

**DINE OUT FOR THE CURE®
STANDARD TERMS AND CONDITIONS**

1. **Application.** The establishment named in the application on [website] ("Establishment") represents and warrants that the terms in the application are true and correct and agrees to comply with them.

2. **Term.** These terms and conditions (our "Agreement") will be in effect upon acceptance of Establishment's application and will terminate 30 days after the completion of its Dine Out for the Cure® event(s) ("Event"), except that Sections 5.B., 8, 9, 12, 13, 17 and 18 will forever survive termination of this Agreement.

3. **Payment of Monies.** Establishment will be responsible for handling all monies in connection with the Event and will be responsible for all collection costs and attorneys' fees incurred to collect any delinquent amounts due in connection therewith.

4. **Operations and Costs.** Establishment will be solely responsible for conducting the Event and for all operational aspects, 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.

5. **Intellectual Property.**

A. Susan G. Komen ("Komen") grants to Establishment a limited, non-exclusive license to use the Susan G. Komen name and signature logo, Dine out for the Cure® and certain copyrighted materials provided to Establishment by Komen (collectively, "Komen Intellectual Property") during the term of this Agreement for the sole purpose of promoting the Event. Event materials using the Komen Intellectual Property must state the exact dollar amount or percentage of retail sales that will be donated to Komen and must include appropriate attributions of Komen's ownership. Establishment is prohibited from modifying, transferring, sublicensing or assigning its rights to use the Komen Intellectual Property. Establishment agrees that all right, title and interest in and to the Komen Intellectual Property will inure to the sole benefit of Komen. Notwithstanding any provision above, the license granted in this Agreement for Establishment to use the Komen Intellectual Property will extend to each participating location of Establishment ("Participating Location"), provided that Establishment will require each Participating Location to comply with these terms and conditions. In the event of a breach of this Agreement by Establishment, Komen may require Establishment to immediately cease all uses of the Komen Intellectual Property.

B. Establishment grants to Komen a limited, non-exclusive license to use the Establishment name and logo in a fair and accurate manner for the sole purpose of acknowledging the Event. Nothing in this Agreement grants any further rights in Establishment's intellectual property. Furthermore, the Establishment hereby represents and warrants that the Komen may use the name and logo of each Participating Location (if different than the Establishment) for the sole purpose of acknowledging the Event.

6. **Promotion.** Establishment may promote the Event in the manner and to the extent agreed upon in advance with the Komen.

7. **Permission to Link.** As of the effective date of this Agreement, each of Komen and Establishment grants the other permission to provide a link from its website to the other party's website. Each party reserves the right to withdraw such permission at any time in the future, but any such withdrawal will not terminate or otherwise modify this Agreement. Upon termination of the Event or this Agreement, whichever is earlier, each party will have 14 days to remove the above-referenced link from its website.

8. **Compliance with Laws.**

A. Establishment 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 requirement, and will cause the Participating Locations to comply with all such laws. Establishment further agrees to file all appropriate registrations and post all necessary bonds, and obtain all permits, releases, consents, licenses and approvals, necessary for Establishment promoting and conducting the Event.

B. Establishment acknowledges 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 may cancel this Agreement in the state of New York by sending written notice of cancellation to Establishment at its address listed on the Application, 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 registration number in South Carolina is SC-1681.

9. **INDEMNITY. ESTABLISHMENT, ON BEHALF OF ITSELF AND EACH PARTICIPATING LOCATION LISTED ON THE APPLICATION, AGREES TO INDEMNIFY AND HOLD KOMEN HARMLESS FROM AND AGAINST ANY AND ALL COSTS, LOSSES OR EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES, THAT KOMEN MAY INCUR BY REASON OF (A) THE NEGLIGENCE OR INTENTIONAL MISCONDUCT OF THE ESTABLISHMENT OR A PARTICIPATING LOCATION 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 ESTABLISHMENT'S OR A PARTICIPATING LOCATION'S PERFORMANCE OR FAILURE TO PERFORM PURSUANT TO THIS AGREEMENT OR (II) ANY SERVICE OR PRODUCT SOLD OR PROVIDED BY THE ESTABLISHMENT OR A PARTICIPATING LOCATION IN CONNECTION WITH THE EVENT.**

10. **Insurance.** Establishment will maintain, during the term of this Agreement, commercial general liability insurance with combined limits of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate, which covers liability for bodily injury, property

damage, death and advertising injury (including reasonable attorneys' fees) arising in connection with the Event. Furthermore, in the event the Participating Locations are not insured by Establishment, Establishment will cause each Participating Location to maintain commercial general liability insurance in the amount of \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate, which covers liability for bodily injury, property damage, death and advertising injury (including reasonable attorneys' fees) arising in connection with the Event. Establishment and each Participating Location (if applicable) will name Komen as an Additional Insured on all insurance policies required under the terms of this Agreement solely with respect to the Event.

11. **Default and Early Termination.** If either Establishment or Komen 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 will 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, Komen will 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 will 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 publicly disclosed prior to the date of termination. In the event of an early termination due to a breach by Establishment, Komen will 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 may be applicable. The provisions of this Section 11 will 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 will 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 will be submitted to mediation in Dallas, Texas. Costs of mediation will be borne equally by the parties. Mediation of the dispute will 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 either party believes that immediate injunctive relief is required to protect its intellectual property, such party may invoke the immediate powers of the appropriate court of law without the requirement to first mediate the dispute.

13. **Audit Rights.** Establishment agrees to maintain, and will cause each Participating Location to maintain, accurate and complete financial records regarding the Event and to do so in accordance with applicable law and agrees that Komen may with 10 days' prior notice conduct an audit of such records during regular business hours at any time reasonably requested by Komen.

14. **Relationship of Parties.** Establishment and Komen 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; Severability.** This Agreement supersedes any prior understandings or oral agreements between Establishment and Komen 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 Establishment and Komen regarding the subject matter hereof other than those set forth herein. The finding by any court of competent jurisdiction that any provision of this Agreement or part thereof is unenforceable will not affect the enforceability of the remaining provisions of this Agreement.

16. **Assignment.** Establishment may not 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 Komen, which will not be unreasonably withheld. Any attempt to assign this Agreement in contravention of this Section 16 will be void and of no force and effect.

17. **Notices.** Any notice hereunder will be in writing and will 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; or (iii) five business days following deposit in the United States mail, postage prepaid, registered or certified. All notices will be forwarded to the address of each party listed on the Application.

18. **Governing Law and Venue.** This Agreement will be governed by and construed in accordance with the laws of the State of Texas. Any dispute arising out of or in connection with this Agreement that is not resolved under Section 12 will be filed and heard in the state or federal courts of the State of Texas, and the parties consent to the exclusive jurisdiction of such courts.

Comment [CA1]: No, they will not be able to create their own materials. We will have generic, pre-printed marketing items, they will be able to use. As of right now, we are also not allowing any co-branding of materials in this first phase of DOFTC. Since we are in a test and learn approach. Looking to see what sort of engagement/demand we are going to get.

Comment [LL2]: Need clarification on whether they can create their own materials and approval of those materials by Komen.