



## Third Party Charitable Sales Promotion and Licensing Agreement Master Terms and Conditions

The following Master Terms and Conditions govern all Third Party Charitable Sales Promotion and Licensing Agreements between American Cancer Society, Inc. ("ACS") and the Company to which these Master Terms and Conditions relate. Capitalized terms used in these Master Terms and Conditions shall have the meaning defined in the associated Third Party Charitable Sales Promotion and Licensing Agreement between ACS and the Company. Hereinafter, these Master Terms and Conditions and the associated Third Party Charitable Sales Promotion and Licensing Agreement shall be referred to collectively as the "Agreement."

### 1. Proprietary Rights, Ownership, and Use of ACS Design.

(A) Company acknowledges and agrees that all right, title and interest to ACS's trademarks, service marks, trade dress, tradenames, copyrighted works, information of any kind, digital assets, and any other ACS intellectual property belongs to and remains solely the property of ACS. Subject to the terms and conditions of the Agreement, ACS hereby grants to Company the limited non-exclusive, nontransferable, nonassignable, revocable right and license to use the ACS name and logo/logos indicated on the ACS Design Exhibit to the associated Third Party Charitable Sales Promotion and Licensing Agreement (collectively, the "ACS Design") solely in connection with the terms of the Agreement. All rights and licenses of any kind in the ACS Design not expressly granted in the Agreement are exclusively reserved to ACS. Company agrees to use the ACS Design only in accordance with ACS logo policy and such other reasonable instructions as may be given by ACS in writing pursuant to Section 3 of these Master Terms and Conditions. The ACS Design shall not be altered or modified in any way whatsoever when used by Company other than as may be mutually agreed upon in writing by the parties hereto. Company acknowledges that all use of the ACS Design and any other ACS marks inures to the benefit of ACS. Company shall include the registration notice "®" where appropriate on all marks and other materials related to ACS and shall use the name American Cancer Society in connection with all use of the words related to the Promotion defined in the Agreement.

(B) In order to protect the ACS Design, reputation, and established goodwill of ACS, Company must obtain prior written approval for each and every use of the ACS Design and the ACS name including, but not limited to its use on any Web pages, audio, video, script, print advertising, promotional and marketing materials, press releases, celebrity endorsements, celebrity testimonials or other related materials (collectively, the "Promotional Materials") regardless of the medium. Such approvals will be provided in accordance with Section 3 of these Master Terms and Conditions. Company represents and warrants that it will not use or allow others to use the ACS Design, the ACS name and other ACS intellectual property without the prior written approval of ACS.

(C) ACS warrants that it has the exclusive ownership rights to the ACS Design and that it has the legal right to enter into agreements

relating thereto. In the event of any infringement or improper use of the ACS Design, ACS represents that it will vigorously protect its interests. Company and ACS mutually agree to cooperate with each other in the protection of each party's intellectual property rights as they relate to the Promotion and the Agreement.

**2. No Endorsement.** ACS does not endorse or promote any of Company's products or services. Further, Company agrees that it will not use the ACS Design in any way that would imply endorsement of Company or demean, defame, embarrass, diminish or cause any harm to ACS. ACS's name and the ACS Design may not be listed on any of Company's Promotional Materials or client lists without ACS's prior written approval pursuant to the terms of the Agreement.

**3. Approvals.** Unless otherwise agreed in writing, ACS shall have at least ten (10) business days from the date of receipt to review and approve all use of the ACS Design and all Promotional Materials, and such approval shall not to be unreasonably withheld. A fax or an e-mail shall be deemed a "writing" for the purposes of such approval. All Promotional Materials shall be directed to, unless otherwise directed by ACS, Director, Cause-Related Marketing, for approval. In addition, the final copy of all Promotional Materials shall be provided to ACS at least five (5) business days prior to public distribution.

**4. Termination.** ACS reserves the unconditional right to terminate the Agreement upon thirty (30) days written notice to Company. Additionally, ACS has the right to terminate the Agreement for purposes of any charitable sales promotion directed to New York residents, upon fifteen days notice following the date upon which the Agreement is filed with the New York Attorney General. Notices of termination shall be sent to Company at the address and to the attention of the contacts set forth in the Notice Section of the Agreement, with a duplicate copy to the New York Secretary of State, New York Department of State, 41 State Street, Albany, NY 12231.

Company reserves the right to terminate the Agreement upon 30 days written notice to ACS. Notices of termination to ACS shall be sent to ACS, Attention: Director, Cause-Related Marketing, 250 Williams Street, Suite 400, Atlanta, GA 30303, with a copy to Chief Counsel, ACS, 250 Williams Street, Atlanta, Suite 400, GA 30303

with a duplicate copy to the New York Secretary of State, New York Department of State, 41 State Street, Albany, NY 12231.

In the event of termination, Company shall immediately cease production of the Product with the ACS Design and will cease to use the ACS Design in its Promotional Materials and shall immediately discontinue references in any manner to its relationship with ACS. Company shall make commercially reasonable efforts to recall and destroy all Promotional Materials from Company's facilities, its affiliates' facilities and participating retail locations, e-mail database and website. In the event of termination, any year-end cumulative or final financial report required to be sent by Company to ACS shall be sent on or before thirty days from the effective termination date of the Agreement and shall be cumulative from the date of execution of the Agreement to the date of the effective termination. In the event sales of Product involving in any way the name of ACS are made following termination of the Agreement, Company shall pay ACS royalty fees in accordance with the terms of the Agreement and shall provide financial reports in accordance with the terms of the Agreement.

#### **5. Confidentiality.**

(A) Company understands and agrees that ACS is engaged in a service which makes it crucial for ACS to develop and retain trade secrets, donor lists, proprietary techniques, information regarding its employees, donors, volunteers and recipients of ACS services ("Constituents"), including personal health information, and other confidential information, and acknowledges that Company may develop and learn such information in the course of its performance of activities under the Agreement. In light of these facts and in consideration of Company's collaboration with ACS, Company covenants and agrees with ACS that it shall protect all ACS Confidential Information (as defined below) at all times, both during and after the Term, and shall not disclose to any Person, or otherwise use, except in connection with its duties performed in accordance with the Agreement, any ACS Confidential Information. For purposes of the Agreement, "ACS Confidential Information" shall mean any personal health information of Constituents and any and all technical, business, and other information of ACS or any affiliate of ACS which derives value, economic or otherwise, actual or potential, from not being generally known to the public or other Persons who can obtain value from its use or disclosure (other than the party disclosing such information and its affiliates), including without limitation, technical or nontechnical data, compositions, devices, methods, techniques, drawings, inventions, processes, financial data, financial plans, product plans, donor lists, lists of or information concerning actual or potential donors or suppliers, and information regarding the strategies, business plans or operations, methods and plans of operation, marketing strategies of ACS or any affiliate of ACS. ACS Confidential Information includes information disclosed or owned by third parties (including information of any affiliate of ACS) that is treated by ACS as confidential or that ACS is required to treat as confidential, whether such obligation is

contractual or arises by operation of law. For purposes of the Agreement, ACS Confidential Information shall not include confidential business information that does not constitute a trade secret under applicable law after the third anniversary of the termination of the Agreement, but such information will remain subject to any other limitation of use or disclosure under any other agreement, applicable law or otherwise; *provided, further*, that such obligation shall continue with respect to confidential business information that constitutes a trade secret for so long as it remains a trade secret under applicable law and shall continue indefinitely with respect to personal health information of Constituents. In addition, under no circumstance shall Company provide ACS Confidential Information or any information associated with the Agreement to any political candidate or party that could be used in support of or opposition to any political candidate or party. As used in the Agreement, "Person" means any individual, corporation, limited liability company or partnership, bank, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or other entity.

(B) The obligations of Section 5(A) shall not apply to any information (i) that is or comes into the public domain through no fault of Company, (ii) rightfully in the possession of Company in written form as of the Effective Date hereof or hereafter independently developed by Company without reference to any ACS Confidential Information, or (iii) that is required to be disclosed by order of a court or tribunal of competent jurisdiction or by any law.

**6. Compliance with Laws.** The charitable sales promotion evidenced by the Agreement may be subject to the provisions of charitable sales promotion laws in various states, including without limitation, Georgia Statutes, Title 43, Chapter 17 and New Hampshire Statutes, Chapter 7 to the extent the Territory includes Georgia and New Hampshire. Company agrees to comply with the laws and regulations applicable to the Promotion.

#### **7. Indemnification.**

(A) Company agrees to indemnify, defend and hold ACS and all its affiliates, successors and assigns and their respective employees, officers, directors, agents, volunteers, donors and Constituents harmless from all claims, actions, suits, proceedings, investigations, arbitrations, assessments, losses, damages, liabilities, settlements, penalties, costs and expenses, including reasonable attorney fees and those fees of in-house counsel, based upon the salary, proportion of benefits and time of such in-house counsel, and other expenses of litigation (collectively, "Claims"), arising out of or resulting in whole or in part from (1) any act or omission by Company constituting breach by Company of its representations, obligations or warranties under the Agreement or constituting negligence or intentional misconduct; (2) any infringement misappropriation, or misuse of trademark, patent, copyright, trade name, service marks, trade secret or other intellectual property rights of ACS or any other

third party; and (3) any claim or action by any third party for bodily injury, illness, or death and damage to property alleged to have been caused, in whole or in part, by any Company merchandise or Product.

(B) ACS agrees to indemnify, defend and hold Company and all its affiliates, successors and assigns and their respective employees, officers, directors and agents harmless from all Claims incurred by Company arising out of (1) any act or omission of ACS constituting negligence or intentional misconduct; (2) any misrepresentation or breach of warranties made by ACS in the Agreement; and (3) Company's use, in a manner approved by ACS, of any intellectual property in which ACS claims ownership.

(C) The party seeking indemnification pursuant to the Agreement ("Indemnitee") shall promptly give the other party notice of any Claim for which indemnification is required hereunder and afford the other party the opportunity to defend any such event. The party obligated to provide the indemnification ("Indemnitor") shall, at its own expense and through counsel of its own choosing, defend or otherwise contest any such Claim for which indemnification is required pursuant to the Agreement.

(D) The Indemnitee shall also have the right, but not the obligation, to participate at its own expense in the defense thereof with counsel of its own choice, and the parties agree to coordinate their efforts. If the Indemnitor fails, within thirty (30) days of receipt of notice of any such claim, action, suit, proceeding, investigation, or arbitration for which indemnification is required, to notify the Indemnitee of its intent to defend, contest, or otherwise protect against such event, the Indemnitee shall have the right to defend, settle and satisfy any such event and recover the costs of the same from the Indemnitor.

(E) Company shall apprise ACS as soon as practicable of any infringement of the ACS Design, which comes to the attention of Company. ACS shall prosecute and defend any action or proceeding which ACS deems necessary or desirable to protect the ACS Design, including but not limited to actions or proceedings involving infringement of the ACS Design. In addition, Company shall notify ACS of all confusingly similar uses of the ACS Design by third parties. Any and all damages recovered in any action or proceeding commenced by ACS shall belong solely and exclusively to ACS.

#### **8. Tobacco Affiliations.**

(A) "Tobacco Company" means any company that manufactures tobacco products and is commonly considered to be part of the tobacco industry, including subsidiaries and parent companies, and companies under common control with such company, as well as philanthropic foundations and other organizations closely linked with the tobacco industry.

(B) Company represents and warrants that Company is (i) not a Tobacco Company; (ii) does not own 5% or more of a Tobacco Company; and (iii) is not 5% or more owned by a Tobacco Company.

(C) Company shall not employ any entity or assign, subcontract, or delegate, directly or indirectly, any activities under the Agreement to any entity that is a Tobacco Company and any attempt to do will be void without further effect. If Company is acquired by or acquires a Tobacco Company in whole or in part or assigns, subcontracts or delegates, directly or indirectly, any activities under the Agreement to a Tobacco Company, Company shall immediately notify ACS and ACS shall have the right to immediately terminate the Agreement without penalty.

**9. Insurance.** Prior to commencing activity under the Agreement, Company shall obtain, and thereafter maintain, commercial general liability insurance (including product and contractual liability insurance in an occurrence form), providing adequate protection for ACS as an additional insured on Company's policy from and against any and all Claims, resulting from or in connection with any of the circumstances described in Section 7(A) of the Agreement. Such insurance policy shall not be canceled or materially changed in form without at least thirty (30) days prior written notice to ACS. Company agrees that such insurance policy or policies shall provide coverage of at least Five Million Dollars (\$5,000,000) for personal, advertising, property damage and bodily injury and contractual liability arising out of each occurrence, and not less than Ten Million Dollars (\$10,000,000) for aggregate claims during a twelve (12) month period or Company's standard insurance policy limits, whichever is greater. However, recognizing that the aforesaid amounts may be inappropriate with regard to specific situations, it is contemplated that ACS may make reasonable adjustments to the foregoing amounts. Any adjustment must be confirmed in writing by ACS's Risk Management Director. Company shall provide ACS with a copy of a Certificate of Insurance evidencing such insurance within ten (10) days following execution of the Agreement.

**10. Entire Agreement; Amendment.** The Agreement represents the entire agreement between the parties on this matter and supersedes any and all prior understandings, agreements, representations or undertakings. The Agreement is not subject to amendment, change or modification except by written agreement signed by duly authorized representatives of both parties. Any amendments to the Agreement shall specifically refer to the Agreement.

**11. Severability.** The covenants set forth in the Agreement shall be considered and construed as separate and independent covenants. Should any part or provision of any covenant be held invalid, void or unenforceable in any court of competent jurisdiction, such invalidity, voidness or unenforceability shall not render invalid, void or unenforceable any other part or provision of the Agreement.

**12. Applicable Law and Jurisdiction.** THE AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF GEORGIA WITHOUT REGARD TO THE CONFLICT OF LAWS PROVISIONS THEREOF. THE STATE AND FEDERAL COURTS LOCATED IN FULTON COUNTY, GEORGIA SHALL HAVE EXCLUSIVE JURISDICTION FOR THE PURPOSES OF ADJUDICATING DISPUTES UNDER THE AGREEMENT. THE PARTIES HEREBY WAIVE ALL OBJECTIONS TO VENUE AND PERSONAL JURISDICTION IN THESE FORUMS FOR SUCH DISPUTES, AND AGREE THAT SERVICE OF PROCESS MAY BE MADE BY CERTIFIED MAIL ADDRESSED TO THE COMPANY'S NAME AND ADDRESS GIVEN IN THE FIRST PARAGRAPH OF THE AGREEMENT, TO THE ATTENTION OF THE PERSON(S) SIGNING BELOW. THESE CONTACT PERSON(S) OR ADDRESS(ES) MAY BE AMENDED PURSUANT TO THE NOTICE PROCEDURE OF THE INDIVIDUAL AGREEMENT BETWEEN ACS AND COMPANY.

**13. Assignment; Successors and Assigns.** The Agreement is being entered into in reliance upon and in consideration of the qualifications of Company. Company may not assign, transfer, delegate or subcontract any of its rights or obligations under the Agreement without the express written consent of ACS, which may be withheld by ACS in its sole discretion. A merger or change in control of Company shall constitute an assignment. Any purported assignment or delegation in violation of this Section shall be null and void. The Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, personal representatives, successors and permitted assigns.

**14. Construction.** The captions and section headings used in the Agreement are for convenience of reference only and shall not affect the construction or interpretation of the Agreement or any of the provisions thereof. Each party signing the Agreement acknowledges that it has had the opportunity to review the Agreement with legal counsel of its choice, and there shall be no presumption that ambiguities shall be construed or interpreted against the drafter.

**15. Non-exclusivity.** The Agreement is a non-exclusive agreement which preserves the right of ACS to contract with other companies for similar and related promotions.

**16. No Third Party Beneficiaries.** The Agreement inures to the benefit of Company and ACS only, and no third party shall enjoy the benefits of the Agreement nor shall have any rights under it except as is expressly provided in the Agreement.

**17. Force Majeure.** Neither Company nor ACS shall be deemed to be in default of any provision of the Agreement for failures in performance resulting from acts or events beyond its reasonable control (a "Force Majeure Event") for the duration of the Force Majeure Event. Such Force Majeure Events shall include, but not be limited to, acts of God, civil or military authority, terrorists, civil disturbance, war, strikes, fires, other catastrophes, labor disputes, parts shortages, or other events beyond Company's or ACS's reasonable control.

**18. Conflicts of Interest.** Company represents and warrants to ACS that, to the best of Company's knowledge, none of Company's employees, officers or majority owners is employed by or serve on the Board of Directors of the American Cancer Society, Inc.

**19. Survival.** Section 5 (Confidentiality), Section 7 (Indemnification) and Section 12 (Applicable Law and Jurisdiction) of these Master Terms and Conditions, Section 4 (Books, Records and Reports) of the applicable Third Party Charitable Sales Promotion and Licensing Agreement and all representations and warranties contained in the Agreement shall survive the termination or the expiration of the Agreement.

**20. Waiver and Breach.** The waiver by either party of any default or breach of the Agreement shall not constitute a waiver of any other default or breach, or subsequent default or breach.

**21. Independent Contractors.** Company and ACS are independent contractors. Nothing in the Agreement is intended by the parties hereto to create a fiduciary relationship between them, nor to constitute one party as agent, legal representative, subsidiary, franchisee, joint venturer, partner, employee or servant of the other party for any purpose whatsoever.