

# BRAND DEVELOPMENT PROFIT SHARING AGREEMENT

This Profit Sharing Agreement (the "Agreement") is entered into as of \_\_\_\_\_ by and between \_\_\_\_\_ having its principal place of residence located at \_\_\_\_\_ (the "Client") and [COMPANY NAME] having its principal place of business located at [COMPANY ADDRESS] (the "Company"), both of whom agree to be bound by this Agreement.

**WHEREAS**, the Client desires to produce and market apparel, merchandise, or any other retail goods and products to be listed for sale (the "Product") and holds ownership of all intellectual property rights in the Product;

**WHEREAS**, the Client desires to hire the Company to represent Client in negotiating the production of the Product, marketing the Product for sale, fulfilling and shipping orders; and

**WHEREAS**, the Client and the Company desire to enter into an arrangement whereby [CLIENT NAME] and [COMPANY NAME] will share the profits realized from the sale of the Product due to the efforts of the Company according to the terms and conditions herein.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises made by the parties hereto, the Client and the Company (individually, each a "Party" and collectively, the "Parties") covenant and agree as follows:

## 1. TERM.

This Agreement shall last from the date of execution until terminated by thirty (30) days' written notice by either party.

## 2. EFFECT OF TERMINATION.

Upon termination according to section 1, the following shall occur:

1. The Company shall continue to receive the profit share described herein from any continuing sales of the Product for a term of 90 days;
2. The Company shall direct all further inquiries regarding the Product back to the Client;
3. The Company shall return or destroy any physical or digital copies of the Client's proprietary information in its possession including (but not limited to) marketing material, business plans, customer lists, and pricing information.

## 3. RESPONSIBILITIES OF THE COMPANY.

In consideration for the profit share granted herein, the Company shall perform the following duties:

1. Overseeing the design, development, sampling, of the Product;
2. Negotiate with the manufacturers for the production and dropshipping of the Product, all contracts and payments will be completed by the Company directly;
3. Overseeing the fulfillment and timely shipping of all customer orders;
4. Create and operate website (\_\_\_\_\_) for the purpose of accepting customer orders;
5. Performing research and other prospecting duties with regard to potential customers;
6. Performing necessary photo and video shoots with known influencers for the purpose of gathering marketing content;
7. Create and operate Facebook and Instagram advertisements for the Product, the Company will make all payments directly to Facebook and Instagram;
8. Work with the Client to determine and institute any sales, discount codes, or price decreases from the agreed upon retail price. Any and all sales, discount codes, or price decreases will require written approval from the Client prior to instituting the sale, discount code, or price decrease;
- 9 The Company will work with the Client to adjust the cost of shipping charged to the customer at the point of checkout (the "Shipping Cost"). Adjustments may include cheaper rates, free shipping, or any other adjustment to the actual amount charged to the customer for shipping at checkout. Any and all adjustments to the Shipping Cost will be approved in writing by the Client prior to being put in place. Any additional expenses incurred by a change in Shipping Cost, including additional cost of fulfillment, poly bags, boxes, and other packing materials, and actual cost of shipping labels, will be treated as "Other eligible expenses" subject to section 4.1.b of this Agreement. Any and all additional expenses incurred from a change in Shipping cost will be invoiced directly to the Company and paid in full by the Company prior to the calculation of Profits. The Company will make any projected additional expenses expected to be incurred by a change in Shipping Cost known to the Client in writing prior to instituting any changes to the Shipping Cost, and the Client will have the final decision as to whether or not such proposed change will be implemented;
10. Performing other such duties and services as may be assigned by the Client to accomplish the aims of this Agreement in the time, place, and manner deemed appropriate by the Company.

#### **4. PAYMENT.**

In consideration for the duties performed hereunder, the Company shall be entitled to fifty percent (50%) of the profits earned for sales of the Product for the duration of this Agreement.

1. "Profits" are deemed to be calculated by the actual revenues minus sales tax and shipping, received for sale of the Product less any expenses by the Company paid on behalf of the Client in furtherance of the sale and the cost of goods sold.

- a. 'Cost of goods sold' (the "Production Cost") refers to the actual cost of producing the Product on a per-unit basis. The Production Cost for each Product will be outlined in writing to the client prior to the Product being listed for sale. The Production Cost shall not exceed the quoted per-unit price outlined in the provided pricing sheet for that specific Product.
- b. Other eligible expenses to be deducted prior to calculating Profits include: any paid digital (Facebook, Instagram, Google, Pinterest, Twitter, LinkedIn) advertising purchased in furtherance of the sale of the Product, actual cost of fulfillment, boxes, and shipping costs paid to manufacturer, payment processor fees, website hosting related fees, any legal or professional filing fees incurred in furtherance of the sale of the Product, expenses paid by the Company per paragraph 8 of this agreement, and any other expenses incurred relating to the furtherance of the sale of the Product which were approved in writing, by the Client, prior to their expenditure.
- c. The Company will be responsible for accurately calculating, charging, and paying sales tax to the state of California.
- d. Company will forward to the Client an accounting of the net profits and payment of Client's share upon the conclusion of each merchandise drop.

## **5. INDEPENDENT CONTRACTOR.**

The Parties agree that the Parties shall be considered independent contractors and not agents or employees of the other Party. Neither Party shall have authority to make any statements, representations or commitments of any kind, nor to take any action which shall be binding on the other Party, except as may be expressly provided for herein or authorized in writing.

## **6. CONFIDENTIALITY.**

The Company shall not, in any fashion, form, or manner, either directly or indirectly:

1. Disclose or communicate to any party any information relating to the Client's business or the Product including (but not limited to) customer lists, price points, analytics, account credentials, intellectual property, marketing plans, or any other information shared by the Client to the Company that is not readily available to the public at that time (the "Confidential Information");
2. Duplicate any Confidential information;
3. Use any Confidential Information other than solely for the benefit of the Client; or
4. Assist a third party in using any Confidential Information in any manner but solely for the benefit of the Client.

## **7. APPROVAL OF MARKETING MATERIAL.**

The Company shall receive written confirmation from the Client prior to using any marketing materials related to the Product that were not directly provided by the Client. The Company shall also receive written confirmation from the Client prior to incurring any marketing related expenses.

1. Any and all paid digital advertising related expenses are to be paid by the Company directly and factored into the calculation of Profits.

## **8. EXPENSES.**

The Company shall not be entitled to reimbursement for any expenses except those that have been previously approved in writing by the Client or explicitly stated within the context of this Agreement.

## **9. EXCLUSIVITY.**

The Client agrees to work with the Company exclusively for any and all brand development related projects, including but not limited to; apparel and merchandise launches, clothing lines, or any other physical product to be sold in a retail location, online, through social media, or any other retail medium for the duration of this agreement. Should the Client wish to launch any of the aforementioned brand development projects, the Company will retain the right of first refusal to facilitate the project, and the project will be governed by the terms and conditions set forth in this Agreement.

## **10. INDEMNIFICATION.**

At all times after the effective date of this Agreement, the Client shall indemnify the Company from all damages, liabilities, expenses, claims, or judgments (including interest, penalties, reasonable attorneys' fees, accounting fees, and expert witness fees) (collectively, the "Claims") that the Company or its employees may incur, excluding those that arise from:

1. The Company's negligence or willful misconduct arising from the carrying out of its obligations under this Agreement, and;

2. The Company's violation of applicable law or third party's rights, and;

3. The Company's breach of any of its obligations or representations under this Agreement

Running digital advertising campaigns can have unintended consequences on the Client's reputation. Should any consequences occur, the Client waives its right to hold the Company responsible for any damage and/or liability that may arise from the Company's actions on behalf of the Client within the scope of this Agreement.

## 11. SERVICE INTERRUPTION

Either party shall be excused from any delay or failure in performance required hereunder if caused by reason of any occurrence or contingency beyond its reasonable control, including, but not limited to, acts of God, acts of war, fire, laws, proclamations, edits, ordinances or regulations, riots, earthquakes, floods, explosions or other acts of nature. The obligations and rights of the party so excused shall be extended on a day-to-day basis for the time period equal to the period of such excusable interruption. When such events have abated, the parties' respective obligations hereunder shall resume. In the event the interruption of the excused party's obligations continues for a period in excess of twenty-eight (28) days, either party shall have the right to terminate this Agreement with ten (10) days prior written notice to the other party.

## 12. SEVERABILITY

It is the intention of the parties that the provisions of this Agreement will be enforceable to the fullest extent possible under applicable law, and that the enforcement of any provision or provisions of this Agreement by any such law will not render unenforceable, or impair, the remainder of the Agreement. If any provision or provisions hereof are deemed invalid or unenforceable, either in whole or in part, this Agreement will be deemed amended to delete or modify, as necessary, the offending provision or provisions and to alter the bounds thereof in order to render it valid and enforceable.

## 13. NOTICES

Each party giving or making any notice, request, demand, or other communication required or permitted by this Agreement shall give that notice in writing and use one of the following types of delivery, each of which is a writing for purposes of this Agreement: personal delivery, mail (registered or certified mail, postage prepaid, return-receipt requested), nationally recognized overnight courier (fees prepaid), facsimile, email, or text message.

A party shall address notices under this section to a party at the following addresses:

If to the Company:

ATTN: [NAME]

[COMPANY NAME]

[COMPANY ADDRESS]

[BUSINESS EMAIL]

If to the Client:

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Effectiveness.

- (a) A notice is effective only if the party giving notice complies with subsections and;
- (b) If the recipient receives the notice.

## **14. WAIVER**

No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement will be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy will be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, and no waiver will constitute a continuing waiver, unless the writing so specifies. Failure to enforce any condition or right contained in this Agreement shall not constitute a waiver.

## **15. APPLICABLE LAW**

This Agreement incorporates by reference, and will be modified as though agreed to by both parties, any and all provisions of federal, state or local statute or regulation governing the performance of any obligation hereunder.

Choice of Law. The laws of the state of California govern this Agreement (without giving effect to its conflicts of law principles).

Choice of Forum. Both parties consent to the personal jurisdiction of the state and federal courts in Los Angeles County, California.

## **16. COUNTERPARTS; ELECTRONIC SIGNATURES**

Counterparts. The parties may execute this Agreement in any number of counterparts, each of which is an original but all of which constitute one and the same instrument.

Electronic Signatures. This Agreement, agreements ancillary to this Agreement, and related documents entered into in connection with this Agreement are signed when a party's signature is delivered by facsimile, email, or other electronic medium. These signatures must be treated in all respects as having the same force and effect as original signatures.

## **17. AMENDMENTS & ADDENDUMS**

This contract is to be considered complete and final. However, a change may necessitate an amendment or addition to this contract. Should such a need arise, the amendment or addendum must be drawn up as a separate document, signed by both parties indicating their agreement, and a copy of the signed document must be provided to the Client and the Company.

## **18. ENTIRE AGREEMENT**

This Agreement constitutes the final agreement of the parties. It is the complete and exclusive expression of the parties' agreement with respect to its subject matter. All prior and contemporaneous communications, negotiations, and agreements between the parties relating to the subject matter of this Agreement are expressly merged into and superseded by this Agreement. The provisions of this Agreement may not be explained, supplemented, or qualified by evidence of trade usage or a prior course of dealings. Neither party was induced to enter this Agreement by, and neither party is relying on, any statement, representation, warranty, or agreement of the other party except those set forth expressly in this Agreement. Except as set forth expressly in this Agreement, there are no conditions precedent to this Agreement's effectiveness.

Should either party violate the terms of or fail to meet the obligations set forth in this contract, such action will render the opposing party free from any further contractual obligation.

## **19. HEADINGS**

The descriptive headings of the sections and subsections of this Agreement are for convenience only, and do not affect this Agreement's construction or interpretation.

[SIGNATURE PAGE]

**IN WITNESS WHEREOF**, each of the Parties has executed this Consulting Agreement, both Parties by its duly authorized officer, as of the day and year set forth below.

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\_\_\_\_\_  
Date

[COMPANY NAME]

\_\_\_\_\_  
[NAME]

[TITLE]

[COMPANY]

\_\_\_\_\_  
Date