



Guide to Intellectual Property & Fiscal Sponsorship Agreements for scientific, research, and archival projects



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This guide is designed to help scientific, research, and archival projects understand Intellectual Property and other important considerations when entering a Fiscal Sponsorship relationship.

Introduction

Are you an individual, researcher, scientist, small laboratory, or archivist interested in collaborating with a larger non-profit? Then you may need a fiscal sponsorship agreement. A fiscal sponsorship is when a non-profit organization offers their legal and tax-exempt status to an unincorporated project engaged in activities related to the sponsor's mission. It typically involves a fee (or percentage of donations) paid by the project to the sponsor in exchange for the sponsor non-profit's administrative support and any other activities agreed upon and documented in the fiscal sponsorship agreement.

When entering a fiscal sponsorship, most people are primarily concerned with receiving the benefits of a larger supporting organization and being able to accept tax deductible donations. However, in the rush to get things going, individuals often forget to ask some very important questions and can end up signing away their rights to their research, equipment, and even the name of their project.

This guide will help you understand and clarify ownership of intellectual property rights when entering a fiscal sponsorship agreement. It will also identify some of the key considerations when entering a fiscal sponsorship

agreement as a small lab or research project.

If set up properly, a fiscal sponsorship can do wonders for your project, providing badly needed structure and resources for your research. On the other hand, if you don't take the time to fully understand and define the relationship, it can be a nightmare.

Here are some common questions you may have when entering a fiscal sponsorship:

- Who owns the rights to the work I produce?
- Who owns the equipment that I buy for the project with sponsored funds?
- If I have disputes with my sponsor, can I leave and take my research, equipment, and project name with me?
- Can my sponsor replace me and take over my project?
- Why does this sponsor want to sponsor my project?
- Does it matter how much my goals are aligned with the sponsor?

Disclaimer: This guide is not meant to be an all-inclusive guide to fiscal sponsorships, and you shouldn't solely rely on it when entering into a fiscal sponsorship arrangement. New Media Rights strongly recommends you contact an attorney to help you construct or at least review your fiscal sponsorship agreement.

The underlying theme of this guide is to encourage you to thoroughly think these questions through and make sure they are addressed in your sponsorship agreement. We will also do our best to answer a few of the questions for you. In the event you need help with your agreement and are located in California, do not hesitate to contact New Media Rights to request legal services. If you are in another state or country, consult with a local attorney, or reach out to us and we may be able to refer you to other appropriate counsel that may be better suited for your specific needs.

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I. Starting off on the Right Foot.

So you've started a research project and things are going well. You're adding collaborators and the project is growing into a small organization. You're starting to find yourself pulled away from your research. The things pulling you away are accounting, fundraising and all sorts of other administrative tasks. Wouldn't it be wonderful if someone else could some of that administrative work for you so you can spend more time focused on making your research successful? Many projects shut down every year just because they simply can't do it all themselves and still raise enough funds to keep going. You're looking for a nonprofit to partner with that will share their non-profit status with you in return for the great things your project brings to the table. Ideally, if you find the right sponsor, you will be able to have them handle some of your administrative tasks, allowing you to focus on your research. However, like any relationship,

clearly communicating the expectations of your relationship is critical to the success of your fiscal sponsorship.

In this section we will discuss some of the key questions posed in the introduction. Every project is unique, so hopefully this discussion will also help you think of questions that relate specifically to your project.

a. **How do I Find the Right Sponsor?**

You might ask yourself, why does it really matter who my sponsor will be? As long as I get financial and administrative support, and the ability to accept donations that are tax deductible, I'm set, aren't I? Actually, a sponsor affects a fiscally sponsored project in a variety of ways, and here are some other things you need to be thinking about.

i. **Why should I work with this sponsor and why do they want to work with me?**

Finding a sponsor that truly believes in your work can have profound effects on the relationship if and when a dispute arises. One of the requirements of a fiscal sponsorship is that the sponsored program "further the mission and goals of the sponsoring organization". Some organizations have very broad mission statements, allowing them to encompass a wide range of projects. While this may seem beneficial, you should ask yourself, how is my mission aligned with my sponsor and why do they want to sponsor me? Don't just think surface level. Review their policies, publications, and find whatever other information you can find out about them. Doing a thorough analysis of who your sponsor is will help you decide whether or not they will be a good host for your project.

Non-profits that host many fiscally sponsored projects

There are occasionally some fiscal sponsors that take on many projects, which may help them generate revenue and further the fiscal sponsor's own non-profit goals. If your fiscal sponsor operates under this model, you may want to learn a bit about how the fiscal sponsor approves projects and holds them accountable. You should understand and feel comfortable with this process, because you might be one of many fiscally sponsored projects of the host non-profit organization. With so many different fiscally sponsored projects, you may also want to make sure that your potential sponsor doesn't host other fiscally sponsored projects that conflict with your mission.

A restrictive non-profit sponsor might limit your project

A very restrictive fiscal sponsor may handcuff you with too many restrictions that impose on you and your project. This could be anything from restricting you to a particular service to collect donations, all the way to restrictions or requirements on what kinds of funding you can accept.

At some point in the process, you'll need to identify the sticking points, those items that your project simply must have to function. Then you'll need to have a contract that is written to reflect those specific needs.

EXAMPLE: You're a small laboratory that refuses to accept money from large Pharmaceutical companies. You need to make sure that your fiscal sponsor will respect that choice. Then, you'll have to decide, do we care whether our fiscal sponsor accepts monies from the same sources you refuse to take money from?

ii. **Talk to other fiscally sponsored programs of the non-profit.**

Taking the time to talk to another project sponsored by the fiscal sponsor (if one exists) may also help you identify potential issues so you can either handle them upfront in the agreement or simply choose to find another sponsor. A good fiscal sponsor should support you in your efforts to talk to other projects and one that is not supportive of this may give you concern. As a starting point, we have provided a few resources in the Additional Resources section below that will help you start your research on potential sponsors. Further, in the Additional Resources section there are two

examples of fiscal sponsors that have very detailed websites and will give you a good introduction of what you will be dealing with as you embark on your journey.

b. What Intellectual Property do I Already Own?

i. What is Intellectual Property?

Intellectual property includes anything your project creates that is covered by patent, copyright, trademark, or trade secret law. Intellectual Property can include a vast array of things such as: computer code; articles; photos; drawings; videos; logos; the name of your project; as well as inventions; systems; and processes that you create. The bottom line is that any material that you created prior to the fiscal sponsorship should be identified and carefully catalogued prior to entering the fiscal sponsorship. It will then be included in your agreement with the Fiscal Sponsor, but we will discuss what to do with this information when we reach The Contract section below. First, we'll give you a very brief introduction to the areas of law that might protect what you're creating.

Intellectual Property

Your ability to control how others can use what your project creates comes from the following four key areas of law established by Congress and/or state legislatures.

- **Copyright** ([Click Here \(http://inventors.about.com/od/copyrights101basicsfaq/Frequently_Asked_Questions_About_Copyrights.htm\)](http://inventors.about.com/od/copyrights101basicsfaq/Frequently_Asked_Questions_About_Copyrights.htm) for more information on Copyrights) – protects creative works of expression that can be anything like: articles; computer code; drawings; videos; sculptures; paintings; music; books; etc. Copyright protection exists as soon as the work is “fixed in a tangible medium,” which basically means as soon as it is written or recorded; Copyright protects the creation. Copyright allows you to control reproduction, distribution, creation of derivative works (a derivative work is a “new work” that is created using some “previously copyrighted material”), ([Click Here \(http://www.newmediarights.org/business_models/artist/xiii_what_derivative_work\)](http://www.newmediarights.org/business_models/artist/xiii_what_derivative_work) for more information on Derivative works) publicly display or publicly performance of what you create. Copyright is something that New Media Rights is very knowledgeable about and would be happy to discuss with you at length in the event you need our help if so, ([click here \(http://www.newmediarights.org/about_us/contact_us\)](http://www.newmediarights.org/about_us/contact_us)), and fill out our contact form and we will be in touch as soon as possible.
 - Example. You write an article for a magazine or local newspaper to help generate funding. You would be the Copyright holder of all the material you write in your article. This allows you to stop anyone from: reproducing, distributing, making derivative works, publicly displaying or publicly performing any of your “work”.
- **Trademark** ([Click Here \(http://inventors.about.com/od/inventing101trademarks/\)](http://inventors.about.com/od/inventing101trademarks/) for more information on Trademarks)– is typically a name, logo, or symbol used to identify particular goods or services. Trademark is used to protect the owner from having other “copy-cats” in the market that are trying to use your brand name or symbol to sell their product. At its core it is to protect the consumer from confusion and prevent them from buying a product they didn't intend too. In the context of a fiscal sponsorship, it could prevent investors from contributing to the wrong project. Your project may have a logo or name and you should find out from an attorney if it is protectable under trademark law.
 - Example, “Nike” or the “Nike” symbol.
- **Patent** ([Click Here \(http://inventors.about.com/od/inventing101patents/\)](http://inventors.about.com/od/inventing101patents/) for more Information on Patents) – whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent. The challenge with patents is that they must truly be a leap in innovation. Patents are meant to protect inventions that have novelty and are considered non-obvious, which may include improvements to known inventions or methods. Patents are utilized to protect your invention from being made, used or sold by others to induce you into distributing your invention

to the general public. Patents fall into two major categories. Design patents - A US design patent covers the ornamental design for an object having practical utility, like a jewelry design or beverage container, and last 14 years. Utility patents – Protects the functionality of a given item and last up to 20 years. Upon expiration the information becomes public and can be used by anyone.

◦ Example, “brand” name pharmaceuticals whose patents expire and then you can buy “generic”.

- **Trade Secret** ([Click Here \(http://inventors.about.com/od/tradesecrets/Trade_Secrets.htm\)](http://inventors.about.com/od/tradesecrets/Trade_Secrets.htm) for more information on Trade Secrets)—can be used for formulas, processes, methods, devices, customer lists, etc. This is information that derives value from its secrecy. It is extremely important that Trade Secrets be kept secret, so you will want to consult with an attorney if you have questions about whether something is protected by trade secret. With trade secret you keep the information private, but run the risk of someone else coming up with it independently, using it, and potentially even patenting the secret, which gives them the right to stop you from using it.
 - Example, the recipe for “Coca Cola” is a trade secret and you can walk into most grocery stores and find other companies trying to produce their own version of it. However, the actual recipe is not known to the public and as long as no one else can figure it out, it will remain a trade secret. On the other hand, if someone else does figure it out, there is nothing “Coca Cola” can do to stop them from selling it as “Coca Cola” made the choice to keep it secret.

Open, closed, or somewhere in the middle?

Once you have IP protection its basically up to you how much you want to control the work or make it freely available. Some projects may take a very open approach, and choose to release their work under open licenses. These projects might make articles, videos, and photos available under a Creative Commons open license, for instance, and software available under the General Public License. For open science and research projects, this can help create a community of sharing and speed progress.

On the other hand, some projects choose to retain more control over their work, choosing to license or sell various intellectual property to others to support the work of the project.

Think carefully about what’s right for your project because it will be important to make sure your agreement with your fiscal sponsor reflects this consideration.

c. What are Some Options for Protecting Intellectual Property?

There are typically four options when considering how to protect your intellectual property; patents, trademark, trade secret, and copyright. All serve similar purposes in that they protect the original creator from having their creative work used by another without permission. However, they each protect the original creator in different and distinct ways as discussed above so be sure to carefully consider which approach to take.

On the other hand, there are many organizations that do not want to protect their information and rather prefer to share it with the public free of charge. The best example, is projects that do research often publish articles of their findings rather than patenting the discovery. This is based on the core value of some educational institutions to share information and advance our society through knowledge.

How do I openly license my research?

One good way to openly license the creative expression, including articles, videos, audio, software and posters you create is by using an open content license like Creative Commons. Creative Commons allows others to reuse your work under certain conditions. Anyone reusing your content must attribute you. You can also choose whether or not to allow commercial use, sharing of the downstream work under the same license, and creation of derivatives of your work.

Overall, keeping the “default”, “all rights reserved” copyright of your work when your goal is to encourage sharing of your work can discourage others from doing so. Creative Commons are the middle ground between “all rights reserved” and “no rights reserved” that allow and in fact encourage others to use and share your work. As long as they abide by the creative commons license. If you are considering using a Creative Commons license there is a great discussion at the following URL, <http://creativecommons.org/licenses/> (<http://creativecommons.org/licenses/>)

Important: If you have specific questions about how your intellectual property is created, we highly suggest speaking to an intellectual property attorney in your state as soon as possible. It’s important to sort out what intellectual property you have **before** entering an agreement with the fiscal sponsor.

d. What Intellectual Property Might I Create?

Now we’re talking about work you create *after* entering the fiscal sponsorship agreement. Your new sponsor may even provide you with the funding or resources that help you create new kinds of intellectual property. Once the relationship has started you may be considered an employee of the fiscal sponsor. This is critical, because without a written agreement that says otherwise, the intellectual property employees create typically becomes property of the employer. You may be happy with this for the time being, but if one day you want to have the ability to take what you create with you to another fiscal sponsor or an organization you create, you must address the intellectual property you will create in the fiscal sponsorship agreement upfront.

e. What Support Will I Need?

One of the main reasons that projects seek to work with a fiscal sponsor is due to the administrative support they will receive from the sponsor. This should at a minimum include all the accounting and reporting necessary to maintain their non-profit status and ensure compliance with all relevant laws. Further, the fiscal sponsor has to maintain “control over the collection of and distribution of funds” for each of the sponsored projects. Therefore they must provide the necessary documentation and or process to do this.

In addition to basic financial administrative support, you’ll want to thoroughly consider all other support you require, including human resources (such health insurance & benefits), fundraising, marketing, and other forms of support.

Heads up: Some fiscal sponsors take a percentage of your revenues and offer almost no accounting or reporting support. Be aware that if this is the case you’ll need to arrange services which could be a significant additional cost that drains funds from your project.

II. The Contract

The goal of this section is to help you understand what kinds of things should be covered in the written fiscal sponsorship agreement so that your interests and rights are protected. Please remember that oral agreements are subject to interpretation, so it is in your best interest to **get everything you agree to in writing**. It is not necessary to include every detail in your fiscal sponsorship agreement however, you should incorporate enough detail through related documents or written agreements into the fiscal sponsorship agreement to make sure you create the relationship you need and set expectations in advance of the relationship.

For example, if you have an employment contract, you may not include all the details in the sponsorship agreement but you will probably reference the employment contract in the fiscal sponsorship agreement. The main question to answer here is, if a dispute arises, or if I were to go to court, what do I want in writing so that the fiscal sponsor or a judge honors my expectations?

This is definitely something that you want to consult an attorney for and whether or not you are drafting the contract or the sponsor is, have an attorney involved in drafting and reviewing the agreement and all related documents!

a. **How do I make sure the fiscally sponsored project controls the use of the intellectual property it creates?**

We understand that keeping control over your project and control over the intellectual property it creates is something very important. Even if your project's mission is to release what it creates to the world freely into the public domain or under open licensing, you still want to make sure that your fiscal sponsor will respect that mission. We've already discussed how important it is to identify this material and to include it in the agreement, but this section is designed to explain specific options.

There are several ways to protect your intellectual property. An example would be to register a copyright or file a patent over the material and then license it to whoever you wish for a fee. This protects the research while still giving you the right to share it with anyone you wish. If you want to make certain material completely free and open you can do so by utilizing Creative Commons licenses (click [here \(http://www.newmediarights.org/guide/legal/copyright/licensing/creative_commons/citizens_legal_guide_using_creative_commons_licenses\)](http://www.newmediarights.org/guide/legal/copyright/licensing/creative_commons/citizens_legal_guide_using_creative_commons_licenses) or [here \(http://www.newmediarights.org/guide/how_to/creative_commons/best_practices_creative_commons_attributions\)](http://www.newmediarights.org/guide/how_to/creative_commons/best_practices_creative_commons_attributions) for links to more information on creative commons licenses) OR making the material public domain (click [here \(http://en.wikipedia.org/wiki/Public_domain\)](http://en.wikipedia.org/wiki/Public_domain) for more information on the public domain). As discussed earlier make sure that in your agreement you include language to explain that you retain control over this property and include it in the assignment agreement if and or when you separate. If you have questions about how to license or make freely shareable particular copyrighted content like research results or articles, this is something New Media Rights is knowledgeable in and if you are in California you can come to us and request specific legal assistance at that time ([click here to contact us \(http://www.newmediarights.org/about_us/contact_us\)](http://www.newmediarights.org/about_us/contact_us)).

It may be beneficial to include some language in the agreement that embodies your goal of how you want the intellectual property used. For example, if you wanted to keep the information open and available to others, while at the same time having the possibility to license some content as a revenue stream, see the example below. This sample clause offers flexibility in licensing approaches for copyrighted articles and research created and released by a fiscally sponsored project.

“Fiscal Sponsor will not restrict the open sharing or licensing of information between Sponsored Project and others, including the public”.

This statement is intended to provide flexibility to a project to determine what material will be completely open for anyone to use, and what material you will license as a revenue stream. If you know exactly how you plan to use the intellectual property your project creates, be sure to get it in writing so there is no controversy later with your fiscal sponsor. Leaving these sorts of issues unattended can really destroy the relationship with your fiscal sponsor.

b. **How do I Clearly Outline the Relationship?**

As mentioned above, it is important to think about exactly what you will be providing the sponsor and what they will be providing for you. It may be helpful to create a separate document that outlines the necessary tasks and objectives that both sponsor and project must accomplish. Since fiscal sponsors have certain IRS guidelines they must meet, they will have to keep track of records, file tax returns, etc. for both themselves and the project. It would also be helpful to request that the sponsor provide you with reporting of all pertinent financials along with the ability to request financials whenever you need them to apply for grants or satisfy funding sources.

You should also ask yourself a series of questions and be sure to incorporate the necessary tasks in your fiscal sponsorship documents.

i. A few examples of the types of questions that can help you shape the relationship with your fiscal sponsor

Consider what you will need from the sponsor:

- What financial information will I need from the sponsor and how often?
- Do I want to receive information on all the donors that have given money to my project?
- Does the sponsor send “thank you” notices to the donors or do I?
- What if I want to apply for a specific grant, what information may I need to get from my sponsor?
- Does my sponsor have any policies in regards to what grant money I must or can’t take?
- Will the sponsor open a specific bank account for me? If not, what is the process?
- Will I be in charge of hiring employees, or will the sponsor? Who will sign day off requests and/or timecards? What do we do if an employee needs to be terminated? Will my sponsor provide my employees and with healthcare and benefits, and who will pay for those benefits?
- Who has control over the copyrighted material we produce (like articles and website content) and what if we want to share it freely?

You should then consider what information the sponsor may need from you:

- Do they want monthly, quarterly, or annual reports on the progress of my project? If so, in what format do they want them? What topics should be covered in the report?
- Will they want evaluations of the employees?
- Do they want me to update them on how I am spending funds? If so, how often do they need that information?

Please remember these lists are not exhaustive but rather to help you get started so you can ultimately find a sponsor that will be a good fit for your project. Another good way to do this is to create a list of things that may come up over the first year of your project. Don’t focus on the solution, but rather, what might come up and bullet the points out and then you can figure out later how to handle them. For example, after a month or at the end of the first quarter we may need to: hire two assistants; rent a piece of expensive equipment for a month; obtain insurance or a permit to use public space; draft contracts with vendors, etc.

Once you have a thorough list you can sit down with your fiscal sponsor and figure out how each will be handled and document it in the contract.

It is also important to note here that this separate document should be incorporated by reference into the fiscal sponsorship documents. The attorney that helps you draft the agreement should be able to do this. Any additional document mentioned in the fiscal sponsorship agreement should be properly labeled and attached to the agreement at signing. Contracts can be very tricky and though we hope you never deal with a company or partner that tries to “pull a fast one on you”, this is simply another reason to make sure you have an attorney help you through this process or at least review the documents before you sign them.

Lastly, never rely on the attorney of the other party. You SHOULD ALWAYS have your own attorney look the documents over for you. Attorneys are bound to ethical guidelines and are REQUIRED by the state bar to represent THEIR client to the best of their ability. This means if your fiscal sponsor has an attorney prepare documents and this attorney presents them to you and advises you on them, they could be breaking an ethical guideline. Attorneys may only represent separate parties if they have a signed consent form from both parties. Always have your own attorney review the documents closely keeping your particular interests in mind. This might be the most important agreement you ever make for your project.

What if I want to be able to Terminate and/or Transfer my Project and all related assets?

This is another very important piece of the puzzle. Projects want the ability to transfer the project at in their sole discretion for two main reasons. The first situation occurs when you only plan on working with the sponsor for a certain project, a set period of time, or until you can get the project going and are able to sustain yourself as your own non-profit organization. You don't want any confusion when you move on from that temporary arrangement.

The second situation occurs when something goes wrong with the fiscal sponsor and you need to move the project. Even if you plan on staying with the sponsor for the duration of your work and have no plans on moving the project anywhere else, it is often important to make sure your project has the ability to transfer for any reason. Relationships unfortunately do go bad sometimes, and disputes can arise between you and your fiscal sponsor. It is a good idea to plan for the worst and hope for the best when creating the relationship with your fiscal sponsor.

Having the ability to terminate the agreement and transfer your project also gives you a bargaining chip to negotiate with the fiscal sponsor in the event disputes arise with your fiscal sponsor. Whether you plan to sever the relationship or not, a desire to simplify disputes later on should compel you to address termination and transfer in the agreement right at the beginning of a relationship.

i. Taking your website URL with you

URL's are critical because they are often the public face of a small non-profit project. Losing your URL can be as bad as losing your name. You want to maintain all that goodwill you built up in your website. For this reason, you should also include a clause that says regardless of the termination scenario you will have complete control over the Intellectual Property and specify that you have control of the URL or URLs for your project.

ii. What should my agreement include to allow me to terminate the fiscal sponsorship?

In order to terminate or transfer the project you will want to include a specific section of the agreement that gives you the right to terminate the relationship at your sole discretion. Often times these termination clauses also state that termination will be effective immediately, in regards to future funding, but that any ongoing funding (ie current grant funding) be completed and managed by the current fiscal sponsor. This is important, so that any current grants you do have continue to be administered properly, making it more likely you can meet the requirements of your current grants and maintain a reputation as a responsible manager of funds. This is critical to obtaining future funding.

Sometimes these clauses also state that the necessary third parties (i.e. foundations and funding sources) consent should be obtained. Depending on your needs it may be a good idea to have an initial one year period or longer that the contract may not be terminated by either party to give yourself enough time to get settled in and avoid having to move just a few months after becoming sponsored by this non-profit.

iii. What are the two likely termination scenarios?

There are two likely termination scenarios, one where you have a successor organization and one where you don't. You can also outline the possible termination scenarios in your agreement and make sure that the appropriate officer, for instance the Director of the project, has the right to designate a successor.

The first scenario is termination where there is a successor organization, another non-profit that is taking over as host of the project. This would allow you to transfer all physical and intellectual property to a different 501(c)(3) corporation or to create your own and transfer the project there. The second is termination without a successor. This is included so that if for any reason the project is to be terminated the fiscal sponsor will be responsible for disposing of the assets within applicable 501(c)(3) guidelines. A sample has been provided for you in the Additional Resources

titled Termination at the end of this document. Please remember these are only examples and should be discussed with an attorney and altered appropriately.

iv. When I terminate a relationship with a fiscal sponsor, do I need an assignment agreement to transfer all the assets?

Probably, yes. It is very important to remember when termination does occur you will probably want to create an assignment agreement to actually memorialize the transfer of all the property, both physical and intellectual to your new host organization.

c. What Happens with the Equipment When and if the Project is Moved?

As mentioned above, it is a good idea to do a thorough inventory of both your tangible and intangible goods prior to entering the agreement. Once you have created the list you will want to title it and incorporate it into the fiscal sponsorship by reference.

This list often is critical to establishing exactly what property your project owns and is bringing to the relationship. Remember to include a clause that says while equipment purchased with project funds during the sponsorship are property of the sponsor, at time of separation they will transfer with the project.

i. What about equipment we purchase while fiscally sponsored?

You will also want your fiscal sponsorship agreement to give you the discretion to amend the inventory with new equipment you purchase with project funds. An example of how to do this might include the right to email a copy of any receipts for any equipment you purchase in the future to a designated representative of your sponsoring organization. Once you have sent the e-mail you would save a copy in a designated folder so that if and when you decide to separate from your fiscal sponsor you have records of all the equipment you are retaining. You can use language that doesn't make it necessary to e-mail them about everything you purchase, but it's a good idea to document the larger or more important items and add those to the inventory list to avoid a dispute. A good rule of thumb for what to add to the inventory as you go would be to ask yourself, If I took my project elsewhere tomorrow, would I need this piece of equipment?

III. Other Important Considerations

The goal of this section is to mention a few topics that are commonly overlooked and/or can lead to serious disputes or loss of valuable time if not handled upfront.

a. How do Employment Contracts Fit In?

Employment contracts can be a tricky situation so please consider them carefully and consult an employment attorney. As the project leader of a fiscally sponsored project you may be able to negotiate a specific employment contract or have some other arrangement. The important thing to keep in mind here is that when you enter into an employment contract be cautious of the restrictions. An employment contract that requires a specific task from you may override the requirements in your fiscal sponsorship. Make sure you and your attorney carefully review the agreement and look for any conflicting language that may contradict your fiscal sponsor agreement. The question is, what am I binding myself to do as an employee that I may not be required to do by the fiscal sponsorship agreement?

b. How Can I Get the Ability for Others to Donate Directly to My Project?

Most sponsors these days will provide this option without you having to mention it, but don't assume anything when entering a contract. Regardless of how much you plan on marketing yourself, you should make sure that your sponsor's website has a brief statement about your project allows donations to go directly to your project. Please remember donations typically must go through the sponsor's accounting system and then can be split off for your use. If you take any kind of donation directly without going through or reporting it to your sponsor it can create significant tax implications for your sponsor as well as you. So please discuss the donation process with your fiscal sponsor, accountant, and tax attorney.

c. **Should I Consult with Other Counsel (Tax/Employment)?**

Absolutely YES!

We hope this material has been helpful in getting you started. We are not experts in all areas of the law, so this guide has focused on the intellectual property assets we are expert at dealing with.

No one attorney is an expert in all areas of the law. Due to the nuances of creating a fiscal sponsorship agreement, it is important to consult the appropriate types of attorneys. Our expertise is in intellectual property, specifically copyright and trademark, so we can't provide many details on the tax and or employment issues, but these are critical for you to sort out before finalizing a fiscal sponsorship.

Please do not use this guide as your sole resource. Contact attorneys to handle the questions you have about your project's particular needs. If your questions have to do with intellectual property, particularly copyright or trademark, please do not hesitate to contact New Media Rights, or if you simply don't know who to contact to get started, contact us and we may be able to connect you with other resources that are available.

*****Again, Please note there are several topics that should be discussed with other counsel as we do not specialize in employment or tax law. We have done our best to bring these to your attention but cannot offer specific advice and suggest you consult appropriate counsel for these matters.**

If you found this material helpful and want to help New Media Rights continue to produce similar useful information in the future for others just like you. Please consider making a donation, [DONATE HERE](#), every little bit helps! Best of Luck from the whole team at New Media Rights!

IV. Additional Resources:

Sample Termination Language

[Project "P"] and [Fiscal Sponsor "FS"] intend to revisit this agreement annually to negotiate the future of the relationship between [P] and [FS].

[P] may terminate this Agreement at any time by giving written notice of termination to [FS]. Any such termination will be effective immediately except that, with respect to ongoing grants and [P] activities, such termination will be effective only after such activities have been wound up and/or any required consents have been obtained from third parties to the satisfaction of [FS] and [P] in their sole discretion. Any outstanding assets and liabilities in the [P] Fund will be transferred upon termination as follows:

1. Termination with Successor

If the purposes of [P] can still be accomplished, [P] may identify a successor organization that has been recognized by the Internal Revenue Service as exempt under IRC Section 501(c)(3) and as not a private foundation under Section 509(a) (such organization is referred to herein as a “Successor”). If [P] incorporates as a separate entity it will also qualify as a Successor. The balance of assets in the [P] Fund, together with any tangible and intangible assets (including intellectual property) as defined above and liabilities (whether then known or unknown) of [P] will be transferred to the Successor upon termination.

2. Termination without a Successor

If no Successor is identified, then upon termination of this Agreement, and after payment of all [P] debts, subject to the approval of the [FS] Board of Directors, [FS] may transfer any remaining [P] assets to a charitable or grant-making institution, or another project of [FS], that will commit to disbursing those funds for charitable purposes similar to those of [P], or may dispose of such assets in any manner consistent with applicable tax and charitable trust laws, subject to approval of any third parties that may be required.

3. In any termination scenario, initiated by either party, [P] has sole discretion over the disposition of the [P] url (<http://www.abc123456def.org> (<http://www.abc123456def.org>)), service mark, and any and all other related intellectual and intangible property associated with [P].

Other Resources:

Potential Sponsors can be found at the following links:

- http://www.fiscalsponsordirectory.org/facts_stats.php (http://www.fiscalsponsordirectory.org/facts_stats.php)
- <http://www.fracturedatlas.org/site/fiscal/> (<http://www.fracturedatlas.org/site/fiscal/>)
- <http://www.councilofnon-profits.org/fiscal-sponsorship-resources> (<http://www.councilofnonprofits.org/fiscal-sponsorship-resources>)

Examples of a few Fiscal Sponsors that have very detailed websites:

- <http://www.tides.org/i-want-to/turn-my-vision-ideas-into-a-non-profit-project/learn-about-fiscal-sponsorship-at-tides/> (<http://www.tides.org/i-want-to/turn-my-vision-ideas-into-a-nonprofit-project/learn-about-fiscal-sponsorship-at-tides/>)
- <http://www.communitypartners.org/incubator-services/> (<http://www.communitypartners.org/incubator-services/>)



Value legal services for internet users and creators? Support them.
<http://www.kintera.org/autogen/home/default.asp?ievent=1034481>

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Learn about our legal services for: **App Developers** (http://www.newmediarights.org/app_developers), **Artists & Graphic Designers** (http://www.newmediarights.org/artists_graphic_designers), **Bloggers & Journalists**, (http://newmediarights.org/bloggers_journalists) **Clothing Designers**, (http://newmediarights.org/clothing_designers) **Entrepreneurs, E-commerce Business People & Startups**, (http://newmediarights.org/entrepreneurs_e_commerce_business_people_and_startups) **Filmmakers & YouTube creators**,

http://www.newmediarights.org/filmmakers_and_youtube_creators) **Game Developer** (http://www.newmediarights.org/game_developers) s, **Internet** (http://www.newmediarights.org/internet_smartphone_users_0) users & **Smartphone users** (http://www.newmediarights.org/internet_smartphone_users_0) , **Maker** (<http://www.newmediarights.org/makers>) s, **Musicians**, (<http://www.newmediarights.org/musicians>) **Non-Profits**, (http://www.newmediarights.org/non_profits) **Photographers**, (<http://www.newmediarights.org/photographers>) **Scholars, Researchers** (http://www.newmediarights.org/services_new_media_rights_ofers_scholars) , (http://www.newmediarights.org/writers_and_publishers) and **Writers and Publishers**. (http://www.newmediarights.org/writers_and_publishers)



(<http://www.newmediarights.org/policy>) (<http://www.youtube.com/playlist?list=PLD1071E5E4FD66B73&feature=plcp>)
(<http://www.newmediarights.org>)



[/legal how to guides for citizen media creators online publishing\)](#)

(http://www.newmediarights.org/about_us/contact_us)

(<http://www.youtube.com/user/newmediarightsstudio>)

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