

**SUSAN G. KOMEN FOR THE CURE**  
**AFFILIATION AGREEMENT**

AFFILIATION AGREEMENT WITH THE **[AFFILIATE DBA NAME]**

This Affiliation Agreement (“Affiliation Agreement”) is made and entered into effective as of the 1st day of April, 2010 by and between The Susan G. Komen Breast Cancer Foundation, Inc. d/b/a Susan G. Komen for the Cure, a 501(c)(3) Texas non-profit corporation with its principal place of business at 5005 LBJ Freeway, Suite 250, Dallas, Texas 75244 (“Headquarters”), and the **[AFFILIATE CORPORATE NAME]** d/b/a **[AFFILIATE DBA NAME]**, incorporated as a non-profit corporation in the State of **[STATE OF INCORPORATION]**, and located at **[AFFILIATE PHYSICAL ADDRESS]** (the “Affiliate” and together with Headquarters and all other affiliates of Headquarters located in the United States are collectively referred to herein as the “Komen Organization”).

**RECITALS**

WHEREAS, the Komen Organization was founded on the promise to end breast cancer forever (the “Promise”), that is, to save lives and end breast cancer forever by empowering people, ensuring quality of care for all and energizing science to find the cures;

WHEREAS, this Affiliation Agreement is a binding commitment by Headquarters and the Affiliate to approach the Promise in a unified and supportive manner, respectful of each other’s roles and each other’s strengths;

WHEREAS, the Affiliate desires a revocable charter as an affiliate of Headquarters for the sole purpose of furthering the Promise in the Service Area and supporting and promoting the related strategic initiatives developed collaboratively by Headquarters and Affiliate;

WHEREAS, Headquarters desires to grant a revocable charter to Affiliate to be an Affiliate of Headquarters;

NOW, THEREFORE, in consideration of the premises and mutual promises hereinafter set forth, Affiliate and Headquarters mutually agree as follows:

**1. Term.**

1.1. The term of this Affiliation Agreement begins on April 1, 2010 and ends on March 31, \_\_\_\_\_, unless terminated earlier as set forth in Section 9.

## **2. Application for Affiliation.**

2.1. The Affiliate is a separately incorporated non-profit corporation that desires to become or remain an affiliate of Headquarters for the sole purpose of furthering the Promise in the Service Area and supporting and promoting the related strategic initiatives developed collaboratively by Headquarters and Affiliate.

2.2. The Affiliate has applied to Headquarters for recognition as a Komen Organization affiliate. Headquarters' Board of Directors has approved such recognition as an affiliate for the term and under the specific terms and conditions of this Affiliation Agreement.

## **3. Grant of Affiliate Charter; Service Area.**

3.1. Headquarters hereby grants to the Affiliate a revocable charter as an affiliate ("Affiliate Charter") of the Komen Organization in the defined Service Area as set forth in Exhibit A attached hereto. Service Area is defined as that specific geographic region within which the Affiliate will conduct its Community Profile and all its programs, activities, fund raising, grants and operations. A Community Profile is defined as a profile of demographics of the Service Area, breast cancer statistics, an assessment of current services for breast cancer screening and treatment in the Service Area and a survey of the community's attitudes about breast cancer. The Affiliate shall conduct its Community Profile, programs, activities, fund raising, grants and operations exclusively within the boundaries of the Service Area and shall endeavor to do so throughout the entire Service Area. The Affiliate may conduct business outside of its Service Area subject to the terms and conditions of the Affiliate Policies or with prior written approval from Headquarters. The Affiliate may only expand or amend its Service Area with prior approval from Headquarters. The "Affiliate Policies" are those policies promulgated by Headquarters as listed on Exhibit B attached hereto, as such policies may be amended from time to time in Headquarters' sole discretion. The parties hereto acknowledge and agree that each of the Affiliate Policies is incorporated herein by reference and shall form a part of this Affiliation Agreement.

3.2. Headquarters hereby grants a revocable non-exclusive license to the Affiliate to identify itself as an affiliate of the Komen Organization, and to raise funds, conduct programs, and provide services in the name of the Komen Organization in furtherance of the Promise and in accordance with this Affiliation Agreement and the Affiliate Policies.

## **4. Duties of Headquarters.**

4.1. Headquarters will provide, to the extent reasonably practical (as determined in its sole discretion), support, assistance, direction, guidance, resources and training to the Affiliate to facilitate and support the Promise and the Affiliate's compliance with the responsibilities and obligations set forth herein and in the Affiliate Policies.

4.2. Provided that the Affiliate is in compliance with this Affiliation Agreement and the Affiliate Policies and is otherwise qualified, at all times during the term of this Affiliation Agreement, as an organization exempt from federal taxation under Internal Revenue Code § 501(c)(3) and such other requirements as may be imposed by law, Affiliate shall be entitled to use the group tax exemption obtained by Headquarters from the Internal Revenue Service.

4.3. Headquarters shall prepare and deliver to Affiliate current versions of the Affiliate Policies, model bylaws and certificate of incorporation, and such other documents, including various training and educational guides, as are reasonably necessary for the functioning of the Affiliate as required by this Affiliation Agreement and the Affiliate Policies.

4.4. Headquarters shall distribute a fundraising revenue sharing policy to the Komen Organization. This policy shall outline (i) the responsibilities of the Affiliates and Headquarters with respect to selected fund raising programs; and (ii) how funds raised in connection with such programs are to be allocated between Headquarters and the Affiliates.

4.5. Headquarters shall use reasonable good faith efforts to solicit affiliate input into the development and updating of the Affiliate Policies and other matters related to affiliate operations and activities.

4.6. Headquarters will take all steps it deems reasonably necessary to preserve and protect its ownership in and validity of the Komen Organization's Marks (as defined in Section 8.1).

## **5. Duties of Affiliate.**

### **General**

5.1. At all times, the Affiliate shall, and shall cause its officers, directors, employees, agents, committee members and volunteers to, comply with the terms of this Affiliation Agreement and the Affiliate Policies promulgated by Headquarters. The Affiliate acknowledges that such Affiliate Policies may be changed by Headquarters from time to time in the sole discretion of Headquarters. The Affiliate agrees to abide by any such changes.

5.2. The Affiliate shall adopt and maintain a certificate of incorporation and bylaws substantially the same as the promulgated Komen Organization model certificate of incorporation and bylaws, and shall have on file with Headquarters a copy of its then current certificate of incorporation and bylaws at all times. The Affiliate agrees to update and amend its certificate of incorporation and bylaws in accordance with changes proposed by Headquarters. Except as required to conform to changes proposed by Headquarters, the Affiliate's certificate of incorporation and bylaws cannot be amended without the consent of Headquarters.

5.3. The Affiliate shall not discriminate against any person on the basis of race, ethnicity, religion, color, national origin, gender, genetics, age, sexual orientation, disability, or any other non-

merit criteria, except that for valid scientific or medical reasons, the Affiliate may focus mission programs on specific segments of the population.

5.4. At all times, the Affiliate shall comply with all applicable local, state, and federal laws.

5.5. The Affiliate cannot and shall not attempt to legally bind Headquarters to any agreement without Headquarters' prior express written consent.

## **6. Finances/Tax/Insurance.**

6.1 The Affiliate shall conduct all of its activities and operations in such a manner as to qualify, at all times, as (1) an organization exempt from federal taxation under Internal Revenue Code §501(c)(3) and (2) a "subordinate" organization eligible to be included as part of Headquarters' group tax exemption under Headquarters' group exemption ruling and to file under Headquarters' group tax return.

6.2. The Affiliate shall strictly comply with all requirements pertaining to insurance as set forth in the Affiliate Policies.

6.3. The Affiliate shall submit a year-end financial report to Headquarters as set forth in the Affiliate Policies.

6.4. The Affiliate shall submit a year-end report with a complete listing of all of its legislative and lobbying activities and expenditures, which are permissible under Internal Revenue Code Section 501(h).

6.5. In the event that the Affiliate exceeds the fund balance limitations contained in the Affiliate Policies for a period of twenty-four (24) months or more, the excess fund balance shall be immediately due and payable to Headquarters, which shall direct the use of such funds, with preference to use in the Affiliate's Service Area.

6.6 Each Affiliate may be required to execute a Limited Power of Attorney provided by Headquarters that (i) authorizes Headquarters to file on behalf of the Affiliate any and all documents necessary to maintain the Affiliate's tax exempt status and corporate standing, including, but not limited to, federal state, and local tax returns, state information filings and other necessary registrations necessary for the Affiliate to conduct its business in furtherance of the Promise; (ii) grants Headquarters the power to manage and perform financial conduct on behalf of the Affiliate; and (iii) permits Headquarters to take any other action in the name of the Affiliate as specifically provided in the Limited Power of Attorney.

6.7 Headquarters shall appoint each Affiliate's agent for service of process and Affiliate shall not modify such agent without the prior express written consent of Headquarters.

## **7. Legislative/Lobbying Activities.**

7.1 The Komen Organization recognizes the need for consistent messaging within the organization in furtherance of its mission and to protect its image and reputation within the community. The Komen Organization also recognizes the importance of ensuring compliance with lobbying limitations and prohibitions on political activity applicable to §501(c)(3) organizations. Open communication and collaboration among Headquarters and the Affiliates with respect to their respective public policy efforts is essential in order to ensure consistent messaging and protect the Komen Organization's tax exempt status. The Affiliate, therefore, agrees to the following:

7.1.1 The Affiliate shall not establish, or otherwise be involved with, a Political Action Committee (PAC) or any other similar group in raising or receiving funds for distribution to, for or on behalf of any candidate for political office. Similarly, the Affiliate is strictly prohibited from engaging in any activity that may reasonably be perceived as political campaign activities, as defined for federal income tax purposes, or which causes the Affiliate to be classified as an "action organization" or which is classified as a "political expenditure".

7.1.2 The Affiliate shall not, as a substantial part of its activities, carry on propaganda or otherwise attempt to influence legislation. The Affiliate may engage in legislation or lobbying activities and expenditures, provided such activities are (1) non-partisan; (2) expressly allowed under the Affiliate Policies; (3) are permissible under Internal Revenue Code Section 501(h); and (4) the Affiliate provides notice of such activities to its Affiliate Relationship Manager.

## **8. Trademarks and Copyrights.**

### **Komen Organization's Marks**

8.1. For purposes of this Affiliation Agreement, "Komen Organization's Marks" are defined as the corporate names, trade names, domain names, service marks, trademarks, logotypes, slogans, symbols and other indicia of source, whether registered or not, owned or licensed by Headquarters, including, without limitation, any trademark or service mark that contains the words "for the Cure", "for a Cure", "Imagine", "Promise" and/or "Komen", except that for the purposes of this Affiliation Agreement, this term shall not include any of the registered Komen Race for the Cure® service marks. The registered Komen Race for the Cure® service marks may only be used by an Affiliate pursuant to an express license granted by Headquarters in a separate agreement between the Affiliate and Headquarters, and nothing in this Agreement shall be construed to grant any license in such marks to the Affiliate, nor permission for an Affiliate to hold such an event or use such registered marks. For purposes of this Affiliation Agreement, "Trademark Rights" shall mean any and all rights, intangible or otherwise, existing under trademark laws and unfair competition laws or other similar laws or

principles arising from or actionable under the laws, regulations, treaties or international conventions of the United States or any foreign country.

8.2. During the term of this Affiliation Agreement and subject to the restrictions and conditions on use contained in this Affiliation Agreement and the Affiliate Policies, Headquarters grants to the Affiliate a non-exclusive, royalty-free, limited license under and to the extent of Headquarters' Trademark Rights to: (i) adopt, use and file in its own name with the appropriate Federal, State and local government (as required by applicable law) the corporate name, [AFFILIATE CORPORATE NAME], and an assumed name approved in writing by Headquarters (currently [AFFILIATE DBA NAME]) (collectively, "Affiliate Name"); provided, however, such license shall not permit the Affiliate to make any filings with respect to the Affiliate Name in the United States Patent & Trademark Office or any similar state or local government patent or trademark authority; (ii) register in its own name certain domain names containing (A) variations of the Affiliate Name or (B) the mark "Komen" or other Komen Organization's Mark as approved in writing by Headquarters ("Affiliate Domain Names"); (iii) use certain Komen Organization's Marks, alone or in conjunction with other marks or logos approved by Headquarters, in conjunction with the Affiliate's operations, as approved in writing by Headquarters, for the sole purposes of promoting the Promise; and (iv) sublicense the right to use the Komen Organization's Marks solely related to the Affiliate Name to certain local sponsors of Affiliate solely in conjunction with events of the Affiliate or for the benefit of the Affiliate and not for their own benefit or other products or services. The foregoing license is referred to as the "Trademark License". The Affiliate may not create a "multi-Affiliate" trademark, service mark or logo ("Multi-Affiliate Mark") that represents more than one Affiliate (e.g. "The Greater Dallas/Fort Worth Metroplex Affiliates of Susan G. Komen for the Cure"); provided, however, that the Affiliate may use the Headquarters' signature logo and, in close proximity and proportion to the logo, list the names of several Affiliates (e.g. "The Dallas County, North Texas and Tarrant County Affiliates of Susan G. Komen for the Cure") in connection with an event or program if the Affiliate receives written permission from the other Affiliates and Headquarters prior to doing so.

### **Komen Organization's Copyrighted Materials**

8.3. For purposes of this Agreement, "Komen Organization's Copyrighted Materials" means all copyright in — and associated with — all materials, including without limitation, information text, photographs, illustrations, artwork, software, music, sound, graphics, audio/visual works, video, books, promotional or advertising copy, brochures, articles, documents or other materials, whether publicly posted or privately transmitted, whether registered or not, owned or licensed by Headquarters, and all translations, adaptations, editions, excerpts or derivative works thereof. For purposes of this Affiliation Agreement, "Copyrights" shall mean any and all rights, intangible or otherwise, existing under copyright laws or other similar laws or principles arising from or actionable under the laws, regulations, treaties or international conventions of the United States or any foreign country.

8.4. During the term of this Affiliation Agreement and subject to the restrictions and conditions on use contained in this Affiliation Agreement and the Affiliate Policies, Headquarters grants to the Affiliate a non-exclusive, royalty-free, limited license under and to the extent of Headquarters' Copyrights to reproduce, publicly display and distribute certain Komen Organization's Copyrighted Materials for the sole purposes of promoting the Promise. The foregoing license is referred to as the "Copyright License".

#### **General Terms for Trademarks and Copyrights**

8.5. All rights to the use of any of the Komen Organization Marks under the Trademark License and the Komen Organization's Copyrighted Materials under the Copyright License may be suspended or terminated at any time by Headquarters in its sole discretion. The Affiliate agrees to use, without alteration or modification, only those Komen Organization Marks pursuant to the Trademark License or Komen Organization's Copyrighted Materials pursuant to the Copyright License solely in connection with carrying out the Promise of the Komen Organization. Headquarters shall have the right to control the quality of all goods and/or services offered under the Komen Organization Marks or the Komen Organization's Copyrighted Materials and may monitor any and all uses of such marks by Affiliate or its permitted sublicensees and reasonably request any changes to, or removal of, such use, and Affiliate will promptly make any changes or removal of such use requested by Headquarters. Upon Headquarters' written request, Affiliate will provide Headquarters with the name and addresses of each sublicense and such other information as may be reasonably requested by Headquarters. The Affiliate agrees that it will not, and it will not permit its permitted sublicensees to, exercise the Trademark License or the Copyright License in any way that would disparage or injure Headquarters' reputation for high quality or the goodwill associated with the Komen Organization Marks or the Komen Organization's Copyrighted Materials, as applicable.

8.6. The Affiliate acknowledges and agrees that Headquarters is the owner of the Komen Organization Marks and all Trademark Rights therein and the Komen Organization's Copyrighted Materials and all Copyrights therein and that all use of, and goodwill associated with, such marks or copyrights inure solely to the benefit of Headquarters. All rights not expressly granted to Affiliate under the Trademark License or the Copyright License are expressly reserved by Headquarters.

8.7. The Affiliate covenants to Headquarters that: (i) it will not, and will not permit others within its control to, take any action inconsistent with or adverse to or otherwise challenge the Headquarters' ownership or rights in the Komen Organization's Marks or Komen Organization's Copyrighted Materials; (ii) it will affix the appropriate trademark and/or copyright notices for the Komen Organization's Marks or Komen Organization's Copyrighted Materials in its product labeling, packaging, promotional materials, advertisements and other items containing the Komen Organization's Marks or Komen Organization's Copyrighted Materials to be sold or distributed (or such other proprietary or legal notices as may be provided by Headquarters to Affiliate in writing); (iii) it will not use the Komen Organization's Marks in any way to indicate or imply Headquarters' endorsement of or affiliation with any products or services other than the activities conducted by the Affiliate that are consistent with the Promise; (iv) it will not, and it will

not permit others within its control to, incorporate the Komen Organization's Marks in any brand name, trade name, corporate name, trademarks, service marks, logos or domain names not approved in writing by Headquarters other than the Affiliate Name; (v) it will not, and it will not permit others within its control to, file any application or obtain any registration containing the Komen Organization's Marks or any mark confusingly similar to the Komen Organization's Marks except as set forth expressly in the Trademark License without the prior written consent of Headquarters; (vii) it will not, and it will not permit others within its control to, file any application or obtain any registration pertaining to Komen Organization's Copyrighted Materials or any works derived from or substantially similar to Komen Organization's Copyrighted Materials except as set forth expressly in the Copyright License without the prior written consent of Headquarters; (viii) it will not, and it will not permit others within its control to, pledge, hypothecate or otherwise grant any security interest or lien on the Trademark License in the Komen Organization's Marks or the Copyright License in Komen Organization's Copyrighted Materials without Headquarters' prior written consent; and (ix) the Affiliate and its sublicensees comply at all times with all applicable Federal, State and local laws and regulations in connection with its exercise of the Trademark License, the Copyright License, and all other activities and obligations pursuant to this Agreement.

8.8. The Affiliate agrees to cooperate and to execute any documents, including, without limitation, an assignment of interest, deemed necessary by Headquarters or its counsel to obtain registrations for the Komen Organization's Marks or Komen Organization's Copyrighted Materials or to maintain their continued validity and enforceability in the United States and all other countries. Headquarters, in its sole discretion, shall have the sole authority, but not the obligation, to file for trademark or copyright registrations pertaining to or covering the Komen Organization's Marks or Komen Organization's Copyrighted Materials, to prosecute them to issuance, and to maintain any resulting registrations, all of which will list Headquarters as the record owner. If any claim involving the Komen Organization's Marks or Komen Organization's Copyrighted Materials is instituted or threatened against the Affiliate, the Affiliate will promptly notify Headquarters, and will cooperate fully in defending or settling any such litigation, with Headquarters assuming the defense of such claim at its cost and expense.

8.9. Headquarters, in its sole discretion, shall have the sole authority, but not the obligation, to take any action against any alleged infringement of the Komen Organization's Marks and/or Komen Organization's Copyrighted Materials; provided that the Affiliate shall promptly notify Headquarters of any actual or threatened infringement of the Komen Organization's Marks or Komen Organization's Copyrighted Materials, and Headquarters shall retain all monetary recoveries thereof. At Headquarters' request, the Affiliate shall cooperate with Headquarters, at Headquarters' cost and expense, and shall in general take such action as is necessary to facilitate Headquarters' procurement, protection, enforcement, and maintenance of the Komen Organization's Marks and/or Komen Organization's Copyrighted Materials, including being named as a plaintiff in enforcement actions to the extent legally required, and timely executing all powers of attorney, applications, declarations, affidavits, and other similar papers.



8.10. Upon the termination of the Trademark License, the Copyright License or this Affiliation Agreement for any reason, Affiliate shall promptly: (a) cease and desist from all use of the Komen Organization's Marks and/or Komen Organization's Copyrighted Materials; (b) transfer all registrations for the Affiliate Name and Affiliate Domain Names to Headquarters; (c) redirect any websites of Affiliate or others designated to any Affiliate Domain Names; (d) change its corporate name and assumed names to any name that is not substantially similar to the Affiliate Names and file the appropriate change of name or assumed name filings with all applicable Federal, State and local government agencies as may be required under applicable law and provide copies of all such filings to Headquarters; and (e) turn over to Headquarters all items of personal property, including, but not limited to, stationery, business cards, and printed materials, that contain the Komen Organization's Marks or Komen Organization's Copyrighted Materials. Affiliate covenants that thereafter it shall not adopt or use, without Headquarters' prior written consent, any words or marks that are identical or confusingly or deceptively similar to or incorporating the Komen Organization's Marks in relation to goods or services identical or confusingly or deceptively similar to those in respect of which the Komen Organization's Marks are used or registered, and all rights granted under the Trademark License and the Copyright License automatically and immediately revert back to Headquarters. Termination of this Affiliation Agreement shall effectively terminate all sublicenses arising under the Trademark License and the Copyright License.

8.11. The Affiliate acknowledges and agrees that: (i) the Trademark License and the Copyright License are non-exclusive and personal to Affiliate and may not be assigned, transferred, encumbered, sold, leased or otherwise encumbered, whether by agreement or operation of law, without Headquarters' prior written consent; and (ii) Headquarters retains the rights, among others, to use the Komen Organization's Marks and Komen Organization's Copyrighted Materials itself and to grant other licenses for the use of the Komen Organization's Marks or Komen Organization's Copyrighted Materials in its sole discretion. The Affiliate agrees to cease using the Komen Organization's Marks and/or Komen Organization's Copyrighted Materials upon the written request of Headquarters.

8.12. Nothing in this Affiliation Agreement or Affiliate Policies shall be construed as: (i) a warranty or representation by Headquarters as to the validity or scope of any Trademark Rights or Copyrights; (ii) a warranty or representation that anything made, used, sold, or otherwise disposed of under the Trademark License or Copyright License granted in this Agreement is or will be free from infringement of patents, trademarks, trade secrets or other intellectual property rights of third parties; or (iii) granting by implication, estoppel, or otherwise, any licenses or rights in any patents, trademarks, copyrights, trade secrets or other intellectual property or proprietary rights of Headquarters other than the Trademark License and Copyright License.

### **Jointly Owned and Affiliate Copyright Materials; Affiliate Trademarks**

8.13. The Affiliate and Headquarters agree and acknowledge that, unless otherwise agreed by the parties in writing, Headquarters and Affiliate shall jointly own the Copyrights to any materials produced jointly by Headquarters and Affiliate, and either party has the

unrestricted right to use and sublicense such jointly-owned copyrighted material without accounting, royalty, or other costs.

8.14. The Affiliate and Headquarters acknowledge that, during the term of this Affiliation Agreement, Affiliate may obtain or create certain materials, including without limitation, information text, photographs, illustrations, artwork, software, music, sound, graphics, audio/visual works, video, books, promotional or advertising copy, brochures, articles, documents or other materials, whether publicly posted or privately transmitted, whether registered or not, that pertain to the Promise or other non-profit purpose of the Komen Organization (collectively, "Affiliate Copyrighted Materials"). Subject to the restrictions and conditions on use contained in this Affiliation Agreement, Affiliate grants to Headquarters a non-exclusive, royalty-free, irrevocable, fully-paid limited license under and to the extent of Affiliate's Copyrights to: (i) reproduce, repurpose, modify, create derivative works, publicly display and distribute certain Affiliate Copyrighted Materials in conjunction with Komen Organization's or its Affiliates' activities or events for the sole purposes of promoting the Promise; and (ii) sublicense the foregoing rights to other Komen Affiliates and sponsors of the Komen Organization or its Affiliates in conjunction with the Komen Organization's or its Affiliates' activities or events for the purpose of carrying out the Promise. The foregoing license shall survive the expiration or termination of this Affiliation Agreement for any reason. Headquarters acknowledges and agrees that Affiliate is the owner of the Affiliate Copyrighted Materials and all Copyrights therein and that all use thereof inures solely to the benefit of Affiliate. All rights not expressly granted to Headquarters under the foregoing license are expressly reserved by Affiliate.

8.15. The Affiliate and Headquarters acknowledge that, during the term of this Affiliation Agreement and except as otherwise provided herein, Affiliate may obtain or adopt certain trademarks, service marks, logos, or other indicia of source, whether registered or not, that pertain to Affiliate's operations in furtherance of the Promise (collectively, "Affiliate Marks"). All Affiliate Marks must be created in compliance with the Affiliate Policies.

8.16. Subject to the restrictions and conditions on use contained in this Affiliation Agreement, the Affiliate grants to Headquarters a non-exclusive, royalty-free, irrevocable, fully-paid limited license under and to the extent of Affiliate's Trademark Rights to: (i) use the Affiliate Marks, alone or in conjunction with other marks or logos approved by Headquarters; and (ii) sublicense the foregoing rights to other Komen Affiliates or other non-profit organizations for mission-related work and sponsors of the Komen Organization or its Affiliates but not for such sponsor's own benefit or other products or services. The foregoing license shall survive the expiration or termination of this Affiliation Agreement for any reason. Headquarters acknowledges and agrees that Affiliate is the owner of the Affiliate Marks and all Trademark Rights therein and that all use thereof inures solely to the benefit of the Affiliate. All rights not expressly granted to Headquarters under the foregoing license are expressly reserved by Affiliate.

## **9. Remedies for Affiliate Breach; Suspension/Revocation of Affiliate Charter; Dissolution of Affiliate.**

9.1. It is essential to the continued viability of the Komen Organization that both Headquarters and the Affiliate understand and appreciate their obligations and responsibilities under this Affiliation Agreement and the Affiliate Policies and be accountable for compliance with same. Accordingly, Headquarters and Affiliate acknowledge and agree that Headquarters shall have the following specific remedies, in addition to any other remedies available to it herein, at law or in equity, which it may use to address Affiliate breaches of or non-compliance with any provision of this Affiliation Agreement or the Affiliate Policies:

- Warning. A written notice to Affiliate setting forth in detail the existence of the breach.
- Withholding of Funds. Withholding of distributions (e.g., funds raised in connection with cause-related marketing programs, Susan G. Komen 3-Day for the Cure™ series) made by Headquarters to Affiliate.
- Work Plan. A reasonable written plan may be created by Headquarters and required to rectify the breach.
- Suspension. A formal suspension of the Affiliate Charter.
- Revocation. A formal revocation of the Affiliate Charter.

The listed remedies need not be utilized in sequential order and Headquarters may utilize any of these remedies, at any time, in its sole discretion, subject only to the restrictions imposed by Section 9.2.

9.2. Prior to suspension or revocation of the Affiliate Charter, the Affiliate shall be given due notice of Headquarters' intent to suspend or revoke the charter and the Affiliate shall be afforded a fair and reasonable opportunity, as determined in the sole discretion of the Executive Committee of Headquarters' Board of Directors, to cure the breach or event of non-compliance. The Affiliate shall also have the opportunity to receive a hearing before the Executive Committee of Headquarters' Board of Directors, prior to any formal action to suspend or revoke the charter.

9.3. If the Affiliate Charter is suspended or revoked, or the Affiliate voluntarily terminates its affiliation, the Affiliate shall immediately cease using any Komen Organization's Marks and Komen Organization's Copyrighted Materials of Headquarters and shall immediately cease soliciting contributions in the name of the Komen Organization. All events and activities of the Affiliate shall be suspended unless prior approval of Headquarters is obtained. The Affiliate shall provide Headquarters with immediate access to all books and records, including, without limitation, powers of attorney to review and access all funds and accounts of the Affiliate. The Affiliate agrees to comply with this Section 9.3 regardless of whether there is a dispute as to the propriety of the suspension or revocation.

9.4. If the Affiliate Charter is revoked, or the Affiliate voluntarily terminates its affiliation, the Affiliate shall immediately cease all operations, other than those reasonably necessary to dissolve the corporation in an orderly fashion, and proceed to dissolve as a corporation under the law of the state in which it is incorporated. In doing so, the Affiliate shall comply with all applicable laws and regulations.

9.5. Upon dissolution of the Affiliate, all liabilities and obligations of the Affiliate shall be paid in full or otherwise satisfied in accordance with the law of the state in which the Affiliate is incorporated. All remaining monetary assets of the Affiliate shall be transferred to Headquarters and Headquarters shall, in accordance with the Affiliate's certificate of incorporation, (i) distribute such assets to organizations exempt from federal taxation with purposes consistent with the charitable purposes and Promise of the Komen Organization for use in the Service Area, and/or (ii) retain such assets, in the same proportions that such assets would have been distributed had the Affiliate continued in existence. Notwithstanding the foregoing, in no event shall Headquarters transfer the monetary assets of the dissolved Affiliate to an organization whose board of directors includes of any former members of the board of directors of the Affiliate, or any immediate family members of such former members. Upon dissolution of Affiliate, all remaining non-monetary assets of the Affiliate (including all books, records, mailing lists, stationary, equipment, etc.) shall be transferred to and become the sole property of Headquarters. The Affiliate agrees to execute such documents and take such actions as are reasonably requested by Headquarters to comply with this section and to assist in an orderly dissolution.

9.6. It is specifically agreed by Headquarters and the Affiliate that monetary damages would not adequately compensate Headquarters for a breach of this Affiliation Agreement by the Affiliate, that irreparable harm will result to Headquarters and that Headquarters has no adequate remedy at law for such a breach. Therefore, this Affiliation Agreement shall be specifically enforceable, and any breach or threatened breach of this Affiliation Agreement shall be the proper subject of a temporary or permanent injunction or restraining order and Headquarters shall be entitled to appropriate injunctive relief. Further, each party hereto waives any claim or defense that there is an adequate remedy at law for any breach or threatened breach hereof. This provision shall be effective notwithstanding the breach of any agreement or understanding between Headquarters and the Affiliate.

9.7. No failure or delay of Headquarters in any one instance to exercise any remedy or power given it herein or to insist upon strict performance by Affiliate of any obligation imposed on it herein shall constitute a waiver or a modification of the terms hereof by Headquarters or of any right it has herein to demand strict compliance with the terms hereof by Affiliate in any other instance. All of the remedies permitted or available to Headquarters under this Affiliation Agreement, or at law or in equity, shall be cumulative and not alternative and the exercise of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

## **10. Dispute Resolution; Governing Law; Jurisdiction; Venue.**

10.1. This Affiliation Agreement shall be construed and enforced in accordance with the laws of the State of Texas without regard to its conflict of laws principles and the copyright, trademark and unfair competition laws, regulations and treaties of the United States of America.

10.2. Each of the Affiliate and Headquarters consents to the exercise of personal jurisdiction over it by any court located in the State of Texas with respect to any claim, suit, or dispute between the parties. The parties also agree and consent to venue exclusively in the state and federal (if it has or can acquire jurisdiction) courts located in Dallas County, Texas.

10.3. In the event that any dispute arises between the Affiliate and Headquarters, authorized representative of the parties shall first discuss such dispute and determine an appropriate resolution. If the dispute cannot be resolved by direct communication, the Affiliate and Headquarters agree to submit such dispute to confidential mediation in Dallas County, Texas before a mutually agreeable mediator. If one cannot be agreed upon, the parties will each choose a mediator in Dallas County and then those mediators will choose the mediator to preside over the dispute. Mediation shall precede any legal action other than a suit for immediate injunctive relief as provided in section 9.6 of this Affiliation Agreement.

## **11. Affiliate Board of Directors.**

11.1 The parties acknowledge and agree that the Affiliate's Board of Directors has a fiduciary obligation to exercise good faith, ordinary care and act in the best interests of the Affiliate. The Affiliate's Board of Directors shall ensure that the Affiliate complies with all terms of this Affiliation Agreement and the Affiliate Policies. Accordingly, the Affiliate shall ensure that, on (a) the beginning of each fiscal year; or (b) the date on which the individual becomes associated with the Affiliate if subsequent to the date in subpart (a), each member of its Board of Directors signs and files with Headquarters a statement indicating that he/she has read the Affiliate Policies and will use reasonable diligence to ensure they are complied with. In addition, each Director, officer, employee, staff member, grant reviewer, race director, committee chair and committee member shall sign the disclosure statement contained in the Code of Ethics for Susan G. Komen for the Cure Affiliates thereby acknowledging such individual's agreement to be bound by the Code of Ethics, including its conflict-of-interest and confidentiality provisions. In the event an individual does not execute his or her disclosure statement electronically, a hard copy of the executed disclosure statement shall be kept on file with the Affiliate records. An individual's disclosure statement shall be updated by such individual whenever merited by changed factual circumstances.

## **12. Miscellaneous.**

12.1. Any notice hereunder shall be in writing and shall be effective (i) when personally delivered or when transmitted via facsimile with receipt confirmed; (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 mail. All notices shall be addressed as set forth below; provided, however, that if either party shall have designated a different address by written notice to the other, then such notice shall be provided to the last address so designated. In the event either party changes its mailing address, phone number, or facsimile number, such party shall provide the other party a five-day advance written notice of such change.

If to Headquarters: Susan G. Komen for the Cure  
5005 LBJ Freeway, Suite 250  
Dallas, Texas 75244  
Attention: Chief Operating Officer  
Fax number: (972) 855-4301  
Phone number: (972) 855-1600

Copy to: Susan G. Komen for the Cure  
5005 LBJ Freeway, Suite 250  
Dallas, Texas 75244  
Attention: Legal Department  
Fax number: (972) 855-4301  
Phone number: (972) 855-1600

If to Affiliate: [AFFILIATE DBA NAME]  
[AFFILIATE ADDRESS]  
[AFFILIATE CITY, STATE, ZIP]  
Fax number: [AFFILIATE FAX]  
Phone number: [AFFILIATE PHONE]

12.2. This Affiliation Agreement may not be altered, changed or amended, except by an agreement in writing, executed by authorized signatories of each party.

12.3. If any term or provision of this Affiliation Agreement, or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Affiliation Agreement, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby. Each provision of this Affiliation Agreement shall be valid and enforceable to the extent permitted by law.

12.4. This Affiliation Agreement and any attachments hereto, including, without limitation, the Affiliate Policies incorporated herein by reference, constitute the entire agreement between Headquarters and Affiliate on the matters discussed herein, and there are no agreements, understandings, representations or warranties among the parties other than those set forth herein.

12.5. Headquarters and Affiliate each represent and warrant that it has the authority to enter into this Affiliation Agreement and that it is not a party to any other agreement which prohibits the entering into of this Affiliation Agreement or which renders any provision of the Affiliation Agreement ineffective or unenforceable.

12.6 In addition to any Sections of this Affiliation Agreement that contain specific survivorship provisions, Sections 6.1, 6.2, 6.3, 6.4, 6.5, 6.6, 8.5, 8.6, 8.7, 8.8, 8.9, 8.10, 8.16, 9.3, 9.4, 9.5, 9.6, 9.7, 10.1, 10.2, 10.3, 12.1, and 12.3 herein shall also survive the termination of this Affiliation Agreement.

12.7 All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Affiliation Agreement.

12.8 This Affiliation Agreement may be executed simultaneously in one or more counterparts. Each counterpart will be considered a valid and binding original. Once signed, any reproduction of this Affiliation Agreement made by reliable means (e.g., photocopy, facsimile) is considered an original.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have duly executed this Affiliation Agreement as of the day and year first above written.

**HEADQUARTERS:**

THE SUSAN G. KOMEN  
BREAST CANCER FOUNDATION, INC.  
D/B/A SUSAN G. KOMEN FOR THE CURE

Printed Name: Nancy G. Brinker  
Title: Chief Executive Officer

**AFFILIATE:**

[AFFILIATE CORPORATE NAME] D/B/A [AFFILIATE  
DBA NAME]

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**EXHIBIT A**

[SERVICE AREA]

## **EXHIBIT B**

### **Affiliate Policies**

Susan G. Komen for the Cure Affiliate Policies

Affiliate Treasurer Guide

Shared Services Manual

Fundraising Revenue Sharing Policy

Komen Branding Guidelines

Affiliate Fund Raising Guide

Affiliate Grantmaking Guide

Volunteer Management Guide

Affiliate Gift Acceptance Policy

Affiliate Endowment Funds – Policies and Guidelines

Service Area Policy

Guidelines and standards of the Association of Fundraising Professionals, the Better Business Bureau Wise Giving Alliance and the Direct Marketing Association

Headquarters may promulgate other policies from time to time in its sole discretion.