement by either Party for any reason.

6.15.

This Agreement is personal to the Parties and may not be assigned or transferred and any attempt to do so is void.

6.16.

This Agreement may be executed in counterparts, each of which so executed will be deemed to be an original and such counterparts together will constitute one and the same agreement.

6.17.

The undersigned represent and warrant to each other that each has all the requisite power and authority, corporate or otherwise, to enter into this Agreement, and bind the Party, and the acceptance of the terms in this Agreement will be treated as acceptance by that Party.