

CHAPTER FUNDRAISING AGREEMENT

This **Chapter Fundraising Agreement** (“**Agreement**”) is entered into and effective as of this 5th day of February 2016 (“**Effective Date**”) by and between the **Wikimedia Foundation, Inc.** (hereafter “**WMF**”), located at 149 New Montgomery Street, 6th Floor, San Francisco, California, USA and **Stowarzyszenie Wikimedia Polska** (also called “Wikimedia Poland”) (hereafter “**Chapter**”), located at ul. Tuwima 95 pok. 15, 90-031 Łódź, Poland (each individually a “**Party**” and collectively the “**Parties**”).

Whereas, the Chapter does not currently fundraise in relation to or on behalf of WMF during the WMF annual fundraiser, but wishes to engage in limited fundraising during the Term (defined below) in order to participate in Poland’s 1% System (defined below);

Whereas, WMF wishes for the Chapter to be able to participate in the 1% System to raise funds by which it may further the Wikimedia mission to empower every single human being to freely share in the sum of all knowledge and is willing to support the Chapter in this effort with use of banner messages on WMF websites;

Therefore, for and in consideration of mutual promises, conditions, and covenants set forth below and for other good and valuable consideration cited herein, the Parties hereto expressly agree as follows:

ARTICLE 1 – DEFINITIONS

- 1.1 “**1% System**” means the system created by the Law on Public Benefit Activity and Volunteerism (effective 01 January 2004), which allows Polish taxpayers to transfer one-percent (1%) of their income tax to organizations of their choice of organizations that serve the public good that qualify for “Organizacja Pożytku Publicznego” status (“**OPP Status**”).
- 1.2 “**Territory**” means the geographic region of Republic of Poland.
- 1.3 “**Chapter Fundraising Landing Page[s]**” means the webpage[s] managed and hosted by the Chapter to solicit donations.
- 1.4 “**Visitor[s]**” means a visitor to one of the Wikimedia websites, including donors and potential donors.
- 1.5 “**Banner**” means banner notices that are put up across the Wikimedia sites during fundraising campaigns.

ARTICLE 2 – TERM & TERMINATION

- 2.1 Term – This Agreement shall commence on the Effective Date. The rights and obligations of this Agreement shall remain in effect until 3 May 2016, at which time this Agreement shall terminate without any 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 6.12.
- 2.2 Termination – Subject to the termination of the survival provisions of Section 6.12,

- (a) Either Party may terminate this Agreement with thirty (30) calendar days written notice to the other Party;
- (b) Either Party may terminate this Agreement in the event that the other Party is in material breach of this Agreement and fails to cure such material breach within five (5) business days of the receipt of written notice from the non-breaching Party;
- (c) WMF may terminate this Agreement with one (1) business day written notice in the event that (i) the Chapter loses its OPP Status; (ii) the Chapter is in violation of applicable local laws, including but not limited to privacy, advertising, and fundraising laws and regulations; or (iii) there is reasonable proof of malfeasance by the Chapter, or its employees, volunteers, contractors, or agents with regards to donor funds or fundraising activities;
- (d) WMF may terminate or suspend any fundraising activity covered under this Agreement if, as determined in the discretion of the WMF Executive Director, the Chapter does not adhere to either a published WMF Board of Trustee decision or resolution on the dissemination of funds to the Wikimedia movement (unless legal or regulatory restrictions prevent such adherence) and the Chapter fails to cure such lack of adherence within five (5) business days of the receipt of written notice from WMF; and
- (e) Either Party may terminate this Agreement immediately by written notice in the event that such Party (i) becomes insolvent; (ii) files a petition, or has a petition filed against it, under any laws relating to insolvency, and the related insolvency proceedings are not dismissed within thirty (30) calendar days after the filing of such petition; (iii) enters into any voluntary arrangement for the benefit of its creditors; (iv) appoints, or has appointed on its behalf, a receiver, liquidator, or trustee of any such Party's property or assets; or (v) ceases to carry on business in the ordinary course.

ARTICLE 3 – RIGHTS & OBLIGATIONS OF THE CHAPTER

- 3.1 Ability to Accept Donations – The Chapter must ensure that it is legally able to accept donations in support of Wikimedia mission and movement under Polish law and must maintain its OPP status continuously throughout the Term of this Agreement. Upon request of WMF and as soon as possible, but in no event thirty (30) calendar days from the date of such request, the Chapter shall provide (i) a signed certification from mutually agreed upon qualified legal counsel that, based on a good faith review and examination, the Chapter is legally able to fundraise in the Territory; and/or (ii) proof of the Chapter's OPP status issued by the appropriate local authorities.
- 3.2 Technical & Customer Support – The Chapter shall ensure that WMF has all necessary hyperlinks to Chapter Fundraising Landing Pages. The Chapter shall ensure that the Chapter Fundraising Landing Page[s] carry no malware, viruses, phishing scams, or other harmful code. The Chapter shall provide sufficient personnel to handle customer service related activities, including answering questions about donations and refunds in a timely manner through an appropriate system (consistent with all applicable privacy and other laws and regulations).
- 3.3 Disclosure – The Chapter shall provide clear information to Visitors indicating: (i) all donations submitted by donors participating in the 1% System shall be received and used by the Chapter and not WMF; (ii) that the Chapter is independent from WMF; and (iii) how the donations are used in an accurate, truthful, and lawful manner.
- 3.4 Messaging – The Chapter agrees to collaborate with WMF on Territory-specific messaging, including all mass direct communications and all text, images, and video appearing on Banners or Chapter Fundraising Landing Pages (collectively “**Messaging**”), and that all such Messaging shall be consistent with the brand and values of the Wikimedia movement. The Chapter agrees to

immediately cease use of any Messaging, which WMF provides reasonable, written objection to. The Chapter agrees to provide English translations of any messaging so as to aid WMF in its review. The Chapter must seek legal review of Messaging, as necessary, to ensure compliance with local fundraising and advertising laws.

- 3.5 Trademark Compliance – The Chapter shall comply with the WMF Trademark Policy (found at https://wikimediafoundation.org/wiki/Trademark_policy) in all fundraising materials and shall not violate the intellectual property or other rights of WMF or any third party.
- 3.6 Fundraising Guidelines Compliance – The Chapter agrees to abide by fundraising guidelines issued by the WMF Board of Trustees found at: https://wikimediafoundation.org/wiki/Resolution:Developing_Scenarios_for_future_of_fundraising#Guidelines_for_Fundraising_Scenarios.
- 3.7 Data Processing & Security – The Chapter agrees to comply with internal control processes and procedures to support the receipt and processing of donations in a secure, legal, timely, and cost effective fashion, including:
 - (a) Ensuring that, prior to commencing fundraising, proper financial and technical controls are in place to accurately and promptly track and account for donations received as a result of the fundraising done by the Chapter pursuant to this Agreement;
 - (b) Setting up a dedicated segregated Chapter bank account to receive and hold donations received as a result of the fundraising done by the Chapter pursuant to this Agreement. If a segregated bank account is not feasible, the Chapter may alternatively maintain a fund accounting system to ensure proper tracking of funds received;
 - (c) Complying with applicable privacy laws, including but not limited to, the Chapter's procurement, processing, use, retention, and security of donor information and data; the Chapter's maintaining of legally-compliant, industry security infrastructure for the networks and systems processing and retaining donor information and data (including payment and financial information); and the Chapter's registration with proper data authorities if required by law. If requested by WMF, the Chapter must provide a signed certification of such compliance, maintenance, and registration from a mutually agreed upon qualified legal counsel or auditor no later than thirty (30) calendar days from receipt of such request, which will cover the Term;
 - (d) Posting a clear and reasonably prominent link on the Chapter Fundraising Landing Page the donor privacy policy and Polish translation of that donor privacy policy and adhering to that donor privacy policy, found at http://pl.wikimedia.org/wiki/Polityka_prywatno%C5%9Bci_darczy%C5%84c%C3%B3w >;
 - (e) Putting in place the technical capacity to process donations prior to the Effective Date, and, if requested by WMF anytime after that date, demonstrating the successful testing of the Chapter's infrastructure to accept online donations;
 - (f) Ensuring that any or all payment processing made pursuant to this Agreement be completed solely by the official tax office of the Polish government and no other third party, including the Chapter; and
 - (g) Ensuring that each person who has access to donor data signs a confidentiality agreement prohibiting the use or disclosure of donor data in violation of the agreement. If requested by WMF, the Chapter shall have the agreement reviewed by qualified mutually agreed upon legal counsel and shall present a copy of the reviewed confidentiality agreement to WMF no later than thirty (30) calendar days from receipt of such request.

- 3.8 Donor Acknowledgment – Acknowledge and thank donors as soon as possible after receiving a donation, but in any case no later than within six (6) months of receiving such donation and fulfill any legal and regulatory obligations, such as sending tax receipts and compiling donation reports in a timely manner.
- 3.9 Financial Reporting Obligations –The Chapter agrees to comply with financial reporting obligations in a timely manner, in a form acceptable to the WMF Executive Director, with accurate and complete reports or documentation, including:
- (a) Providing an accurate and complete revenue report following generally accepted accounting and reporting practices in the Chapter’s jurisdiction covering the Term of this Agreement no later than March 30, 2017;
 - (b) Providing a copy of accurate and complete audited financial statements and the auditor’s letter to management, compiled by a mutually agreed upon auditor, covering the Term of this Agreement no later than March 30, 2017; and
 - (c) Providing a copy of an accurate and complete auditor's statement on internal financial controls, compiled by a mutually agreed upon auditor, no later than March 30, 2017, covering the period between the Effective Date and March 30, 2017.
- 3.10 Indemnification & Insurance – If WMF is charged with any claims or suits related to Chapter (or its employees, contractors, agents, directors, trustees, or officers) negligence, data breaches, or outside server and computer attacks that arises from the Chapter’s (or its employees, contractors, agents, directors, or officers): (i) handling, receipt, storage, use, disclosure, or other processing of donor data; (ii) negligence or gross negligence; (iii) breach of this Agreement; (iv) fundraising conducted outside of the scope of this Agreement; or (v) activities, products, services, or conduct, the Chapter shall indemnify, defend, and hold WMF (and its employees, contractors, agents, directors, trustees, and officers) harmless from and against any and all such third party claims and related losses, damages (including actual and consequential), costs, judgments, and expenses, including legal expenses and attorneys’ fees. The Chapter is encouraged to obtain appropriate insurance coverage to mitigate against the risk of such third party claims.
- 3.11 Improper Conduct – As a condition of this Agreement, the Chapter agrees to report immediately to the legal department of WMF any knowledge or reasonable suspicion of malfeasance or allegation of unlawful behavior, including the misappropriation of donations or improper disclosure of donor information.
- 3.12 Reporting of Legal Issues – The Chapter shall report immediately to the legal department of WMF any warnings, notices, charges, or allegations by authorities relating to the activities or responsibilities of the Chapter during Term of this Agreement or in relationship to conduct or lack thereof relating to or arising under this Agreement.
- 3.13 Data Sharing & Analysis – If requested by WMF, the Chapter shall share information, such as the number of donations, the average size of donation, and the origin of the donation (ex. banner tracking information, and the number of hits and completions to particular fundraising landing pages) but excluding personal information about actual donors, regarding the performance of the Chapter Fundraising Landing Pages to enable analysis and improvement of the process.

ARTICLE 4 – RIGHTS & OBLIGATIONS OF WMF

- 4.1 Geolocation Capability & Use – WMF shall implement and maintain, as reasonably is possible, industry standard technology to identify Visitors from the Territory through geolocation. WMF shall use Internet Protocol (“IP”) addresses to determine whether the Visitors are from the Territory and Visitors from an IP address within the Territory will be directed to the Chapter Fundraising Landing Page while Visitors whose IP addresses are not identified as within the will not be directed to the Chapter Fundraising Landing Page, regardless of the actual physical location of the Visitors. The Parties acknowledge that WMF's referral of Visitors is contingent upon the ability to legally and technically implement industry standard technology to identify the geography of Visitors.
- 4.2 Support – WMF shall provide a reasonable amount of fundraising expertise and advice, as requested, including answering any questions the Chapter may have regarding fundraising to the best of its ability. As requested and if able to within the confines of limited WMF resources, WMF shall create or modify standard WMF fundraising materials in collaboration with the Chapter for use by the Chapter locally.
- 4.3 Notice – WMF shall provide reasonable notice to the Chapter of any planned or actual change in the bylaws or status of the Foundation, which might affect the Chapter’s activities under this Agreement.
- 4.4 No Right to Donations – WMF understands and agrees that all donations received by the Chapter as result of donors’ participation in the 1% System shall not be shared with WMF or any other organization, unless the Chapter agrees to do so and only to the extent permitted by U.S. and Polish law.
- 4.5 Auditing Rights – WMF may, in its discretion, audit (or have its auditors audit) the financial and fundraising operations of the Chapter upon reasonable notice to the Chapter, but no more than once a year, unless there is a reasonable suspicion of misappropriation of donations or improper disclosure of donor information (in which case there is no limitation on the number of audits). The Parties will ensure the audit is conducted in such a manner to avoid the disclosure of personally identifiable information of donors or that the audit is conducted in a manner conducive to European privacy laws.

ARTICLE 5 – RIGHTS & OBLIGATIONS OF BOTH PARTIES

- 5.1 Compliance – The Parties shall comply with all local laws, including fundraising regulations applicable in their jurisdiction as well as laws relating to privacy, data security, advertisement, SPAM, and non-profit solicitation.
- 5.2 Disclosure & Curing of Breaches – The Parties agree to proactively identify, disclose to the other Party, and remedy deficiencies or breaches in a timely fashion.
- 5.3 Testing – The Parties shall jointly participate in tests to gather information for optimizing fundraising messages and technology during the Term and before the Term begins, as mutually agreed upon and necessary.
- 5.4 Banners & Landing Pages – WMF shall, at its sole discretion after consultation with the Chapter and internal best practices, determine when to display Banners directing Visitors from the Territory as identified using geolocation to the Chapter Fundraising Landing Page during the Term of this Agreement based upon highest potential revenue, fidelity to the Wikimedia brand

and values, compliance with Wikimedia policies and practices, applicable legal and regulatory requirements, and other factors that might be mutually agreed upon. The Parties agree that data from test runs and live performance should be used to guide and revise these decisions during the Term of this Agreement. Chapter shall provide the text and content for such Banners for WMF's review and use and shall not independently attempt to activate or display Banners. Chapter shall post all approved banners on the central notices calendar for public view (available at <https://meta.wikimedia.org/wiki/CentralNotice/Calendar>).

ARTICLE 6 – MISCELLANEOUS

- 6.1 Relationship of the Parties – Nothing in this Agreement shall be construed to make either Party the partner, joint venturer, legal representative, or agent of the other Party. 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.
- 6.2 Mandatory Mediation – If they disagree, 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) calendar days following the certification of impasse.
- 6.3 Jurisdiction, Venue, & Choice of Law – WMF and the Chapter agree that in the unlikely event of litigation, venue shall be proper only in the courts of competent jurisdiction for San Francisco County, California. WMF and the Chapter agree to be subject to the personal jurisdiction of said courts for purposes of any action brought related to this Agreement. This Agreement and the Parties' actions hereunder shall be governed and construed under the laws of the state of California and the United States, without reference to conflict of law principles.
- 6.4 Attorneys' Fees & Costs – In the event that any action is brought to enforce this Agreement, the prevailing Party shall be entitled to recover its costs of enforcement, including reasonable attorneys' fees and court costs.
- 6.5 Waivers – 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.
- 6.6 Modifications – If either Party desires a modification to this Agreement, the Parties shall, upon reasonable notice of the proposed modification by the Party desiring the change, confer in good faith to determine the desirability of such modification. No modification shall be effective until a written amendment is signed by the Parties or their designees.
- 6.7 Integration – This Agreement constitutes the entire and only agreement between the Parties relating to the subject matter hereof and any prior negotiations, representations, agreements, and understandings, whether written or oral, are superseded hereby. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which will constitute one and the same instrument.
- 6.8 Non-transferability – This Agreement is personal to the Parties and may not be assigned or transferred and any attempt to do so is void.

- 6.9 Force Majeure – In the event that either Party is unable to perform any of its obligations under this Agreement or to enjoy any of its benefits because of any Act of God; war, riot, insurrection; law, edit, proclamation, ordinance, rule, or regulation of any governmental entity or body; strike, lock-out, or other serious work stoppage or labor dispute; earthquake, tornado, explosion, fire, flood, or other natural disaster; Internet system unavailability; system malfunction; or any other reason where failure to perform is beyond the reasonable control and not caused by the negligence of the non-performing Party (“**Force Majeure Event**”), the Party who has been so affected shall be excused from performance and shall give notice immediately to the other Party and shall use its reasonable best efforts to resume performance.
- 6.10 Severability – If any provision of this Agreement shall be found by a court of competent jurisdiction to be void, invalid, or unenforceable, the same shall be reformed to comply with applicable law or stricken if not so conformable so as to not affect the validity or enforceability of this Agreement as a whole.
- 6.11 Headings – The titles and headings of the sections of this Agreement are solely for convenience of reference and are not intended for any other purpose whatsoever, or to explain, modify, or place any construction upon or on any of the provision of this Agreement.
- 6.12 Survival of Certain Provisions – Sections 1, 3.7-3.13, 4.4, 4.5, 5.1, 5.2, and 6 set forth in this Agreement shall survive the expiration or termination of this Agreement by either Party for any reason.
- 6.13 Notices – Any notice required to be given pursuant to this Agreement shall be in writing and shall be deemed to have been given (a) on the same day or first business day following when delivered personally, by email, or facsimile; (b) two (2) business days after having been sent by overnight courier; or five (5) business days after having been sent by first class mail to the receiving Party, addressed in the case of:

WMF:

The Wikimedia Foundation
 149 New Montgomery Street, 6th Floor
 San Francisco, CA 94105
 USA
 Facsimile: +1 415.822.0495
 ATTN: _____
 Email: _____

Chapter:

Stowarzyszenie Wikimedia Polska
 ul. Tuwima 95 pok. 15
 90-031 Łódź
 Poland
 Facsimile: + _____
 ATTN: _____
 Email: _____

- 6.14 Authority – The undersigned represent that they are authorized to sign the Agreement on behalf of the Parties.

[Signature line on next page]

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the Effective Date.

WIKIMEDIA FOUNDATION, INC.

**STOWARZYSZENIE WIKIMEDIA
POLSKA**

By _____

By _____

Name _____

Name _____

Title _____

Title _____