

**(1) JNF CHARITABLE TRUST**

**- and -**

**(2) KEREN KAYEMETH LEISRAEL**

---

**HEADS OF TERMS**

---

These Heads of Terms are made on the 12th day of November 2008

## **BETWEEN**

- (1) JNF Charitable Trust, a company limited by guarantee incorporated under the laws of England and Wales under company number 00355248 and whose registered office is situated at JNF House, Spring Villa Park, Edgware, Middlesex, HA8 7ED (*JNFCT*); and
- (2) Keren Kayemeth Leisrael, a company incorporated under the laws of Israel and whose registered office is situated at 1 Keren Kayemeth Leisrael Street Jerusalem, Israel (*KKL*).

## **BACKGROUND**

- (A) Court proceedings were commenced by JNFCT against the KKL Parties (as defined below) on 11 November 2005 in the Chancery Division of the High Court under claim number HC05 C03158 in relation to the KKL Parties' use of certain trade marks in the United Kingdom. The KKL Parties issued a counterclaim on 7 February 2006 (together, the *English Litigation*).
- (B) Court proceedings were commenced by JNFCT against KKL on 12 July 2006 in the Jerusalem District Court (under Claim number CF831406) in relation (inter alia) to its claim to rights in the Land (as defined below) and under trust deeds entered into between JNFCT and KKL in 1941, 1954 and 1968. KKL issued a counterclaim (under Claim number CF8314.1-06) on 1 March 2007 (together, the *Israeli Litigation*).
- (C) The Parties (as defined below) agreed to stay the English Proceedings by way of a Consent Order dated 7 March 2008 and to postpone the pre-trial hearing of the Israeli Litigation.

- (D) The Parties have now reached a settlement of the Dispute (as defined below) based on these Heads of Terms, which the Parties acknowledge to be legally binding on them. The Parties envisage that following signature of these Heads of Terms the JNF Parties (as defined below) and the KKL Parties will enter into a Settlement Agreement embodying these Heads of Terms.
- (E) The Parties have appointed an Expert (as defined below) who has produced the Valuation (as defined below).
- (F) The Parties wish to acknowledge the benefits that settlement of their disputes will bring and their pleasure that the JNF Parties and the KKL Parties will be able to work together harmoniously in the future within the worldwide KKL family.

**THE PARTIES HAVE AGREED AS FOLLOWS:**

**1. INTERPRETATION**

- 1.1 In these Heads of Terms, unless the context requires otherwise, the following words have the following meanings:

the *Capitalised Sum* means the amount of money in Sterling equivalent to the Valuation.

the *Dispute* means the English Litigation and the Israeli Litigation.

The *Expert* means Yaakov Twito, the expert appointed by the Parties to produce the Valuation

the *JNF Parties* means JNFCT, KKL Executor and Trustee Company Limited (a private limited company registered at JNF House, Spring Villa Park, Edgware, Middlesex, HA8 7ED under company number 00453042), KKL Charity Accounts (a company limited by guarantee registered at JNF House, Spring Villa Park, Edgware, Middlesex, HA8 7ED under company

number 051183600) and The Jewish National Fund for Great Britain and Ireland (an unincorporated association).

the **KKL Parties** means KKL and KKL Charitable Trust (a company limited by guarantee registered at Level 1, Exchange House, 1 Primrose Street, London, EC2A 2HS under company number 03726261).

the **Land** means the land situated in Israel registered in the name of Keren Kayemeth Leisrael, its subsidiaries or affiliated entities and purchased with monies paid to Keren Kayemeth Leisrael its subsidiaries or affiliated entities by JNFCT or its subsidiaries or affiliated entities;

the **License Period** means the term of the licence set out in clause 3.3;

the **Parties** means the JNF Parties and the KKL Parties;

the **Settlement Agreement** means the settlement agreement to be entered into by the JNF Parties and the KKL Parties embodying these Heads of Terms;

the **Trade Marks** means the names "Keren Kayemeth Leisrael ", "KKL", "Jewish National Fund", "JNF" and each of those registered and unregistered trade marks and applications for trade marks set out in Schedules 1 and 2 to these Heads of Terms;

the **Valuation** means the value of the Land, based on the historic income yield of the Land, as determined by the Expert and as stated in paragraph 4.1 below;

- 1.2 Words denoting persons include individuals, bodies corporate and unincorporated associations.
- 1.3 References to the singular include the plural and vice versa.
- 1.4 The headings in these Heads of Terms are for convenience only and do not affect its interpretation.
- 1.5 References to clauses and sub-clauses are references to clauses and sub-clauses of these Heads of Terms.

## 2. **CONDITION PRECEDENT**

- 2.1 These Heads of Terms and the Settlement Agreement shall be subject to the approval of the Charity Commission for England and Wales and the boards of JNFCT and KKL.

3. **TRADE MARKS**

- 3.1 The JNF Parties will assign to KKL all of their legal or beneficial interest in each of the names "Keren Kayemeth Leisrael ", "KKL", "Jewish National Fund", "JNF" and each of the trade mark registrations and applications set out in Schedule 1 to these Heads of Terms.

- 3.2 In consideration of a one off payment by JNFCT to KKL of the sum of ten thousand pounds sterling (£10,000) upon granting of the licence KKL shall grant to JNFCT a licence of all the trade marks set out in Schedules 1 and 2 to these Heads of Terms limited to use in the United Kingdom.

- 3.3 The licence referred to in paragraph 3.2 shall afford JNFCT the exclusive right for a period of 50 years to use the Trade Marks throughout the United Kingdom in connection with its charitable objects. JNFCT will consider in good faith any request by KKL to use the Trade Marks in the UK

- 3.4 JNFCT shall be entitled to sub-licence the Trade Marks to any of the JNF Parties, their subsidiaries or legally affiliated entities for use in connection with their charitable objects.

- 3.5 Save as expressly set out in this clause 3 JNFCT shall not be entitled to grant any other sublicences without the consent of KKL.

- 3.6 The licence referred to in clause 3.2 will be terminable only if:

3.6.1 JNFCT so substantially amends its objects so that it is unable to support charitable purposes within the State of Israel; or

3.6.2 JNFCT becomes insolvent; or

3.6.3 JNFCT is found, following adjudication by a neutral third party (the *Adjudicator*), to have committed a repudiatory breach of the Settlement Agreement which is either:

- (a) incapable of remedy; or,
- (b) is capable of remedy, but has not been remedied within the period stipulated by the Adjudicator.

If the Parties are unable to agree, the Adjudicator will be appointed by the Chairman of the Bar Council of England and Wales.

- 3.7 The Parties will undertake to withdraw all opposition and revocation proceedings currently on foot (either active or stayed) in the UK Trade Marks Registry and to allow any of the Trade Marks which are subject to opposition or revocation proceedings to be registered. Such trade marks shall be subject to the provisions of clause 3.1 of these Heads of Terms (if registered by one of the JNF Parties) and in any event subject to the licence referred to in clause 3.2 of these Heads of Terms.
- 3.8 The Parties will undertake *not to register or apply to register* any trade marks applicable in the UK including the names JNF, Jewish National Fund, KKL, Keren Kayemeth Leisrael or variants thereof without the prior written consent of the other. Any trade mark registered or applied for in breach of this clause 3.7 shall be subject to the provisions of clause 3.1 of these Heads of Terms (if registered by one of the JNF Parties) and in any event subject to the licence referred to in clause 3.2 of these Heads of Terms.
- 3.9 To the extent that any trade marks or applications for trade marks applicable in the UK containing the words JNF, Jewish National Fund, KKL, or Keren Kayemeth Leisrael have been omitted from the Schedules to these Heads of Terms the Parties will undertake to procure that such trade marks are incorporated into the Schedules to these Heads of Terms and be subject to the licence in clause 3.2.

#### 4. LAND

- 4.1 The expert having valued the land, the parties acknowledge and accept the Valuation of five million pounds sterling (£5,000,000). The valuation in

relation to the Land shall be binding on the Parties and the Parties undertake not to challenge the valuation..

- 4.2 KKL agrees to pay the Capitalised Sum in ten equal annual instalments together with interest at 2% above the Base Rate for the time being of HSBC to JNFCT.
- 4.3 JNFCT will treat each instalment of the Capitalised Sum as if it were funds raised by JNFCT. and donated for the specific purpose of being applied to KKL projects selected by KKL and JNFCT.

## **5. SELECTION OF PROJECTS**

- 5.1 The Parties acknowledge that the JNF Parties are entitled to raise funds for any purpose (provided that such purpose is within the relevant entity's charitable objects).
- 5.2 JNFCT and KKL undertake to co-operate to identify and select, together, KKL projects in Israel which are suitable for funding wholly or in part by JNFCT (*Suitable Projects*). JNFCT undertakes to remit a majority of the charitable funds raised by the JNF Parties (after deduction of expenses and excluding funds donated to the JNF Parties for a specific purpose- not linked to one of the JNF Parties fundraising projects) to KKL for KKL to apply without deduction or set-off to Suitable Projects selected with KKL, the implementation of which shall be as directed by JNFCT. The obligations in this clause shall apply only once the JNF Parties have fulfilled all funding commitments made prior to the date of these Heads of Terms.
- 5.3 JNFCT will pay all donations to projects in Israel through KKL, provided that where the project is not administered by KKL, KKL will pay the relevant donation to the party administering the project forthwith without any deduction or set-off.
- 5.4 KKL will provide an account to JNFCT showing where each donation has been applied within three (3) months of remittance. In relation to projects in Israel administered by KKL, KKL shall additionally account to JNFCT within

three (3) months after completion of the project and inform JNFCT if there are any delays of six (6) months or more from the scheduled date of completion;

5.5 KKL will show any money it receives from JNFCT for particular projects as ring-fenced in their annual accounts for the particular project.

5.6 KKL will use its best endeavours to procure that KKL (Scotland) Charitable Trust SC313740 changes its name to JNF (Scotland) Charitable Trust and to procure that that charity merges with or becomes a subsidiary or branch of JNFCT. Following granting of the licence to JNFCT, JNFCT will grant to KKL (Scotland) Charitable Trust a sub-licence of the names JNF, Jewish National Fund, KKL and Keren Kayemeth Leisrael for use in Scotland in connection with KKL (Scotland) Charitable Trust's objects.

5.7 KKL will use its best endeavours to procure that KKL Charitable Trust 03726261 is dormant and carries out no activities during the Licence Period.

## **6. SETTLEMENT AGREEMENT**

6.1 Following execution of these Heads of Terms, the JNFCT and KKL will negotiate the Settlement Agreement and thereafter procure that the JNF Parties and the KKL Parties enter into the Settlement Agreement.

6.2 Immediately following which ever is the later of Charity Commission approval or the approval of the Boards of the JNF Parties and KKL to these heads of terms JNFCT and KKL will procure applications to the courts in England and Israel to discontinue the English Litigation and the Israeli Litigation on terms such that there shall be no orders as to costs.

## **7. RELEASE**

The Settlement Agreement will be in full and final settlement of, and each Party will release and forever discharge, any and all claims, actions, rights, demands and set-offs, whether in this jurisdiction or any other, presently known to the Parties or to the law (and whether in law or equity) which each Party, its parent company, subsidiaries, assigns, transferees, representatives, principals, agents, officers and directors or any of them have, had or may have



principals, agents, officers and directors or any of them have, had or may have (or hereafter can, shall or may have) against the other Parties and/or the other Parties' parent company, subsidiaries, assigns, transferees, representatives, principals, agents, officers, trustees and/or directors arising out of or connected with:

- 7.1 The Dispute; and/or
  - 7.2 the underlying facts relating to the Dispute
- (collectively the ***Released Claims***).

#### **8. AGREEMENT NOT TO SUE**

Each Party will agree, on behalf of itself and on behalf of its parent company, subsidiaries, assigns, transferees, representatives, principals, agents, officers and directors, not to sue or commence, voluntarily aid in any way, prosecute or cause to be commenced or prosecuted against the other Parties, or the other Parties' parent company, subsidiaries, assigns, transferees, representatives, principals, agents, officers, trustees and/or directors, any claim, action, suit or other proceeding relating to the Released Claims, in this jurisdiction or any other.

#### **9. COSTS**

- 9.1 Each Party shall bear its own costs of and in connection with these Heads of Terms, the Settlement Agreement and the Dispute.
- 9.2 This clause 9 supersedes and overrides any and all prior court orders, and/or prior agreements between the Parties concerning costs

#### **10. NO ADMISSION**

These Heads of Terms are, and the Settlement Agreement will be, entered into in connection with the compromise of disputed matters and in the light of other considerations. It does not constitute, and shall not be represented or construed by any Party as, an admission of any liability or wrongdoing on the part of any Party.


**11. CONFIDENTIALITY**

The entire contents of these Heads of Terms, the Settlement Agreement, and the substance of all negotiations in connection with it, are confidential to the Parties and their advisers, who shall not disclose them (or otherwise communicate them) to any third party other than:

- 11.1 With the consent of the other Party;
- 11.2 to each Party's respective auditors, insurers or lawyers on terms that preserve confidentiality;
- 11.3 pursuant to an order of a court of competent jurisdiction or pursuant to any proper demand made by any competent authority or body where the Party concerned is under a legal or regulatory obligation to make such a disclosure;
- 11.4 as far as necessary to implement and/or enforce any part of the Settlement Agreement; and/or
- 11.5 to issue an agreed statement for public release.

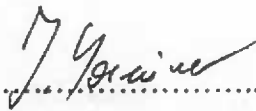
**12. GOVERNING LAW AND JURISDICTION**

- 12.1 These Heads of Terms and the Settlement Agreement shall be governed by, and construed in accordance with, English law.
- 12.2 Any dispute arising out of or in connection with, or concerning the carrying into effect of, these Heads of Terms or the Settlement Agreement shall be subject to the exclusive jurisdiction of the English courts, and the Parties hereby submit to the exclusive jurisdiction of those courts for these purposes.

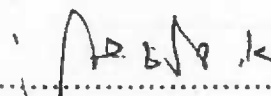

Signed by Samuel Hayek, Chairman:   
For and on behalf of JNF Charitable Trust

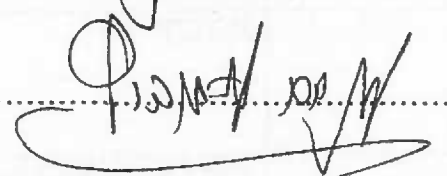
And by Gail Seal, Former President:.....

Signed by

..... 


And by

.....  



..... 

For and on behalf of ~~Keren~~ Kayemeth Leisrael

Schedule 1

<b>No.</b>	<b>Owner/Applicant</b>	<b>Mark</b>	<b>Number</b>
1.	JNF Charitable Trust	JNFCT	2218196A
2.	JNF Charitable Trust	JNF Charitable Trust	2218196B
3.	JNF Charitable Trust	JNF(logo) 	2395252
4.	KKL Charity Accounts	KKL Charity Accounts	2398701
5.	KKL Charity Accounts	KKL Charitable Giving	2398703
6.	KKL Charity Accounts and KKL Executor & Trustee Company Limited	KKL Family & Charity Matters	2398702
7.	KKL Executor & Trustee Company Limited	KKL Executor & Trustee Company Limited	2398620
8.	KKL Executor & Trustee Company Limited	KKL Wills and Estate Planning	2398621

Schedule 2

No.	Owner/Applicant	Mark	Number
1.	Keren Kayemeth Leisrael	Device only (logo) 	2187415A
2.	Keren Kayemeth Leisrael	Keren Kayemeth Leisrael (also in capitals) Keren Kayemet Leisrael (also in capitals)	2187421A
3.	Keren Kayemeth Leisrael	KKL	2187421B
4.	Keren Kayemeth Leisrael	Device only (logo) 	2187421C
5.	Keren Kayemeth Leisrael	KKL Keren Kayemeth Leisrael plus logo	2203912

No.	Owner/Applicant	Mark	Number
			
6.	Keren Kayemeth Leisrael	Device only (logo) 	2217083A
7.	Keren Kayemeth Leisrael	Device only (logo) 	2217083B
8.	Keren Kayemeth Leisrael	Jewish National Fund	2404105
9.	Keren Kayemeth Leisrael	Jewish National Fund - KKL	2404106
10.	Keren Kayemeth Leisrael	Jewish National Fund Charitable Trust	2404107
11.	Keren Kayemeth Leisrael	KKL Charitable Trust	2404108

<b>No.</b>	<b>Owner/Applicant</b>	<b>Mark</b>	<b>Number</b>
12.	Keren Kayemeth Leisrael	KKL – Jewish National Fund	2404109
13.	Keren Kayemeth Leisrael	Keren Kayemeth Leisrael - JNF	2404110
14.	Keren Kayemeth Leisrael	KKL - JNF	2404112
15.	Keren Kayemeth Leisrael	KKL – plant a tree in Israel	2404113
16.	Keren Kayemeth Leisrael	Keren Kayemeth Leisrael – Jewish National Fund	2404115