

Where the venture is in the form of Commercial

on of retail sale of goods, the alternative, general
t should be used instead.

THIS COMMERCIAL
.....]

REEMENT is made the [] day of []

BETWEEN:

- (1) <<Name of the company>> [a company registered in England under number <<Company Number>> whose registered office is at] **OR** [of the company registered in England under number <<Company Number>> whose registered office is at] (the Commercial Participator”);
 - (2) <<Name of the company>> [a company registered in England under number <<Company Number>> whose registered office is at] **OR** [of the company registered in England under number <<Company Number>> whose registered office is at] <<Company Number>>] (the Charity”); and
 - (3) <<Name of the company>> [a company registered in England under number <<Company Number>> whose registered office is at] **OR** [of the company registered in England under number <<Company Number>> whose registered office is at] (the Trademark”);

WHEREAS:

- (1) The Commercial Participator has agreed to participate in the Promotional Venture detailed in the Schedule attached, and it is hereby agreed that the Commercial Participator shall operate in the Promotional Venture on the terms of this Agreement.
 - (2) The principal purposes of the Promotional Venture are to promote the awareness of the Charity via the Trading Company by the means of the Trading Company as set out in the Schedule. The types of Charitable Contributions to be made by the Trading Company for the benefit of the Charity via the Trading Company for the benefit of the Charity in which they are to be given or applied to are set out in the Schedule. The Trading Company shall be a charitable or benevolent body other than the Promotional Venture.
 - (3) The Commercial Participator shall not be a "commercial participator" in connection with the Promotional Venture as defined under the Charity Law [as amended by the Fundraising Regulator].
 - (4) This Agreement shall comply with Charity Law.
 - (5) The Charity shall not allow the Commercial Participator to exploit the Charity Logo and Charity Name for any purpose other than to promote the Charity.
 - (6) The Trading Company shall be governed by the Charity and covenants all of its activities to be carried out in accordance with the Charity Law and its taxable profits shall be distributed to the Charity.
 - (7) As charities are not permitted to trade, the commercial aspects set out in this Agreement shall be carried out by the Trading Company and to be dealt with by the Trading Company.
 - (8) The Charity shall not be required to enter into this Agreement since that is required by Charity Law and the Commercial Participator acknowledges that it is aware of and has no objection to the Charity entering into this Agreement.

1. Definitions

| | |
|---------------------------|---|
| "Agreement" | Agreement including its Schedule; |
| "Promotional Venture" | fundraising and awareness raising activity or to be carried on by the Commercial Participator as set out in the Schedule; |
| "Charitable Contribution" | any proceeds of the Promotional Venture raised by the Commercial Participator for and on behalf of the Charity or Charity Company; |
| "Charity Law" | the Charities Act 1992 (as amended by the Charities Act 2006 and the Charities (Protection and Social Investment) Act 2016), the Charitable Institutions (Regulations) Regulations 1994, and any additions or amendments thereto; |
| "Charity Logo" | the logo of the Charity [which is registered as a trademark no. <<insert number>> [of which the Charity is the registered proprietor] [the Intellectual Property rights in which are owned by the Charity] |
| "Charity Name" | the Charity's name[s]; |
| "Expiry Date" | the end of the Term or if sooner the date upon which the Promotional Venture will terminate in accordance with the provisions of this Agreement; |
| "Fundraising Scheme" | the Code of Fundraising Practice of the Fundraising Regulator; |
| "Intellectual Property" | intellectual property either belonging absolutely to the party or for which the party is entitled to use including any patent, patent application, know-how, trademark, trademark application, registered design, copyright, copyright application or other similar intellectual or commercial rights; |
| "Term" | the period of the Promotional Venture as described in the Agreement; |
| "Territory" | [England & Wales][the United Kingdom][<<define territory of the UK>>]; |
| "Written Statement" | <p>Written statement which complies with Charity Law and which indicates:-</p> <ul style="list-style-type: none"> the name of the Charity; and whichever one of the following sums is applicable in the circumstances: <ul style="list-style-type: none"> the [percentage] amount of the price paid for each product by consumers which will be given by the Commercial Participator to or applied for the benefit of the Charity; or the actual amount, or (if the actual amount is not known at the time when the statement is to be made) an estimate of the amount, of any [other] proceeds from the Promotional Venture undertaken by the Commercial Participator to be so given or applied; or the actual amount, or (if the actual amount is not known at the time when the statement is |

to be made), an estimate of the amount, of the donations to be given or applied by the Commercial Participant in connection with the sale or supply of each such product.

2. **Term of Promotion**

The Term of Promotion shall be for a period of <<number>> months from the date of the Agreement.

The Promotion will run from <<date>> [to <<date>>] [for <<number>> months] or until terminated by either party to any earlier termination under the terms of this Agreement.

3. **Responsibilities of the Commercial Participant**

The Commercial Participant shall:

3.1. Compliance with Charity Law

3.1 must ensure that contributions are to be given or applied for the purposes of a charity or benevolent body (namely the Charity). The Commercial Participant must accompany such contributions with a "Statement" as defined below;

of Charity Law applicable to it as a commercial entity, ensuring that contributions are to be given or applied for the purposes of a charity or benevolent body (namely the Charity). The Commercial Participant must accompany such contributions with a "Statement" as defined below;

3.2 will provide a copy of the Statement to the Trading Company in return for the rights to use the Statement;

AT to the Trading Company in return for the rights to use the Statement;

3.3 will provide a copy of the Statement to the Trading Company and keep the Trading Company informed of any publicity campaign [and any press activities]. All promotional material must incorporate the Charity [Name][and][Charity Logo]. The Charity [Name] and [Charity Logo] will, at all times, be accompanied by the number <<number>> (England & Wales). All promotional material must have the Trading Company's name and logo before it is produced;

ement and keep the Trading Company informed of any publicity campaign [and any press activities]. All promotional material must incorporate the Charity [Name][and][Charity Logo]. The Charity [Name] and [Charity Logo] will, at all times, be accompanied by the number <<number>> (England & Wales). All promotional material must have the Trading Company's name and logo before it is produced;

3.4 shall not promote or advertise the product via broadcast media, direct marketing, or outside the Territory, without the Trading Company's written consent;

or advertising or sale of the product via broadcast media, direct marketing, or outside the Territory, without the Trading Company's written consent;

3.5 shall ensure that the Statement is to be used [on the product and in promotional material];

ven from time to time by the Trading Company as to how the Statement is to be used [on the product and in promotional material];

3.6 will ensure that the Statement is used in accordance with the Scheme;

Scheme;

3.7 will, and ensure that the Commercial Participant will, protect vulnerable people from the behaviour referred to below by the Trading Company. The Trading Company will specify here how the Commercial Participant is to protect vulnerable people. This will depend on the nature of the Promotional Scheme;

Law, in the course of or in connection with the activities under this Agreement, protect vulnerable people from the behaviour referred to below by the Trading Company. The Trading Company will specify here how the Commercial Participant is to protect vulnerable people. This will depend on the nature of the Promotional Scheme;

The "Statement" shall:

3.7.1 not contain any information on a person's privacy;

on a person's privacy;

3.7.2 not contain any information on persistent approaches for the purpose of soliciting money or other property;

ersistent approaches for the purpose of soliciting money or other property;

3.7.3 not contain any information on a person to give money or other property;

on a person to give money or other property;

3.8 will provide the Trading Company with the necessary cooperation and assistance to enable the Trading Company to fulfil its duty under Charity Law to monitor the Commercial Participant's compliance with Sub-clauses 3.6 and 3.7 [..]; and

operation and assistance to enable the Trading Company to fulfil its duty under Charity Law to monitor the Commercial Participant's compliance with Sub-clauses 3.6 and 3.7 [..]; and

- 3.9 will not be subject to the Fundraising Regulator at all times during the Term
4. **Responsibilities of the Commercial Participant**
- The Trading Company
- 4.1 will agree a written statement with the Commercial Participant to ensure compliance with Charity Law concerning the content and use of the Written Statement
- 4.2 hereby grants to the Commercial Participant a non-exclusive, non-transferable licence to use the [Charity Name] [and] [Charity Logo] in the Territory on the material associated with the Promotional Venture and the Commercial Participant to represent itself as operating the Trading Company for the benefit of the Charity
- 4.3 will provide to the Commercial Participant to support the Promotional Venture, where possible, press contacts that will be of use to the Commercial Participant;
- 4.4 will ensure the Commercial Participant's compliance pursuant to Sub-clause 3.7 with the Commercial Participant's duty to provide information referred to in that Sub-clause. The Trading Company shall ensure compliance by the following means: <<specify here how the Trading Company to do so>>.
5. **Financial Provisions**
- The Commercial Participant makes to and covenants with the Trading Company to:-
- 5.1 pay to the Trading Company, without any deduction or set-off, as specified in Sub-clause 5.2 and the Written Statement Charitable Contributions;
- 5.2 notify the Trading Company of the amount of Charitable Contributions that have been received by the Commercial Participant no later than 14 days after the end of the Promotional Venture;
- 5.3 pay to the Trading Company the amount of Charitable Contributions plus VAT (as specified in the Written Statement) as soon as an invoice has been raised by the Trading Company and within 28 days after the date of invoice. It shall pay it: **EITHER** to the Trading Company's bank account as follows:
- [<<name of bank account of Trading Company>>]
Name of bank account of Trading Company>>
Account number of Trading Company>>
Payment reference of Trading Company>>
Sort code of Trading Company>>
OR
[by cheque payable to the Trading Company]; and
- 5.4 upon request of the Trading Company, provide a detailed statement of accounts of the Trading Company or property received by the Commercial Participant or otherwise falling to be given to or applied for the benefit of the Trading Company.

- benefit of the Charity.
6. **Obligations of the Trading Company**
- The Trading Company agrees with the Commercial Participator that it will donate all its taxable profits to the Charity for the period[s] to which this Agreement relates to the Charity.
7. **Obligations of the Commercial Participator**
- The Commercial Participator agrees to and covenants with the Trading Company to:-
- 7.1 The Commercial Participator shall at all times comply with any relevant provisions of Charity Law (in addition to the foregoing) make available to the Trading Company on request and at all reasonable times any books, records and documents (however kept) which relate to the Trading Company for the purpose of this Agreement;
- 7.2 The Commercial Participator shall work to attract Charitable Contributions;
- 7.3 The Commercial Participator shall promote the product throughout the Territory;
- 7.4 The Commercial Participator shall ensure the product is of good quality and to comply in all respects with applicable standards and shall contain the Written Statement;
- 7.5 **Inclusion of the product in the Promotion lasts more than a year** - [provide details of the duration of the sales of the product [monthly][quarterly];
- 7.6 **Inclusion of the product in the Promotion could be hazardous (e.g. electrical goods, etc.)** - The Commercial Participator shall obtain product liability insurance at all times in respect of the product for a sum in excess of £<<amount>>;
- 7.7 The Commercial Participator shall protect the benefit of the Charity the goodwill associated with the Charity's logo][and] [other Intellectual Property], and not allow the logo to go into disrepute; and
- 7.8 The Commercial Participator shall not be engaged in any commercial activity related to the activities of the Charity and not to be involved in any venture similar to the Promotional Venture within the Territory [England & Wales] <<define other parts/s of UK>> with the Commercial Participator during the Term or for a period of six months
8. **Confidentiality**
- 8.1 The Commercial Participator and its employees, agents and representatives shall not disclose or otherwise make use of or permit to be made use of, any information received from the Trading Company or the Charity in connection with the Commercial Participator's business affairs or the details of the information was received during the Term of this Agreement.
- 8.2 The Confidentiality obligations referred to in this clause shall not apply to any information which is:
- 8.2.1 Information which is already in the public domain or which has been published or is otherwise in the public domain or which has been disclosed by the Charity or the Trading Company;
- 8.2.2 Information which is available on a non-confidential basis through no fault of the Commercial Participator or the Trading Company; or

8.2.3 shall be removed by the Charity and/or the Trading Company from the Charity's website following a reasonable enquiry by the Charity or the Trading Company. The Commercial Participant shall have no obligations of confidence to the Charity or the Trading Company in respect of it and imposes no obligations of confidence on the Charity or the Trading Company; and

8.3 The Commercial Participant shall release this clause on the Charity and/or the Trading Company and shall release the Commercial Participant with the necessary changes to this clause.

9. Intellectual Property

9.1 In connection with the Trading Company disclosing the Charity's Intellectual Property to the Commercial Participant to use it for the purposes only of the Promotional Venture, the Commercial Participant agrees that:-

9.1.1 The Intellectual Property shall at all times be maintained in strict confidence by the Commercial Participant only in connection with the Promotional Venture;

9.1.2 The Intellectual Property being a valuable asset of the Charity, it will be the property of the Charity and shall not be assigned, sold, transferred or otherwise disposed of to any person for any reason or purpose without the prior written consent of the Trading Company as appropriate or otherwise in accordance with the Agreement;

9.1.3 The Commercial Participant shall not do any act or thing to be done in derogation of the Charity's Intellectual Property either during or after the Term;

9.1.4 The Commercial Participant shall not after the Term in any way dispute or impugn the validity of the [Logo][or][Name] or other Intellectual Property of the Charity or the Charity's right of the Charity thereto or any person whom the Charity may permit to use the same to use the Term and thereafter;

9.1.5 The Commercial Participant shall not on any website a hyperlink to the Charity's website without the Charity's consent which may be later revoked, in connection with the Promotional Venture the Commercial Participant shall procure that the hyperlink shall be removed within ten days of the Trading Company's instructions to do so;

9.1.6 After the Term it shall forthwith discontinue use of the [Logo][or][Name] and any other Intellectual Property of the Charity and shall not, directly or indirectly, thereafter operate or do anything which might tend to create the impression that it is in any way associated with the Charity or the Trading Company.

9.2 Where the Commercial Participant designs material for the Promotional Venture, the Commercial Participant will indemnify the Charity and the Trading Company for all loss, damages, claims, costs and expenses (including legal costs) in respect of any infringement of the Charity's or the Trading Company's or other proprietary rights of any third party in connection with the Promotional Venture or elsewhere.

9.3 In connection with the Commercial Participant disclosing its Intellectual Property to the Trading Company to use it for the purposes only of the Promotional Venture the Trading Company agrees that the Commercial Participant shall not assign, sell, transfer or otherwise dispose of its Intellectual Property rights in any materials produced by it in connection with the Promotional Venture, with the exception of the Charity's

[Name]

10. Data Protection

- 10.1 The Commercial Participator will be responsible for ensuring that any personal data that it may use will be collected, stored, and held in accordance with the provisions of the Data Protection Act 1998 (and data subjects' rights thereunder) and its Privacy Policy.
- 10.2 Commercial Participator's collection, processing, storage, and retention of personal data will be limited to the purpose(s) for which personal data is used, and the legal basis for using it, details of data subjects' rights and how to exercise them, and data sharing (where applicable), are set out in its Privacy Policy <<insert location>>.
- 10.3 The parties agree that the Commercial Participator is the data controller of the personal data as is referred to in Clause 10.1, and that it is bound by the provisions of this Agreement to, and that it will not:
- 10.3.1 share the data with either or both of the other parties; or
 - 10.3.2 use the data on behalf of either or both of the other parties.
- 10.4 For the purposes of the Data Protection Act 1998:
- 10.4.1 the Data Protection Act 1998, the Data Protection Regulations 2018, the Data Protection Act 2018, the EU law version of the General Data Protection Regulation (GDPR) (EU Directive 609/679) (the "UK GDPR"), as it forms part of the law of England, Wales, Scotland, and Northern Ireland by virtue of the European Union (Withdrawal) Act 2018; the Data Protection Act 2018 and regulations made thereunder; and the Privacy and Electronic Communications Regulations 2003 as amended; and
 - 10.4.2 the terms "data controller", "data processor", "process", and "data subject" shall have the meaning defined in Article 4 of the UK GDPR".

11. Termination

- 11.1 If either party breaches this Agreement, the other party may terminate this Agreement if:
- 11.1.1 the Commercial Participator fails to pay any sum due to the Trading Company within seven days after the due date for payment or fails to fulfil any other obligation of the Commercial Participator within the period of 30 days after written notice of breach has been delivered by the Trading Company to the Commercial Participator; or
 - 11.1.2 the Commercial Participator ceases or threatens to cease to carry on any business, or any composition or arrangement with, or any agreement for the benefit of, its creditors or purports to enter into any agreement with a receiver, administrative receiver, or administrator of its assets or, being an individual, becomes bankrupt or a bankruptcy petition is presented against him or, being a company, is insolvent, or passes any resolution to be wound up or a petition is presented against it; or
 - 11.1.3 the Commercial Participator attempts to assign this Agreement and/or any part of the Intellectual Property or the goodwill without the prior written consent of the Trading Company or attempts to assign, transfer, sub-licence or otherwise dispose of any part of the Intellectual Property or the goodwill.

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asserts any claim to any goodwill, reputation or the Charity's Intellectual Property; or

11.1. In the opinion of the Trading Company, the Charity's Commercial Participator is likely to damage the

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may (but without limiting the Charity's or the right to any other remedy) at its election terminate with upon giving written notice to the Commercial Participator such action either at law or in equity as it or they may see fit to protect its or their rights hereunder.

11.2 In the event of a default by the Commercial Participator in any of the circumstances in 11.1, the Trading Company shall be entitled to recover its expenses relative to the default.

11.3 **Inclusion of the Commercial Participator in the Promotion (2) with the Commercial Participator** The Commercial Participator shall not terminate this Agreement at any time by giving such notice of termination in writing, and where the Commercial Participator it shall also give such notice to the Trading Company.

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11.4 The Commercial Participator shall undertake to and covenants with the Trading Company that it will immediately cease carrying out the Promotion promptly:-

11.4.1 The Commercial Participator shall remove the Charity's [Name] [and] [Logo] and other Intellectual Property as may be required by the Trading Company;

11.4.2 The Commercial Participator shall deliver to the Trading Company all originals and copies of all documents in any form containing or covering in any way the Promotion [and] [Logo] and other Intellectual Property of the

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11.4.3 The Commercial Participator shall pay to the Trading Company without deduction or set-off all sums due

12. Indemnity

The Commercial Participator shall indemnify, respectively, the Trading Company and the Charity for all claims, demands, losses, damages, costs, liabilities and expenses incurred by, respectively, the Trading Company and the Charity (including reasonable legal costs and disbursements paid by either) either as a result of any breach of this Agreement or as a result of the Commercial Participator in relation to this Agreement or as a result of the Commercial Participator of any of the terms of this Agreement.

13. This Agreement is not a partnership

The parties agree that neither the Trading Company nor is the Commercial Participator entitled to act as nor bind the Charity or the Trading Company.

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14. Successors

This Agreement shall be for the benefit and only of benefit to successors in title and shall not bind the Commercial Participator but the Commercial Participator shall not assign or transfer any of its rights or obligations hereunder without the prior written consent of the Trading Company and the Charity.

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15. **Notices**

All notices w
connection v
may be sent
above or suc
notice given
Trading Com
email addres

and or may decide to give to any other under or in
be delivered by hand or by email to such party or
post addressed to such party at the address given
from time to time be given by any party by written
herein provided, or in the case of email to the
address] or to the Commercial Participator at [insert
insert email address].

16. **Waiver and**

No failure to
shall constit
performance
be a waiver

exercising any right or remedy under this Agreement
and no waiver by any party of any breach or non-
any provision of this Agreement shall be deemed to
of the same or any other provision hereof.

17. **Variation and**

This Agree
its subject
understandi
writing and s

understanding between the parties with respect to
cedes all prior discussions, agreements and
ation to this Agreement shall be valid unless in
each of the parties hereto.

18. **Law**

This Agree
and the part

y and construed in accordance with English law
the jurisdiction of the English courts.

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The Promotional V

the following:

The following notes

The charity will need

the details of its own particular promotional venture.

The details should c
intended to be exam

promotion in full; the following examples are not
of promotional ventures.

(1) **Examples of**

ures

These are ex
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product to th

ional ventures comprising use of a charity's name
ucts in return for payment by the supplier of the

(i) A cha
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give
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its name and logo to be used by a supplier of a
product to retail customers. The supplier agrees to
1p for every pack of the endorsed product sold.
ertisements and on the pack that 1p from the sale
will be donated to the charitable institution;

(ii) A cha
Chris
agree
cards
of the

a stationery retailer to use its name and logo on
r pays all the production costs of the cards and
institution 25% of its profits on total sales of the
that a proportion of the proceeds from the sales
e charitable institution;

(2) Examples of mail promotions (see clause 3.1 and 4.1)
These are typical examples of the type of agreement used will need to be adapted to suit the particular promotion in the schedule but it should be agreed in writing:

1. <<X %>> of the profit to be allocated to <<charity>>.
2. For each item sold <<charity>> to <<charity>>.
3. <<Company>> will allocate <<charity>> profits from this promotional venture to <<charity>>.
4. <<Company>> will allocate <<charity>> as a result of this promotion for the first <<YYY>> items sold <<charity>> for each additional item sold.

.....
Duly authorised signatory
for and on behalf of <<Commercial Participator>>

.....
Duly authorised signatory
for and on behalf of <<Company>>

.....
Duly authorised signatory
for and on behalf of <>