

**SUSAN G. KOMEN MEMPHIS- MIDSOUTH@ MISSISSIPPI
THIRD PARTY AGREEMENT**

KOMEN AFFILIATE: Susan G Komen Memphis-MidSouth Mississippi

CITY, STATE, ZIP: Germantown, TN 38138

TELEPHONE: (901) 757-8686

FACSIMILE: (901) 757-8372

WEBSITE: www.komenmemphisms.org

KOMEN AFFILIATE CONTACT: Dana Mann, Operations Manager

FULL LEGAL NAME OF THIRD PARTY _____

THIRD PARTY ADDRESS: _____ **CITY, STATE, ZIP:** _____

TELEPHONE: (____) _____ - _____ **FACSIMILE:** (____) _____ - _____ **WEBSITE:** _____

THIRD PARTY CONTACT: _____

THIRD PARTY CONTACT EMAIL: _____

EVENT NAME: _____ **DATE OF EVENT** (include date range if applicable): _____

DESCRIPTION OF EVENT: _____

LOCATION OF THE EVENT: _____

DONATION STRUCTURE (describe basis of donation to be made to the Komen Affiliate [i.e. flat donation, event admission, pledges, guaranteed minimum donation]) _____

DONATION PAYMENT SCHEDULE:

- Advance payment of _____ due to the Komen Affiliate _____ days after execution of this Agreement.
- Payment of all donations accrued due to the Komen Affiliate 30 days after the end of Event.
- Other (explain schedule): _____

PAYMENT PROCEDURE AND REPORTING: For payment procedure, see "Payment of Monies" in the Standard Terms and Conditions set forth on Page 2 of this Agreement. With each payment, Third Party shall include a reasonably-detailed calculation of the donation due to the Komen Affiliate for such payment.

PERMISSION TO USE THE FOLLOWING MARKS (check all that apply):

- Komen Affiliate name Komen Affiliate logo Komen Affiliate website Other (including "for the Cure" marks and other trademarks): _____

- *The marks selected above ("Licensed Marks") may be used by Third Party during the term of this Agreement for the sole purpose of promoting the Event.*
- *Third Party will present to Komen Affiliate for its approval (which approval shall not be unreasonably withheld), prior to printing, distribution, publication, display, or use, any and all promotional materials and scripts of all statements, oral or written, to be made by Third Party, its agents or spokespersons, which use or refer to any Licensed Marks.*
- *Event materials and statements must state that the Licensed Marks are registered trademarks of Komen and must be consistent with both parties' outstanding public images.*
- *Unless expressly authorized herein, Third Party may not utilize the phrase "for the Cure" in connection with the Event.*

PROMOTION OF THE EVENT: Third Party agrees to promote the Event as follows: _____

- *All promotional and sales materials advertising the Event must state the exact dollar amount or percentage of retail price of all monies from the Event that will be donated to the Komen Affiliate in clear, unambiguous and readily identifiable fashion.*
- *Third Party may only promote the Event in the following service area of Komen Affiliate: _____*

SPECIAL TERMS/ADDITIONAL OBLIGATIONS/OTHER (including, but not limited to, additional insurance requirements other than those set forth on Page 2 of this Agreement): _____

INSURANCE: Third Party shall obtain all insurance necessary for the safe and lawful conduct of the Event. Not later than 30 days prior to the Event, Third Party shall provide the Komen Affiliate with a certificate of insurance evidencing the insurance coverage required under this Agreement.

By executing this Agreement, Third Party agrees to be bound by the Standard Terms and Conditions as set forth on Page 2 of this Agreement, which are hereby incorporated herein as if set forth in their entirety. All terms set forth in all bold and capitalized letters herein shall have the meaning specifically designated above. The signers of this Agreement hereby warrant that they have read and agree to the terms, conditions and provisions of this Agreement, including the Standard Terms & Conditions, and have full power and authority to sign for and bind their respective organizations.

EFFECTIVE THIS _____ DAY OF _____, _____

**MEMPHIS-MIDSOUTH AFFILIATE OF SUSAN G. KOMEN
d/b/a KOMEN MEMPHIS-MIDSOUTH MISSISSIPPI**

("Third Party")

By: _____

By: _____

Name/Title: _____

Name/Title: _____

STANDARD TERMS AND CONDITIONS

1. **Susan G. Komen for the Cure.** The Komen Affiliate is a non-profit organization exempt from federal income tax pursuant to Internal Revenue Code section §501(c)(3). The Komen Affiliate is affiliated by agreement with The Susan G. Komen Breast Cancer Foundation, Inc. d/b/a Susan G. Komen for the Cure ("Komen"). Third Party and the Komen Affiliate agree that Komen is an intended third party beneficiary under this Agreement.
2. **Term.** The term of the Agreement shall commence on the Effective Date and shall terminate 30 days after the end of the Event; provided that the provisions of Sections 5.B., 8, 9, 12, 13, 17 and 18 shall forever survive termination of this Agreement.
3. **Payment of Monies.** Third Party shall be responsible for handling all monies in connection with the Event. All donations accrued in connection with the Event shall be sent to the Komen Affiliate by check at the Komen Affiliate address listed on Page 1 of this Agreement.
4. **Operations and Costs.** The parties acknowledge and agree that Third Party will be solely responsible for conducting the Event and for all operational aspects of the Event including, but not limited to, the safe and lawful conduct of the Event and ensuring that the Event is conducted in a professional manner befitting the parties' respective outstanding public images. Third Party shall be solely responsible for all costs and expenses associated with the Event.
5. **Licensed Marks.**
 - A. The Komen Affiliate is a licensee of Komen with respect to the Licensed Marks. The Komen Affiliate grants to Third Party a limited, non-exclusive sublicense to use the Licensed Marks during the term of this Agreement. Third Party shall be prohibited from transferring, sublicensing or assigning its rights to use the Licensed Marks. In the event of a breach of this Agreement by Third Party, Komen and/or the Komen Affiliate may require the removal of the Licensed Marks at any time from any materials developed in connection with the Event. The Komen Affiliate and Third Party agree that all right, title and interest in and to the Licensed Marks shall inure to the sole benefit of Komen.
 - B. Third Party grants to the Komen Affiliate a limited, non-exclusive license to use the Third Party name and logo provided by the Third Party for the sole purpose of acknowledging the Event; provided, however, that any other use by the Komen Affiliate of intellectual property rights owned by Third Party requires Third Party's prior written consent.
6. **Promotion.** Third Party shall be solely responsible for promoting the Event and may do so in the manner and to the extent agreed upon in advance with the Komen Affiliate. Third Party shall provide to Komen Affiliate access to and right to use any database of consumer information generated through the Event, without charge, to the extent permitted by applicable law or otherwise.
7. **Permission to Link.** Komen Affiliate may grant Third Party permission to provide a link from its website to the Komen Affiliate's website. The Komen Affiliate reserves the right to withdraw such permission at any time in the future, but any such withdrawal shall not terminate or otherwise modify this Agreement. Upon termination of the Event or this Agreement, whichever is earlier, and in the event such permission to link is granted to Third Party, Third Party shall have 14 days to remove the above-referenced link from its website.
8. **Compliance with Laws.**
 - A. Third Party agrees to comply with all laws relating to the promotion and conduct of the Event and its activities under this Agreement, including, without limitation, all consumer and other disclosure requirements. Third Party further agrees to file all appropriate registrations and post all necessary bonds, and obtain all permits, releases, consents, licenses and approvals, necessary for promoting and conducting the Event.
 - B. The parties acknowledge that, depending on the structure of the Event, certain state co-venturer laws may apply. In such case, and with respect to Event activities in the state of New York, Komen Affiliate may cancel this Agreement in the state of New York by sending written notice of cancellation to Third Party at its address listed on Page 1 of this Agreement, with a duplicate notice to: State of New York, Office of the Attorney General, Charities Bureau, 120 Broadway, New York, NY 10271, within 15 days after this Agreement is filed with the New York Attorney General's Office. Further, if any part of the Event occurs in New Jersey, Georgia or New Hampshire, the Event may be subject to the following: (i) New Jersey Charitable Registration and Investigation Act (N.J. Stat. § 45:17A-18 et seq.) and any rules adopted pursuant thereto; (ii) Title 43, Chapter 17 of the Georgia Code; and (iii) Section 7:28 of the New Hampshire Statutes. For Event activities in South Carolina, the Komen Affiliate registration number in South Carolina is SC-1681.
9. **INDEMNITY. EACH PARTY AGREES TO INDEMNIFY AND HOLD THE OTHER PARTY HARMLESS FROM AND AGAINST ANY AND ALL COSTS, LOSSES OR EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES, THAT THE OTHER PARTY MAY INCUR BY REASON OF (A) THE INDEMNIFYING PARTY'S NEGLIGENCE OR INTENTIONAL MISCONDUCT OR (B) ANY CLAIM(S) OR LAW SUIT(S) BROUGHT BY A PARTY THAT IS NOT A PARTY TO THIS AGREEMENT ARISING OUT OF, OR IN CONNECTION WITH, (I) THE INDEMNIFYING PARTY'S PERFORMANCE OR FAILURE TO PERFORM PURSUANT TO THIS AGREEMENT OR (II) ANY SERVICE OR PRODUCT SOLD OR PROVIDED BY THE INDEMNIFYING PARTY IN CONNECTION WITH THE EVENT.**
10. **Insurance.** In addition to any other insurance that Third Party must maintain under this Agreement, Third Party shall maintain, during the term of this Agreement, commercial general liability insurance in the amount of \$1,000,000.00 per occurrence, which covers liability for bodily injury, property damage, death and advertising injury arising in connection with the Event. Third Party shall name Komen and the Komen Affiliate as Additional Insureds on all insurance policies required under the terms of this Agreement solely with respect to the Event.
11. **Default and Early Termination.** If either party should fail to perform or be in breach of any of the terms, conditions, agreements, covenants, representations or warranties contained in this Agreement, or anticipatorily breach this Agreement, and such default is not curable, or if such default is curable but remains uncured for a period of 30 days after written notice thereof has been given to the defaulting party, the other party, at its sole election, may immediately terminate this Agreement by written notice thereof to the defaulting party. In the event of an early termination, the parties shall proceed in a commercially reasonable manner and in good faith to facilitate a professional separation. In the event of an early termination due to a breach by Komen Affiliate, Komen Affiliate shall be entitled to all donations due under this Agreement up to the date of termination; provided, however, that, in the event of a Flat Donation, Komen Affiliate shall be entitled to a pro-rated portion of the Flat Donation if (i) the Event was promoted prior to the date of termination, or (ii) the Flat Donation was publically disclosed prior to the date of termination. In the event of an early termination due to a breach by Third Party, Komen Affiliate shall be entitled to all donations due under this Agreement up to the date of termination, including, but not limited to, the full guaranteed minimum donation or full flat donation, as the case may be. The provisions of this Section 11 shall not preclude the parties from seeking any other remedies available to them under this Agreement and applicable law.
12. **Dispute Resolution.** In the event of any dispute arising out of this Agreement, the parties shall use good faith efforts to resolve their differences amicably. In the event they are unsuccessful, the parties agree not to commence litigation until attempting to resolve their dispute through mediation. Any party may initiate the mediation process with 30 days' prior written notice to the other party. The dispute shall be submitted to mediation in the city in which the Komen Affiliate is located. Costs of mediation shall be borne equally by the parties. Mediation of the dispute shall be completed within 15 days of commencement, unless the parties extend the time by mutual agreement or unless the mediator declares the parties to be at an impasse. Notwithstanding the above, in the event that Komen and/or the Komen Affiliate believes that immediate injunctive relief is required to protect the Licensed Marks, Komen and/or the Komen Affiliate may invoke the immediate powers of the appropriate court of law without the requirement to first mediate the dispute.
13. **Audit Rights.** Third Party agrees to maintain accurate and complete financial records regarding the Event and to do so in accordance with applicable law and agrees that the Komen Affiliate may with 10 days' prior notice conduct an audit of such records during regular business hours at any time reasonably requested by the Komen Affiliate.
14. **Relationship of Parties.** The parties to this Agreement are not joint venturers, partners, agents, nor representatives of each other, and such parties have no legal relationship other than as contracting parties to this Agreement.
15. **Entire Agreement.** This Agreement supersedes any prior understandings or oral agreements between Third Party and the Komen Affiliate regarding the subject matter hereof and constitutes the entire understanding and agreement of such parties with respect to the subject matter hereof. There are no agreements, understandings, representations or warranties between Third Party and the Komen Affiliate regarding the subject matter hereof other than those set forth herein.
16. **Assignment.** No party may assign, directly or indirectly, by operation of law, change of control or otherwise, this Agreement, or any rights or obligations hereunder, without the prior written consent of the other parties, which shall not to be unreasonably withheld. Any attempt to assign this Agreement in contravention of this Section 16 shall be void and of no force and effect.
17. **Notices.** Any notice hereunder shall be in writing and shall be effective (i) when personally delivered or when transmitted via facsimile with receipt confirmed; or (ii) the next business day following deposit with a reputable courier service for overnight delivery. All notices shall be forwarded to the address of each party listed on Page 1 of this Agreement.
18. **Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the state in which the Komen Affiliate is located ("State of Choice"). Any dispute arising out of or in connection with this Agreement that is not resolved under Section 12 shall be filed and heard in the state or federal courts of the State of Choice, and the parties consent to the exclusive jurisdiction of such courts.
19. **Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, each of which shall be considered an original instrument. Each counterpart will be considered a valid and binding original. Once signed, any reproduction of this Agreement made by reliable means (e.g., photocopy, facsimile) is considered an original.