



FUN CENTER AND PC PAL® AGREEMENT

This *Fun Center* and *PC Pal*® Agreement (the "Agreement") is made and entered into as of _____, 20__ ("Effective Date"), by and between The Starlight Children's Foundation ("Starlight") and the hospital named on the signature page hereto (the "Hospital").

RECITALS

Whereas, STARLIGHT and the Hospital desire this Agreement to govern gift(s) by STARLIGHT of *Fun Center*(s) and/or *PC Pal*(s) (the "Donated Unit(s)") and hospital purchases ("Purchased Unit(s)") on the Effective Date and in the future, without the necessity of executing separate agreements. A Donated Unit(s), which is a gift from Starlight, and Purchased Unit(s) will be referred to in this agreement as "Unit(s)" unless otherwise identified.

NOW, THEREFORE, in consideration of the foregoing facts and the mutual representations, warranties, covenants and agreements set forth herein, the parties to this Agreement hereby agree as follows:

1. **Use.** The Unit(s) are intended exclusively to provide entertainment to the Hospital's pediatric patients and the Hospital agrees that the Unit(s) shall be used only for that purpose. Title and risk of loss to the *Fun Center* unit(s) passes to the hospital at the point of shipment, which is in the state of Oregon.
2. **New Equipment.** The Hospital acknowledges that the equipment and programs are technologically innovative and that testing of the Unit(s) and its applications may be an ongoing process.
3. **STARLIGHT Responsibilities.** STARLIGHT shall provide: (i) training of the Child Life Staff in operation of the *PC Pal* unit(s) and its applications; (ii) telephone technical support and repair of the *Fun Center* Unit(s) and its applications on an on-going basis to the Child Life Staff; and (iii) telephone technical support and repair of the *PC Pal*® unit(s) and its applications on an on-going basis to the Child Life Staff for a period of three (3) years from the delivery date of the unit(s).
4. **Hospital Responsibilities.** The Hospital will bear the responsibility of designating a staff member (or members) who will oversee operations and use of the Unit(s) by patients and staff at the Hospital, and make best efforts to monitor use, and to supervise in the same manner and to the same extent they would supervise any element of the Hospital's pediatric programs, the use of the Unit(s) and its applications. The Hospital shall be responsible for controlling access by users and other persons to the Unit(s) and its applications. The

Hospital shall provide proper supervision and management over the use and operation of the Unit(s) in order to preclude its abuse and preserve its operating efficiency.

5. **Inappropriate Use.** STARLIGHT shall not be responsible for inappropriate use of or access to the Unit(s) and its applications including, but not limited, any content viewed by the user on the internet.
6. **No Alteration.** The Hospital shall not make or permit any repair, alteration or attachment to the Unit(s) or its applications that materially interferes with normal and satisfactory operation or maintenance thereof without the prior written consent of STARLIGHT.
7. **Dedication Events.** The Hospital agrees to permit, and participate in, brief presentation events to dedicate the Donated Units(s) at the Hospital, at times that are mutually acceptable to STARLIGHT and the Hospital.
8. **Publicity.** Upon advance notice to the Hospital and at a mutually agreeable time, STARLIGHT will have the right to photograph or videotape the Unit(s) and its use at the Hospital and to disseminate such photographs and videotapes to other persons for publicity purposes intended to build awareness of the program. If children and/or their families are included in such photographs or videotaping, their faces will only be shown by prior written consent of their parent or legal guardian, as applicable, on a form reasonably acceptable to the Hospital, and in compliance with HIPAA guidelines.
9. **Retention of Intellectual Property Rights.** STARLIGHT is and shall remain the sole and exclusive owner of all trademarks, trade secrets, trade names, service marks, copyrights or other intellectual property rights related to the Unit(s). Under no circumstances shall the Hospital acquire any ownership interests whatsoever in any trademarks, trade secrets, trade names, service marks, copyrights or other intellectual property rights related to the Unit(s). The Hospital acknowledges that the Unit(s) are proprietary material and information of STARLIGHT.
10. **Term.** This Agreement shall be effective on the Effective Date and shall continue to be effective until terminated as per Section 11.
11. **Termination.** STARLIGHT may terminate this Agreement by written notice to the Hospital if the Hospital fails to perform any obligation of the Hospital under this Agreement and such failure continues for a period of thirty (30) days after the date that the Hospital receives written notice of such failure from STARLIGHT.
12. **Dispute Resolution.** To the fullest extent permitted by law, any and all controversies or claims arising out of or relating to this Agreement, or the breach thereof, shall be settled by final and binding arbitration in [Los Angeles,

California], administered by the American Arbitration Association in accordance with its rules and judgment by one arbitrator selected in accordance with said rules. The arbitrator shall prepare a written decision containing the essential findings and conclusions on which the award is based so as to ensure meaningful judicial review of the decision. The arbitrator shall apply the substantive law of the State of [California], with the same statutes of limitation and the same remedies that would apply if the claims were brought in a court of law.

13. **Notice.** All notices, demands and other communications made pursuant to this Agreement will be in writing and shall be sufficiently given when (i) personally served or delivered, (ii) transmitted by facsimile, with an original sent concurrently by first class U.S. mail, or (iii) deposited, postage prepaid, with a guaranteed air courier service, in each case addressed as stated below, or addressed to such other person or address either party may designate in a notice. Notice shall be deemed effective upon the earlier of actual receipt or two (2) business days after transmittal.

HOSPITAL:
Hospital Address:

Contact:
Email:
Phone:
Fax:

STARLIGHT:
Starlight Children's Foundation
5757 Wilshire Blvd., Suite M-100
Los Angeles, CA 90036
Attn: Jane Van Stedum, Vice President, Programs & Regional Support
Phone: (310) 479-1212
Fax: (310) 479-1235

14. **Assignment.** The Hospital may not assign its rights or obligations under this Agreement or otherwise transfer the Unit(s) to another location without the express written consent of STARLIGHT.
15. **Entire Agreement.** The terms and conditions contained in this Agreement constitute the entire understanding of the parties with respect to the subject matter of this Agreement and no further or other agreements or understandings, written or oral, are in effect between the parties relating to the subject matter of this Agreement. This Agreement may not be modified other than in writing signed by an authorized representative of both parties to this Agreement. This Agreement supersedes any and all prior understandings, oral or written, as well as any agreement signed in conjunction with past gifts of Unit(s).

16. **Headings.** The section headings in this Agreement are solely for convenience and will not be considered in its interpretation.
17. **Severability.** If any provision of this Agreement, or the application of any such provision to any person or set of circumstances, shall be determined to be invalid, unlawful, void or unenforceable to any extent, the remainder of this Agreement, and the application of such provision to persons or circumstances other than those as to which it is determined to be invalid, unlawful, void or unenforceable, shall not be impaired or otherwise affected and shall continue to be valid and enforceable to the fullest extent permitted by law.
18. **Waiver.** Failure by either party to enforce at any time any term of or condition under this Agreement shall not be a waiver of that party's right thereafter to enforce each and every term and condition of this Agreement.
19. **Survival.** The provisions of Sections 9, 10, 12, 13, 14, 15, 16, 17, 18, 19 and 21 and no other provisions of this Agreement shall survive any termination of this Agreement.
20. **Governing Law.** This Agreement shall be governed by the laws of the State of [California], without regard to conflicts of law, and the Hospital hereby submits to the personal jurisdiction of courts situated in the County of [Los Angeles], State of [California] and waives any right it may have to object to the venue of any proceeding at law or in equity or that such proceeding has been brought in an inconvenient forum.
21. **Counterparts.** This Agreement may be executed via facsimile and/or in counterparts with the same force and effect as if one and the same document were manually executed.

IN WITNESS WHEREOF, the parties have executed this *Fun Center and PC Pal*® Agreement as of the date first written above.

HOSPITAL:

Hospital Name: _____

By: _____

Title: _____

Date: _____

STARLIGHT:

Starlight Children's Foundation

By: _____

Title: _____

Date: _____