

Charitable Sales Promotion / Co-Venture and Licensing Agreement

This Agreement is entered into this ____ day of _____, 20_____, between the CHARITY, Inc., a [STATE] corporation located at _____ (“CHARITY”), and _____, a [STATE] corporation located at _____ (“COMPANY”). This Agreement is designed to clarify the two parties’ responsibilities for regulatory compliance with state charitable sales promotions and commercial co-venture laws and regulations.

PURPOSE

The purpose of this Agreement is to benefit CHARITY and advance its not-for-profit mission to _____. COMPANY desires to support CHARITY to carry out its mission and agrees to provide the support described in this Agreement. COMPANY understands that as a not-for-profit charitable organization CHARITY cannot promote or endorse COMPANY’s products or services. CHARITY acknowledges that the Promotion as set forth herein does not constitute any such impermissible promotion or endorsement.

NATURE AND TERM OF PROMOTION

COMPANY shall conduct a charitable sales promotion (the “Promotion”) in which it shall make a donation to CHARITY for each sale of XXXXXX as described in Exhibit A (the “Promotion Product”) from [DATE] to [DATE] (the “Promotion Period”). COMPANY shall provide to CHARITY a total donation equal to \$X multiplied by the number of Promotion Products purchased during the Promotion Period. The geographic area of the Promotion shall be worldwide.

USE OF INTELLECTUAL PROPERTY

CHARITY hereby grants COMPANY a limited, non-exclusive worldwide license (without the right to sublicense) to use CHARITY’s trademark, attached as Exhibit B (the “Mark”), for the duration of this Agreement, for the sole purpose of manufacturing, distributing, marketing, promoting and selling the Promotion Product embodying the Mark. COMPANY shall use the Mark only as permitted under this Agreement. Any designs incorporating the Mark but be approved by CHARITY prior to production. Nothing in this Agreement shall be deemed to constitute or result in an assignment of the Mark to COMPANY or to give COMPANY any right, title or interest in or to the Mark other than the right to use the Mark in accordance with this Agreement. COMPANY shall not register or apply to register the Mark, or any confusingly similar mark, or represent that it owns the Mark. COMPANY will not attack or challenge in any court of law, or in any other manner, the title of CHARITY to the Mark or CHARITY’s ownership of any copyrights in or distinctive features of the Mark, or the validity or enforceability of the Mark.

TERMINATION

Either Party may terminate this Agreement upon 14 days written notice to the other Party. Upon termination of this Agreement, COMPANY shall provide CHARITY with final donations and accounting as described below and cease using the CHARITY name in any promotional activities. Furthermore, upon termination, COMPANY’s right to use the Mark shall cease, and COMPANY shall immediately and permanently discontinue all use thereof. However, COMPANY may, for a period of 90 days following termination, continue to distribute and dispose of existing supplies of the Promotion Product so long as it continues to make the charitable sales promotion payments to CHARITY. The Intellectual Property provisions shall survive the expiration or termination of this Agreement.

PAYMENT AND ACCOUNTING

COMPANY shall make an initial donation to CHARITY, in the amount stated above based on sales of the Promotion Product, within 90 days of the start of the Promotion Period. COMPANY shall continue to make further donations to CHARITY, in the amount stated above based on sales of the Promotion Product, every 90 days through expiration or termination of this Agreement. COMPANY agrees that it will make a minimum donation to CHARITY of \$_____ every 90 days. COMPANY shall provide CHARITY with a final accounting within 90 days of the end of the Promotion Period of the total donation made to CHARITY based on sales of the Promotion Product, and shall retain the final accounting and make it available to the CHARITY for a period of three (3) years following completion of the Promotion. The CHARITY donation is deemed to occur contemporaneously with receipt of the funds from the consumer purchasing the Promotion Product. All CHARITY donations are held in trust for CHARITY by the COMPANY. CHARITY donations not immediately paid or delivered to CHARITY shall be held in trust for the benefit of CHARITY and be promptly paid or delivered to CHARITY by the COMPANY as described above. All payments to CHARITY shall be made ATTN: _____.

DISCLOSURE OF DONATION

Materials that inform the consumer of the donation being made to CHARITY must clearly state the amount or percentage of the CHARITY donation that shall result from the purchase of the Promotion Product, the time period during which purchase shall result in a donation to CHARITY, and the limitation, if any, on the contribution.

CO-VENTURE STATEMENT OF RELATIONSHIP

Whenever COMPANY offers a Promotion Product for purchase to the public or promotes or advertises a Promotion Product, **one of the following statements of relationship or a similarly-worded statement of relationship must be included on the advertisement and offer for sale:**

- For every purchase of X from [DATE] through [DATE], COMPANY will donate \$_____ of the purchase price to the CHARITY.
- COMPANY is proud to support CHARITY. For every purchase of X from [DATE] through [DATE], COMPANY will donate \$_____ of the purchase price to the CHARITY.

COMPLIANCE WITH STATE LAWS

In conducting this promotion, both CHARITY and COMPANY agree to comply in a timely manner with the requirements of state laws and regulations applicable to each respective party with respect to the performance of its obligations hereunder. The parties further acknowledge and agree that the Promotion set out in this Agreement is subject to the requirements of the various state charitable solicitation laws. COMPANY and CHARITY acknowledge that some states impose registration requirements on co-venturers. CHARITY represents and warrants that it has complied with all federal and state laws allowing it to solicit funds, including in the District of Columbia. New York law requires that written agreements for co-venture sales promotions conducted in the State of New York must include the following provision: that the charitable organization may cancel this contract without cost, penalty, or liability for a period of fifteen (15) days following the date on which the contract is filed with the New York Attorney General. Notice of cancellation should be sent to COMPANY at _____. A duplicate notice of cancellation should be sent to New York Attorney General, Attorney General Eric T. Schneiderman, The Capitol, Albany, NY 12224-0341.

RESOLUTION OF CONFLICTS

The Parties agree in good faith to make every effort to resolve disputes that arise in the performance of this Agreement. Each Party shall make its best efforts to resolve any disputes informally or through a

mutually agreed-upon mediator. However, in the event that mediation or informal resolution fails, the Parties will bring their claims arising under this Agreement in a court in the District of Columbia, and this Agreement shall then be governed by the laws of the District of Columbia.

LIABILITY AND INDEMNIFICATION

COMPANY and CHARITY agree that each party is responsible for its own business activities and will not be held liable for the activities of the other party, except that COMPANY agrees to indemnify and hold harmless CHARITY, and its employees, representatives, and agents from any and all liability, loss, damage, cost or expense, including reasonable counsel fees and expenses, paid or incurred in connection with COMPANY's operation of the Promotion or sale of any products or services, or by reason of COMPANY's intentional or negligent conduct relating to performance of this Agreement. CHARITY assumes no liability to third parties with respect to the provision of any goods or services and/or any use of the Mark by COMPANY. COMPANY shall not be required to indemnify, defend or hold CHARITY harmless against claims asserting that the Mark infringes any trademark, copyright or other proprietary rights.

NOTICE

All notices pertaining to this Agreement shall be in writing and shall be transmitted either by personal hand delivery, by overnight delivery, through the United States Postal Service by registered or certified mail, return receipt requested, or by electronic mail. The addresses set forth below for the respective parties shall be the places where notices shall be sent unless written notice of a change of address is given:

For CHARITY:

For COMPANY:

MISCELLANEOUS PROVISIONS

- Waiver: No failure of any Party to exercise or enforce any of its rights under this Agreement will act as a waiver of such rights.
- Severability: If any provision of this Agreement is found invalid or unenforceable, that provision will be enforced to the maximum extent permissible, and the other provisions of this Agreement will remain in force.
- Entire Agreement: This Agreement and its exhibits are the complete and exclusive agreement between the Parties with respect to the subject matter hereof, superseding and replacing any and all prior agreements, communications, and understandings, both written and oral, regarding such subject matter.
- Modification: This Agreement may only be modified, or any rights under it waived, by a written document executed by all Parties.
- Execution: This Agreement may be executed in any number of counterparts, all of which taken together will constitute a single instrument. Execution and delivery of this Agreement may be evidenced by facsimile transmission.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

Signatures (Two signatures by CHARITY officers required):

CHARITY, Inc.

COMPANY, Inc.

By: _____
Name

By: _____
Name

Title

Title

Date

Date

By: _____
Name

Title

Date

Exhibit A

Promotional Product Description

Exhibit B

Mark: