

Commercial Co-Venture Agreement

This is a Commercial Co-Venture Agreement (“Agreement”), dated as of _____, 20__ between Client, a California nonprofit corporation (“Client”), and **[insert legal name]**, a **[insert the type of entity and jurisdiction of organization]** (“Company”).

Background

A. Client is a tax-exempt charitable organization under Section 501(c)(3) of the Internal Revenue Code. Its mission is to [_____].

B. Company desires to support Client by donating to Client a portion of the proceeds from sales by Company of its products or services, Client desires to accept such donation, and the parties wish to publicize the arrangement, all on the terms set out in this Agreement and in accordance with applicable California and other laws.

C. This Agreement has three parts. The first part sets out framework understandings regarding the arrangement, including funds transfers, disclosures, legal compliance, use of trademarks, and termination. The second part, a document attached as **Exhibit A** and referred to as the “Promotion Plan,” sets out the specifics of the arrangement, including the relevant products or services; relevant location of sale; donation percentage, computation, and payment schedule; and contact persons. The third part consists of exhibits identifying Client and Company trademarks that may be used in connection with the relationship.

D. As used in this Agreement, the term “Promotion” means the donation and communication relationship contemplated by this Agreement, and the terms “Products,” “Promotion Period,” and “Territory” have the meanings given them in the Promotion Plan.

Client and Company agree as follows:

1. Promotion

1.1 Donation

Company will donate to Client the greater of (a) the minimum amount set out in the Promotion Plan or (b) an amount equal to the percentage, set out in the Promotion Plan, of sales of Products sold by Company during the Promotion Period in the Territory.

1.2 Transfer of Donated Amounts

Company will transfer to Client all amounts to be donated under this Agreement promptly, and in no event later than 90 days after the first date that Company makes representations to the public concerning the Promotion. After the initial transfer, Company will transfer to Client additional amounts in accordance with the schedule set out in the Promotion Plan, and in no event later than the end of each successive 90-day period. All amounts donated to Client are non-refundable.

1.3 Report Accompanying Donation

In conjunction with each transfer of donated amounts under Section 1.2, Company will provide to Client a written accounting of all funds, assets, or property received by Company in connection with the Promotion. Such accounting must be in a form sufficient to enable Client to (a) determine that Company has complied with representations made to the public, and (b) comply with state or federal reporting requirements related to Client’s receipt or use of funds. If Client questions or disputes any payment, it will notify Company in writing within 60 days of receipt of the payment, and the parties will make a good faith effort to resolve the issue.

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1.4 Disclosures at Point-of-Sale

At or prior to the point-of-sale, Company will disclose that the donation associated with the sales of Products is not tax-deductible to the purchaser. Company will also provide any disclosures required by applicable laws and regulations, including, without limitation, Section 17510.3(a) of the California Business and Professions Code.

1.5 No Endorsement by Client

Client and Company acknowledge and agree that Client's role in relation to the Promotion is limited to passive receipt of the donation contemplated by this Section 1. Under no circumstances will Client be expected to endorse or promote Company, the Products or Company's other products or services, nor will any such endorsement or promotion be implied or construed based on Client's acceptance and acknowledgment of Company's donation.

1.6 Recordkeeping

Company will maintain records relating to the Promotion in a manner such that Client can evaluate Company's compliance with this Agreement, and will make those records available for review by Client on reasonable notice during the term of this Agreement and for a period of three years after termination or conclusion of the Promotion. Client and Company will each reasonably cooperate with one another in providing information relating to its activities under this Agreement in connection with any financial or tax audit, or similar matter, in which the other is engaged.

2. Legal Compliance

2.1 California Law

Client and Company will comply with California laws applicable to the Promotion including, without limitation, Section 12599.2 of the California Government Code and Sections 17510-17510.95 of the California Business and Professions Code. Client will disclose information about Company and the Promotion to the California Attorney General's Registry of Charitable Trusts as required by Form CT-1 or Form RRF-1, if applicable.

2.2 Other Applicable Laws

Client and Company will comply with all federal, state and local laws applicable to the Promotion, including, without limitation, Federal Trade Commission, other federal and state laws and regulations relating to trade practices and consumer protection, and state regulations regarding the sale of products to benefit a charity, such as commercial co-venturer registration and reporting requirements.

2.3 Permits and Licenses

Each of Client and Company represents and warrants that it has obtained, or will obtain prior to commencement of the Promotion, all permits, licenses, and other governmental authorizations and approvals required for its performance under this Agreement.

3. Intellectual Property

3.1 Client Marks

Client grants to Company a non-transferable, non-exclusive, non-sublicensable, revocable license to use, copy, and display the marks set out in **Exhibit B** ("Client Marks") for the limited purposes set out in Section 3.3.

3.2 Company Marks

Company grants to Client a non-transferable, non-exclusive, non-sublicensable, revocable license to use, copy, and display the marks set out in **Exhibit C** ("Company Marks") and images and descriptions of the Product, for the limited purposes set out in Section 3.3.

3.3 Use of Marks and Images

Client and Company may each use Company Marks and Client Marks, respectively, on correspondence, documents, websites, products, clothing, packaging, and promotional or marketing materials of any kind in connection with the Promotion. Each of Client and Company will comply with any reasonable trademark guidelines that the other may provide. In addition, both during and after the Promotion, Client may identify Company as a donor in accordance with Client's customary donor recognition practices.

3.4 Ownership

Each of Client and Company acknowledges that (a) it has no interest in the other party's marks other than the license granted under this Agreement, (b) the other party will remain the sole and exclusive owner of all right, title, and interest in its marks, and (c) any and all goodwill in the other party's marks will inure solely to the benefit of the other party.

3.5 Non-Permitted Associations

Company may not use Client Marks in any manner that suggests or implies endorsement of political views or religious beliefs, including, without limitation, in connection with any campaign activity for or against a political candidate or in connection with any lobbying activity.

4. Relationship

4.1 Contact Person

Client and Company will each appoint one individual to act as principal contact person and to coordinate activities. The initial appointees are identified in the Promotion Plan. Client and Company each may change its contact person at any time and will so advise the other.

4.2 Independence

Client and Company are and will remain independent contracting parties. Nothing in this Agreement creates an employment, partnership, joint venture, fiduciary, or similar relationship between Client and Company for any purpose. Neither Client nor Company has the power or authority to bind or obligate the other to a third party or commitment in any manner. Any use of the term "partner" or comparable term in any communication is solely for convenience.

4.3 Other Promotions

Company understands that Client may enter into commercial co-venture, product promotion, sponsorship, or other similar arrangements with other companies.

4.4 Confidentiality

Company will use Confidential Information (as defined below) only in connection with Company's activities under this Agreement and keep it confidential. "Confidential Information" means all information, in any form, furnished to or obtained by Company from Client including, without limitation, employee, donor, and client data, budget and other financial data, program plans and strategies, technical data and research, and know-how. It does not include information which: (a) is or becomes generally available to the public other than as a result of a disclosure by Company; (b) was known by Company prior to its being furnished by Client; (c) is or becomes available to Company on a non-confidential basis from a source other than Client; or (d) is independently developed by Company.

5. Indemnification

5.1 Indemnification by Client

Client will indemnify, defend, and hold Company and its directors, officers, employees, agents, and assigns (collectively, the "Company Parties") harmless against any and all claims, liabilities, losses, damages, and expenses any Company Party may suffer and which arise directly or indirectly from: (a) Client's performance under or breach of this

Agreement; or (b) claims by third parties of infringement, misappropriation, or other violations of intellectual property rights arising out of Company's use of Client Marks in accordance with the terms of this Agreement. Client will have no obligation to indemnify any Company Party to the extent the liability is solely caused by such Company Party's gross negligence or willful misconduct.

5.2 Indemnification by Company

Company will indemnify, defend, and hold Client and its directors, officers, employees, agents, and assigns (collectively, the "Client Parties") harmless against any and all claims, liabilities, losses, damages, and expenses any Client Party may suffer and which arise directly or indirectly from: (a) Company's performance under or breach of this Agreement; or (b) claims by third parties of infringement, misappropriation, or other violations of intellectual property rights arising out of Client's use of Company Marks in accordance with the terms of this Agreement. Company will have no obligation to indemnify any Client Party to the extent the liability is solely caused by such Client Party's gross negligence or willful misconduct.

6. Termination

6.1 Termination on Notice

Client may on its own terminate this Agreement by providing written notice of that decision to Company. Such a termination will be effective 30 days after delivery of the notice by Client.

6.2 Termination for Breach

If either party breaches any of its obligations under this Agreement, the non-breaching party may provide the breaching party with written notice of the breach. If the breaching party fails to cure the breach within 30 days after receipt of such notice, the non-breaching party may terminate this Agreement upon delivery to the breaching party of a written notice to that effect, with the termination effective upon delivery of such notice to the breaching party. The non-breaching party may in its reasonable discretion determine whether the breach has been cured.

6.3 Termination for Conduct

Either Client or Company may immediately terminate this Agreement by giving written notice to the other if, based on information about Company not known to Client at the time this Agreement is signed, it reasonably believes that the other party has engaged or is engaging in conduct, or has been alleged to have engaged in conduct, including, without limitation, conduct involving harassment or discrimination, of a nature which reflects or could reflect materially and unfavorably upon the reputation of the terminating party. Such a termination will be effective upon delivery of the notice by the terminating party.

6.4 Consequences of Termination

Upon termination of this Agreement, Client and Company will cooperate in transition activities to minimize adverse impacts of the termination. Company will transfer to Client any remaining donated amounts due within 90 days of the termination date. Except as otherwise provided in this Section 6.4, Client and Company will promptly cease use of any Company Marks and Client Marks, respectively, and disable any associated links from sites and accounts. If (a) the Promotion involves the sale of Products and the Products or their packaging bears Client Marks and (b) the Agreement is terminated by Client under Section 6.1 or by Company under Section 6.2 or 6.3, Company may continue selling such Products for a period of 30 days following the effective date of termination, and Company will transfer to Client amounts in respect of those sales as provided in Section 1.2. Following such 30-day period, and in all other termination cases, Company will stop selling such Products as of the effective date of termination. The provisions of Sections 1.6, 3.3 (last sentence), 3.4, 4.4, 5, 6.4, and 7 will remain effective after termination.

7. General Provisions

7.1 Entire Agreement

This Agreement, together with the Promotion Plan and the other exhibits, expresses the final, complete, and exclusive agreement between Company and Client, and supersedes any and all prior or contemporaneous written and oral agreements, arrangements, negotiations, communications, course of dealings, or understandings between Company and Client relating to its subject matter. If there are any inconsistencies between any exhibit and this Agreement, this Agreement will control.

7.2 Amendment

This Agreement may be amended only as stated in and by a writing signed by both Company and Client which recites that it is an amendment to this Agreement.

7.3 Severability

If any provision in this Agreement is held invalid or unenforceable, the other provisions will remain enforceable, and the invalid or unenforceable provision will be considered modified so that it is valid and enforceable to the maximum extent permitted by law.

7.4 Waiver

Any waiver under this Agreement must be in writing and signed by the party granting the waiver. Waiver of any breach or provision of this Agreement will not be considered a waiver of any later breach or of the right to enforce any provision of this Agreement.

7.5 Assignment

Company may not assign its rights or delegate its duties under this Agreement to anyone else without the prior written consent of Client.

7.6 Third-Party Beneficiaries

Except as specifically provided in Section 5, this Agreement is for the exclusive benefit of Company and Client, and not for the benefit of any third party including, without limitation, any employee, affiliate, donor, vendor, or client of Company or Client.

7.7 Notices

Notices, approvals, and consents under this Agreement must be in writing and delivered by mail, courier, or email to the contact persons identified on the signature page. These addresses may be changed by written notice to the other party.

7.8 Governing Law

This Agreement will be governed by California law.

7.9 Injunctive Relief

Both parties acknowledge and agree that: (a) any breach by one party of its obligations under Section 3 will result in irreparable harm to the other party which cannot be reasonably or adequately compensated in damages; (b) the injured party will be entitled to injunctive or other equitable relief in respect of such breach or imminent breach; and (c) the injured party will have all other rights and remedies to which it is entitled, at law or in equity, with respect to breach of Section 3, and otherwise with respect to the enforcement of all rights relating to the establishment, maintenance, or protection of their intellectual property.

7.10 Counterparts

This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which will be taken together and deemed to be one instrument. Transmission by PDF of executed counterparts constitutes effective delivery.

* * * * *

Client and Company signed this Agreement as of the date set out in its first paragraph.

Client

[insert legal name of Company]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Exhibit A Promotion Plan

Promotion

Product(s)	
Promotion period or event	From _____, 20__ to _____, 20__
Related campaign, if any	
Territory	For sales of Products at retail: retail locations _____. For sales of Products online: products shipped to _____. For services: services delivered in whole or in part _____ [throughout the United States] [worldwide] [including internet sales].
Company's estimate of sales	__ units of Product
Minimum amount to be donated	\$ _____
Percentage of sales	__% of total gross sales Note: A Product will be considered "sold" on the earlier of the date when the Product is billed or invoiced, shipped, consigned, or paid for.
Donation schedule	[payment dates] If as of the last payment date the total amount paid or payable is less than the minimum amount stated above, Company will pay Client an amount equal to the difference between such amount and the minimum amount.

Company data and contact person

Company address	
Company contact person	Name: Title: E-mail: Telephone:

Client data and contact person

Client address	
Client contact person	Name: Title: E-mail: Telephone:

Exhibit B Client Marks

[insert marks]

Exhibit C Company Marks

[insert marks]