

TRIPARTITE AGREEMENT

**Agreement Between
Keech Hospice Care,
Keech Hospice Care (Trading) Ltd
And**

Agreement Dated:

BETWEEN

- 1) Keech Hospice Care (Supporting the Children's Hospice Service), a company limited by guarantee number: 2904446 and registered charity No: 1035089 whose registered office is at Great Bramingham Lane, Streatley, Nr Luton, Bedfordshire, LU3 3NT. (The "Charity")
- 2) Keech Hospice Care (Trading) Ltd, company number 06941924 whose registered office is at Great Bramingham Lane, Streatley, Nr Luton, Bedfordshire, LU3 3NT. (TC); and
- 3) (Commercial Participant) (CP)

BACKGROUND

- a) TC is wholly owned by the charity (and donates all its taxable profits to the charity under gift aid).
- b) The charity is the beneficial owner of the name, logo and data and has licensed TC to exploit them, in particular, to grant sub-licenses.
- c) CP is a commercial participant in relation to the charity as defined in Section 58 of the Act.
- d) This agreement is entered into to comply with the Act and the Regulations.

NOW IT IS AGREED as follows:

1. Definitions

In this agreement the following words and phrases shall have the following meanings, unless the context otherwise requires:

'the Act'	the Charities Act 1992
'data'	all lists of names and/or other details of supporters of the charity in whatever form supplied to or held by CP
'logo'	the logo of the charity, details of which appear in Schedule 1
'name'	Charity
'product'	The products/services details of which appear in Schedule 2
'regulations'	the Charitable Institutions (Fundraising) Regulations 1994
'royalty'	
'term'	the period of one year. On expiry of the first year, the contract becomes a rolling contract with one month's notice, notwithstanding any conditions below.
'territory'	United Kingdom of Great Britain and Northern Ireland

2. The purpose of the agreement is to raise funds for the charity via TC by allowingto use the Keech Hospice Care logo and name on their website, advertising materials and press articles. In exchange for this

3. Appointment of Sub-licensee

In consideration of the undertakings given by CP in this agreement, TC hereby appoints CP as its non-exclusive sub-licensee to use the name and logo on the product/service in the territory for the term on the terms of this agreement.

Obligations of CP

CP undertakes with the charity and TC that it shall:

- 4.1 not bring the name or the logo into disrepute in any way whatsoever and that none of its activities or those of any subsidiary or holding company are or will be inimical to the activities of the charity
- 4.2 promote the sales of the product/service throughout the territory to the best of its abilities
- 4.3 create and manage the design artwork, print and manufacture of the products and all advertising material relating thereto, but on condition that it shall obtain the prior written approval of TC (which approval shall not be unreasonably withheld or delayed) to all materials which bear the name and/or logo
- 4.4 be responsible for the production, promotion, marketing and distribution of the product and to that end may enter into such reasonable agreement as it shall think fit so as to fulfil its obligations under this agreement
- 4.5 ensure that the product shall be of good quality and comply in all respects with all relevant statutory standards and shall contain the statement:

.....

And shall not use the name and logo in any other manner whatsoever without the prior written approval of TC (which approval shall not be unreasonably withheld or delayed)

- 4.6 keep separate, legible and detailed books of account and records relating to the production, promotion and sales of the product/service and shall allow TC, its employees, agents and professional advisers to inspect, audit and take copies of any such books of account, VAT records, bank statements or other records of CP
- 4.7 promptly pay to TC any sums revealed as having been underpaid as a result of an inspection pursuant to 4.6

- 4.8 pay the reasonable professional costs of inspection under 4.6 in full if it has made an underpayment of at least 10% of the sums due
- 4.9 provide details to TC of the sales of the product quarterly and of the royalty paid/due.
- 4.10 arrange that the statements of royalty prepared under this agreement are audited by its auditors and that a copy of such certificate is promptly given to the TC
- 4.11 keeps confidential all data disclosed to it by TC and to use it only for the purpose of this agreement and on termination of this agreement (for whatever reason) to hand over promptly all copies of the data to TC
- 4.12 abide at all times with Part II of the Charities Act 1992 and the Data Protection Act 1984 and, in particular, will state on all notices, advertisements and other documents soliciting funds for the charity the fact that the charity is a registered charity and the charity's registered charity number

5. The Royalty

- 5.1 CP shall pay to TC the royalty yearly/quarterly plus VAT. The first payment will be due on the and as a yearly payment thereafter as defined in Section 348 (1) income and Corporation Taxes Act 1988
- 5.2 prior to the payment of an instalment of royalty, CP shall advise TC of the amount due and TC shall promptly render a VAT invoice to CP in respect of the instalment
- 5.3 TC undertakes with CP that it will donate all its taxable profits for the financial period(s) to which this agreement relates to the charity

6. Termination

- 6.1 TC shall be entitled to terminate this agreement forthwith if:
 - (i) CP fails to pay any sum due to TC after the due date and TC has given CP 30 days written notice requiring it to pay and CP has failed to pay in the 30 day period
 - (ii) CP does anything which in the reasonable opinion of TC or the charity brings or in the opinion of TC or the charity is reasonably likely to bring the name or logo or reputation of either TC or the charity into disrepute
 - (iii) A resolution is passed for the voluntary or compulsory liquidation of CP or a receiver is appointed over all or part of its business or if CP as an individual has a bankruptcy petition presented against him or her
- 6.2 if TC terminates this agreement under 6.1 CP will no longer be authorised to use the name and logo and the data, and will cease immediately the distribution and sale of all existing products bearing the name and logo and cease to use the data

6.3 subject to TC's right to terminate under 6.1 this agreement shall last for the term. On termination under this sub-clause CP shall have the right to sell all existing products bearing the name and logo and use the data until such product has been sold and for no other purpose as if termination had not taken place and it shall account to TC for all royalty payments in respect of such sales in accordance with this agreement and the rights of TC and the charity under this agreement shall continue during that period

6.4 notwithstanding termination of this agreement clauses 4,5 and 7 shall survive termination.

7. Indemnity

7.1 CP agrees to indemnify TC and the charity in respect of any costs, claims, loss or liability whatsoever suffered by TC or the charity (including reasonable legal costs and disbursements paid by either) as a result of any breach by CP of any of the terms of this agreement

8. Confidentiality

TC and charity agree to treat as secret and confidential and not at any time for any reason to disclose or permit to be disclosed to any person or persons or to otherwise make use of or permit to be made use of any information relating to CP's business affairs or finances where knowledge or details of the information was received during the period of this agreement.

The obligations of confidence referred to in this clause shall not apply to any confidential information which:

8.1 is in the possession of and is at the free disposal of the TC or the charity or is published or is otherwise in the public domain prior to the receipt of such information by the charity or the TC; or

8.2 is or becomes publicly available on a non-confidential basis through no fault of TC or charity; or

8.3 is received in good faith by TC and/or charity from a third party who on reasonable enquiry by TC or charity claims to have no obligations of confidence to the CP in respect of it and impose no obligations of confidence upon TC or charity

8.4 the obligations imposed by this clause on TC and the charity shall apply mutatis mutandis to CP

9. General

- 9.1 this agreement is personal as between the parties and CP can only assign the benefit of this agreement with charity's and TC's prior written consent, but CP may appoint sub-licensees provided that it has obtained charity's and TC's prior written consent to the granting of a sub-licence (not to be unreasonably withheld or delayed) and CP shall remain liable for all its obligations hereunder as if it had not appointed a sub-licensee
- 9.2 no amendment or addition to this agreement shall be made unless made in writing and executed by the parties
- 9.3 the parties are not partners nor joint venturers nor is CP entitled to act as nor represent itself as agent for TC or the charity, nor to pledge the TC's or charity's credit
- 9.4 neither party shall be liable for any breach of any term of this agreement that is the result of any clause beyond the reasonable control of the party in breach
- 9.5 this agreement shall be governed by the laws of England and Wales
- 9.6 any notice to be served on any of the parties shall be sent by pre-paid recorded delivery or registered post or by telex or facsimile transmission to the address above (or such other address may be advised from time to time) and shall be deemed to have been received within 72 hours of posting or 24 hours if sent by telex or facsimile transmission to the correct number of the addressee
- 9.7 The TC agrees to not engage in a similar agreement with any other small courier service for the duration of this agreement. Note the use of wording to small courier as CP is happy for us to create deals with larger courier firms.

AS WITNESS the hands of the parties

Schedule 1

Details of the logo: The logo is that of Keech Hospice Care. It has the shapes of two hearts, one larger purple heart and one smaller light blue heart, which overlaps the purple heart. To the right of the hearts are the words Keech Hospice Care in black. CP will also use the words 'For Children' when using the logo.

Schedule 2

Details of the product:

SIGNED by Mike Keel
for and on behalf of the
Trading Company

SIGNED by Jacqui Shepherd
For and on behalf
of the Charity

SIGNED by
For and on behalf of the
Commercial Participator