



Third Party Charitable Sales Promotion and Licensing Agreement Master Terms and Conditions

The following Master Terms and Conditions govern all Third Party Charitable Sales Promotion and Licensing activities and become part of all Third Party Charitable Sales Promotion and Licensing Agreements between Brown Girls Do, Inc. ("BGD") and the Company or entity (collectively "Company") which is a party to any such Third Party Charitable Sales Promotion and Licensing Agreement(s). Capitalized terms used in these Master Terms and Conditions shall have the meaning defined in the associated Third Party Charitable Sales Promotion and Licensing Agreement between BGD and the Company. Hereinafter, these Master Terms and Conditions and the associated Third Party Charitable Sales Promotion and Licensing Agreement shall be referred to collectively as the "Agreement."

1. Proprietary Rights, Ownership, and Use of BGD Intellectual Property.

(A) Company acknowledges and agrees that all right, title and interest to BGD's trademarks, service marks, trade dress, tradenames, copyrighted works, information of any kind, digital assets, and any other BGD intellectual property belongs to and remains solely the property of BGD. Subject to the terms and conditions of the Agreement, BGD hereby grants to Company the limited non-exclusive, nontransferable, nonassignable, revocable right and license to use the BGD name and logo/logos indicated on the BGD Exhibit to the associated Third Party Charitable Sales Promotion and Licensing Agreement (collectively, the "BGD Marks") solely in connection with the terms of the Agreement. All rights and licenses of any kind in the BGD Marks not expressly granted in the Agreement are exclusively reserved to BGD. Company agrees to use the BGD Marks only in accordance with BGD logo policy and such other reasonable instructions as may be given by BGD in writing pursuant to Section 3 of these Master Terms and Conditions. The BGD Marks shall not be altered or modified in any way whatsoever when used by Company other than as may be mutually agreed upon in writing by the parties hereto. Company acknowledges that all use of the BGD Marks and any other BGD marks inures to the benefit of BGD. Company shall include the registration notice "®" where appropriate on all marks and other materials related to BGD and shall use the name Brown Girls Do in connection with all use of the words related to the Promotion defined in the Agreement.

(B) In order to protect the BGD Marks, reputation, and established goodwill of BGD, Company must obtain prior written approval for each and every use of the BGD Marks and the BGD name including, but not limited to its use on any packaging, Web pages, audio, video, script, print advertising, promotional and marketing materials, press releases, celebrity endorsements, celebrity testimonials or other related materials (collectively, the "Promotional Materials") regardless of the medium. Such approvals will be provided in accordance with Section 3 of these Master Terms and Conditions. Company represents and warrants that it will not use or allow others to use the BGD Marks, the BGD name and other BGD intellectual property without the prior written approval of BGD.

(C) BGD warrants that it has the exclusive ownership rights to the BGD Marks and that it has the legal right to enter into agreements relating thereto. In the event of any infringement or improper use of the BGD Marks, BGD represents that it will vigorously protect its interests. Company and BGD mutually agree to cooperate with each other in the protection of each party's intellectual property rights as they relate to the Promotion and the Agreement.

2. **No Endorsement.** BGD does not and will not endorse or promote any of Company's products or services. Further, Company agrees that it will not use the BGD Marks nor make any statements in any way that would imply endorsement of Company or demean, defame, embarrass, diminish or cause any harm to BGD. BGD's name and the BGD Marks may not be listed on any of Company's Promotional Materials or client lists without BGD's prior written approval pursuant to the terms of the Agreement.

3. **Approvals.** Unless otherwise agreed in writing, BGD shall have at least ten (10) business days from the date of receipt to review and approve all use of the BGD Marks and all Promotional Materials, and such approval shall not be unreasonably withheld. A fax or an e-mail shall be deemed a "writing" for the purposes of such approval. All Promotional Materials shall be directed to, unless otherwise directed by BGD, Director, Cause-Related Marketing, for approval. In addition, the final copy of all Promotional Materials shall be provided to BGD at least five (5) business days prior to public distribution.

4. **Termination.** BGD reserves the unconditional right to terminate the Agreement upon thirty (30) days written notice to Company. Additionally, BGD has the right to terminate the Agreement for purposes of any charitable sales promotion directed to New York residents, upon fifteen days notice following the date upon which the Agreement is filed with the Texas Attorney General. Notices of termination shall be sent to Company at the address and to the attention of the contacts set forth in the Notice Section of the Agreement, with a duplicate copy to the State of Texas, Attorney General PO Box 12548 Austin, TX 78711-2548

5. In the event of termination, Company shall immediately cease production of the Product or provision of the service with the BGD Marks and will cease to use the BGD Marks in its Promotional

Materials and shall immediately discontinue references in any manner to its relationship with BGD. Company shall make commercially reasonable efforts to recall and destroy all Promotional Materials from Company's facilities, its affiliates' facilities and participating retail locations, e-mail database and website. In the event of termination, any year-end cumulative or final financial report required to be sent by Company to BGD shall be sent on or before thirty days from the effective termination date of the Agreement and shall be cumulative from the date of execution of the Agreement to the date of the effective termination. In the event sales of Product involving in any way the name of BGD are made following termination of the Agreement, Company shall pay BGD royalty fees in accordance with the terms of the Agreement and shall provide financial reports in accordance with the terms of the Agreement.

6. Confidentiality.

(A) BGD Confidential Information. Company understands and agrees that BGD is engaged in activities which make it crucial for BGD to develop and retain trade secrets, donor lists, proprietary techniques, information regarding its employees, donors, volunteers and recipients of BGD Services ("**Constituents**") including personal health information and other confidential information and acknowledges that Company may develop and learn such information in the course of this Agreement. Company covenants and agrees with BGD that it shall protect all BGD Confidential Information (as defined below) at all times, both during and after the Term, and shall not disclose to any Person, (as defined below) or otherwise use, except in connection with its duties performed in accordance with this Agreement, any BGD Confidential Information. For purposes of this Agreement, "**BGD Confidential Information**" shall include both "**BGD Confidential Personal Information**" and "**BGD Confidential Business Information**." As used in this Agreement, BGD Confidential Personal Information is defined as any information that directly or indirectly identifies or relates to an identified or identifiable natural person. BGD Confidential Personal Information includes: name, location information, telephone number, online identifier, password, financial information, account number, identification number, personal health information, and/or one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that person, that Company or any party acting on Company's behalf has access to in connection with its engagement with BGD. BGD Confidential Business Information is defined as any and all technical, business and other information of BGD or any affiliate of BGD which derives value, economic or otherwise, actual or potential, from not being generally known to the public or other Persons who can obtain value from its use or disclosure (other than the party disclosing such information and its affiliates), including without limitation, technical or nontechnical data, compositions, devices, methods, techniques, drawings, inventions, processes, financial data, financial plans, product plans, donor lists, lists of or information concerning actual or potential donors or suppliers, and information regarding the

strategies, business plans or operations, methods and plans of operation and marketing strategies of BGD or any affiliate of BGD. BGD Confidential Information includes information disclosed or owned by third parties (including information of any affiliate of BGD) that is treated by BGD as confidential or that BGD is required to treat as confidential, whether such obligation is contractual or arises by operation of law. For purposes of this Agreement, BGD Confidential Information shall not include confidential business information that does not constitute a trade secret under applicable law after the third anniversary of the termination of this Agreement, but such information will remain subject to any other limitation of use or disclosure under any other agreement, applicable law or otherwise; **provided, further**, that such obligation shall continue with respect to confidential business information that constitutes a trade secret for so long as it remains a trade secret under applicable law, and shall continue indefinitely with respect to personal health information of Constituents. In addition, under no circumstance shall Company provide BGD Confidential Information or any information associated with this Agreement to any political candidate or party that could be used in support of or opposition to any political candidate or party. As used in this Agreement, "**Person**" means any individual, corporation, limited liability company or partnership, bank, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or other entity.

(B) Exceptions. The obligations of Section 5B shall not apply to any BGD Confidential Business Information that is or comes into the public domain through no fault of Company, and shall not apply to any BGD Confidential Information that is either rightfully in the possession of Company in written form as of the Effective Date hereof or hereafter independently developed by Company without reference to any BGD Confidential Information or that is required to be disclosed by order of a court or tribunal of competent jurisdiction or by any law.

(C) Company requirements for BGD Confidential Personal Information. In addition to any specific privacy or security requirements identified in any addendum or attachment to this agreement, Company agrees to the following: (i) Company agrees to process BGD Confidential Personal Information only on BGD' documented instructions; (ii) Company agrees to implement appropriate technical and organizational measures to ensure a level of security appropriate to protect BGD Confidential Personal Information; (iii) Company agrees that all staff who have access to BGD Confidential Personal Information must have committed themselves to maintaining the confidentiality of such information or are under a statutory obligation of confidentiality; (iv) Company agrees to engage a sub-contractor for the handling/processing/storage of BGD Confidential Personal Information only with the prior permission of BGD, and Company agrees that where a sub-contractor is approved, the contract between Company and the sub-contractor must reflect the data protection obligations set out in this Agreement and any addenda

thereto; (v) Company agrees to assist BGD in carrying out its obligations with regard to requests by individuals to exercise their rights under relevant data privacy laws, as applicable; (vi) Company agrees to notify BGD within 24 hours after becoming aware of a breach involving BGD Confidential Personal Information and agrees to cooperate with BGD in providing information necessary for BGD to carry out its data security obligations under relevant law.

7. **Compliance with Laws.** The charitable sales promotion evidenced by the Agreement may be subject to the provisions of charitable sales promotion laws in various states, including without limitation, Texas, Georgia, New York, New Jersey, California, Oklahoma, Illinois and Louisiana. Company agrees to comply with the laws and regulations applicable to the Promotion.

8. Indemnification.

(A) Company agrees to indemnify, defend and hold BGD and all its affiliates, successors and assigns and their respective employees, officers, directors, agents, volunteers, donors and Constituents harmless from all claims, actions, suits, proceedings, investigations, arbitrations, assessments, losses, damages, liabilities, settlements, penalties, costs and expenses, including reasonable attorney fees and those fees of in-house counsel, based upon the salary, proportion of benefits and time of such in-house counsel, and other expenses of litigation (collectively, "Claims"), arising out of or resulting in whole or in part from (1) any act or omission by Company constituting breach by Company of its representations, obligations or warranties under the Agreement or constituting negligence or intentional misconduct; (2) any infringement misappropriation, or misuse of trademark, patent, copyright, trade name, service marks, trade secret or other intellectual property rights of BGD or any other third party; and (3) any claim or action by any third party for bodily injury, illness, or death and damage to property alleged to have been caused, in whole or in part, by any Company service, merchandise or Product.

(B) BGD agrees to indemnify, defend and hold Company and all its affiliates, successors and assigns and their respective employees, officers, directors and agents harmless from all Claims incurred by Company arising out of (1) any act or omission of BGD constituting negligence or intentional misconduct; (2) any misrepresentation or breach of warranties made by BGD in the Agreement; and (3) Company's use, in a manner approved by BGD, of any intellectual property in which BGD claims ownership.

(C) The party seeking indemnification pursuant to the Agreement ("Indemnitee") shall promptly give the other party notice of any Claim for which indemnification is required hereunder and afford the other party the opportunity to defend any such event. The party obligated to provide the indemnification ("Indemnitor") shall, at its own expense

and through counsel of its own choosing, defend or otherwise contest any such Claim for which indemnification is required pursuant to the Agreement.

(D) The Indemnitee shall also have the right, but not the obligation, to participate at its own expense in the defense thereof with counsel of its own choice, and the parties agree to coordinate their efforts. If the Indemnitor fails, within thirty (30) days of receipt of notice of any such claim, action, suit, proceeding, investigation, or arbitration for which indemnification is required, to notify the Indemnitee of its intent to defend, contest, or otherwise protect against such event, the Indemnitee shall have the right to defend, settle and satisfy any such event and recover the costs of the same from the Indemnitor.

(E) Company shall apprise BGD as soon as practicable of any infringement of the BGD Marks, which comes to the attention of Company. BGD shall prosecute and defend any action or proceeding which BGD deems necessary or desirable to protect the BGD Marks, including but not limited to actions or proceedings involving infringement of the BGD Marks. In addition, Company shall notify BGD of all confusingly similar uses of the BGD Marks by third parties. Any and all damages recovered in any action or proceeding commenced by BGD shall belong solely and exclusively to BGD.

9. **Insurance.** Prior to commencing activity under the Agreement, Company shall obtain, and thereafter maintain, commercial general liability insurance (including product and contractual liability insurance in an occurrence form), providing adequate protection for BGD as an additional insured on Company's policy from and against

any and all Claims, resulting from or in connection with any of the circumstances described in Section 7(A) of the Agreement. Such insurance policy shall not be canceled or materially changed in form without at least thirty (30) days prior written notice to BGD. Company agrees that such insurance policy or policies shall provide coverage of at least Five Million Dollars (\$5,000,000) for personal, advertising, property damage and bodily injury and contractual liability arising out of each occurrence, and not less than Ten Million Dollars (\$10,000,000) for aggregate claims during a twelve (12) month period or Company's standard insurance policy limits, whichever is greater. However, recognizing that the aforesaid amounts may be inappropriate with regard to specific situations, it is contemplated that BGD may make reasonable adjustments to the foregoing amounts. Any adjustment must be confirmed in writing by BGD's Risk Management Director. Company shall provide BGD with a copy of a Certificate of Insurance evidencing such insurance within ten (10) days following execution of the Agreement.

10. **Entire Agreement; Amendment.** The Agreement represents the entire agreement between the parties on this matter and supersedes any and all prior understandings, agreements, representations or undertakings. The Agreement is not subject to amendment, change or modification except by written agreement signed by duly authorized representatives of both parties. Any amendments to the Agreement shall specifically refer to the Agreement.

11. **Severability.** The covenants set forth in the Agreement shall be considered and construed as separate and independent covenants. Should any part or provision of any covenant be held invalid, void or unenforceable in any court of competent jurisdiction, such invalidity, voidness or unenforceability shall not render invalid, void or unenforceable any other part or provision of the Agreement.

12. **Applicable Law and Jurisdiction.** THE AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS WITHOUT REGARD TO THE CONFLICT OF LAWS PROVISIONS THEREOF. THE STATE AND FEDERAL COURTS LOCATED IN DALLAS COUNTY, TEXAS SHALL HAVE EXCLUSIVE JURISDICTION FOR THE PURPOSES OF ADJUDICATING DISPUTES UNDER THE AGREEMENT. THE PARTIES HEREBY WAIVE ALL OBJECTIONS TO VENUE AND PERSONAL JURISDICTION IN THESE FORUMS FOR SUCH DISPUTES, AND AGREE THAT SERVICE OF PROCESS MAY BE MADE BY CERTIFIED MAIL ADDRESSED TO THE COMPANY'S NAME AND ADDRESS GIVEN IN THE FIRST PARAGRAPH OF THE AGREEMENT, TO THE ATTENTION OF THE PERSON(S) SIGNING BELOW. THESE CONTACT PERSON(S) OR ADDRESS(ES) MAY BE AMENDED PURSUANT TO THE NOTICE PROCEDURE OF THE INDIVIDUAL AGREEMENT BETWEEN BGD AND COMPANY.

13. **Assignment; Successors and Assigns.** The Agreement is being entered into in reliance upon and in consideration of the qualifications of Company. Company may not assign, transfer, delegate or subcontract any of its rights or obligations under the Agreement without the express written consent of BGD, which may be withheld by BGD in its sole discretion. A merger or change in control of Company shall constitute an assignment. Any purported assignment or delegation in violation of this Section shall be null and void. The Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, personal representatives, successors and permitted assigns.

14. **Construction.** The captions and section headings used in the Agreement are for convenience of reference only and shall not affect the construction or interpretation of the Agreement or any of the provisions thereof. Each party signing the Agreement acknowledges that it has had the opportunity to review the Agreement with legal counsel of its choice, and there shall be no presumption that ambiguities shall be construed or interpreted against the drafter.

15. **Non-exclusivity.** The Agreement is a non-exclusive agreement which preserves the right of BGD to contract with other companies for similar and related promotions.

16. **No Third Party Beneficiaries.** The Agreement inures to the benefit of Company and BGD only, and no third party shall enjoy the benefits of the Agreement nor shall have any rights under it except as is expressly provided in the Agreement.

17. **Force Majeure.** Neither Company nor BGD shall be deemed to be in default of any provision of the Agreement for failures in performance resulting from acts or events beyond its reasonable control (a "Force Majeure Event") for the duration of the Force Majeure Event. Such Force Majeure Events shall include, but not be limited to, acts of God, civil or military authority, terrorists, civil disturbance, war, strikes, fires, other catastrophes, labor disputes, parts shortages, or other events beyond Company's or BGD's reasonable control.

18. **Conflicts of Interest.** Company represents and warrants to BGD that, to the best of Company's knowledge, none of Company's employees, officers or majority owners is employed by or serve on the Board of Directors of Brown Girls Do, Inc.

19. **Survival.** Section 5 (Confidentiality), Section 7 (Indemnification) and Section 12 (Applicable Law and Jurisdiction) of these Master Terms and Conditions, Section 4 (Books, Records and Reports) of the applicable Third Party Charitable Sales Promotion and Licensing Agreement and all representations and warranties contained in the Agreement shall survive the termination or the expiration of the Agreement.

20. **Waiver and Breach.** The waiver by either party of any default or breach of the Agreement shall not constitute a waiver of any other default or breach, or subsequent default or breach.

21. **Independent Contractors.** Company and BGD are independent contractors. Nothing in the Agreement is intended by the parties

hereto to create a fiduciary relationship between them, nor to constitute one party as agent, legal representative, subsidiary, franchisee, joint venturer, partner, employee or servant of the other party for any purpose whatsoever.