**INFLUENCER SERVICE AGREEMENT**

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2021 (“Effective Date”)

Influencer Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**You**” or “**Influencer**”)

Campaign Project: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Promotion”)

Influencer contact info: email:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, phone number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Company contact email: phone number:

**Please read this Agreement carefully before you perform any services for \_\_\_\_\_\_\_\_. By signing this Agreement, you accept and agree to be bound and abide by all of the terms and conditions hereof. If you do not want to agree to this Agreement, you must not perform any Services for \_\_\_\_\_\_\_\_\_\_\_.**

**1**. **Scope.** This Influencer Service Agreement (“Agreement”) is between you (“Influencer”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Company”) in connection with Campaign Project and Promotion. You shall provide the services (“Services”) as a content creator and/or influencer as set forth in the Project Specifications, attached as Schedule 1 and made a part of this Agreement.

2. **Term:** By accepting this Agreement, you are agreeing to provide Services for the term set forth in Schedule 1 and pursuant to the Standard T&Cs (defined below). You acknowledge and agree to the exclusivity provisions contained in the Standard T&Cs (defined below).

**3**. **Compensation.** Your fee in connection with the Campaign (“Fee”) shall be the sum set forth in Schedule 1 and payable on the date(s) set forth in Schedule 1 and subject to the Standard T&Cs (defined below).

**4**. **Standard Terms and Conditions.** The standard terms and conditions (“Standard T&Cs”) set forth in the attached Exhibit A are an integral part of this Agreement.

**AGREED AND ACCEPTED:**

|  |  |
| --- | --- |
| **“Influencer”** | **\_\_\_\_\_\_\_\_\_\_** |
| By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Authorized signatory | Authorized signatory |
| Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Address for Notices: |  |

**Schedule 1**

**Influencer:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Sponsor:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Sponsor”)

**Campaign:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Campaign”)

**Campaign Window:** \_\_\_\_\_\_\_\_\_\_\_\_\_, 2021 – \_\_\_\_\_\_\_\_\_\_\_, 2021 (“Campaign Window”)

**Social Activations:** \_\_ Total Posts (Insert Social Platform(s) and # of Posts for each here) (each, individually a “Post” and collectively, “Posts”)

**Social Media Properties:** \_\_\_\_\_\_\_\_\_ (each, individually a “Property” and collectively, “Properties”)

**Social Activation Fee:** $\_\_\_\_\_\_\_\_\_\_\_ (“Fee”)

**Exclusivity:** Influencer shall refrain from promoting products of competitive companies including but not limited to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ("Competitors") beginning \_\_\_\_\_\_\_\_\_ weeks prior to the Campaign Window and ending \_\_\_\_\_\_\_\_\_\_ weeks after the Campaign Window. Notwithstanding the foregoing, nothing shall preclude Influencer from appearing in the entertainment, news or information portion of any radio, television, film, stage or other program or at an event regardless of sponsorship or production integration.

**Sponsor & Campaign Overview:**

**Product Name (“Product”) blurb about the Sponsor goes here.**

**Campaign Objective: Campaign overview goes here.**

**Influencer Obligations: Influencer shall do all of the following during the Campaign Window (collectively, the “Services”):**

* All Influencer Content (defined below) and each Post are subject to the prior written approval (email shall be sufficient) of Company and Influencer prior to publication.
* Influencer shall deliver to Company on or before \_\_\_\_\_\_\_\_\_\_\_\_\_\_ (on a delivery schedule determined by Company).
* Company and Sponsor shall have two (2) rounds of notes of approval on the Influencer Content.
* Each Post must include the Campaign hashtag #\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and @\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in the caption.
* Influencer agrees to attach swipe up link on each Post.
* Influencer agrees to submit one (1) photo still image to Company. Photo not required to be posted on social media.
* Influencer’s Post will be published in accordance with Addendum A Influencer Endorsement Guidelines.
* Company will monitor and enforce compliance during the Campaign Window.
* Influencer agrees that all Post(s) on Influencer’s Properties in connection with this Campaign shall remain on Influencer’s Properties throughout the Campaign Window. Influencer shall not remove such Post(s) or authorize any other third party to remove such Post(s) during the Campaign Window. Notwithstanding the foregoing, upon the request of Company, Influencer agrees to immediately take down or remove any Post(s) and/or negative comments, trolling, etc. from the Properties.
* Influencer acknowledges and agrees that any “bonus” posts that Influencer chooses to publish at any time during the Campaign Window (additional posts not paid or contracted for under this Agreement) relating in any way to the Campaign or Company require endorsement disclosures in compliance with “Addendum A” FTC endorsement disclosure guides for social media.
* It is understood and agreed that Influencer may not publish non-Campaign related content on Influencer’s Properties for a minimum of three (3) hours after publication of each Post hereunder.

**Ownership and License of Influencer Content:** Excluding any intellectual property and/or products provided by Company (including, without limitation, any trademarks, logos, trade names of the Company), Influencer shall own all rights (including, without limitation, all intellectual property rights) in and to any content created and posted by Influencer in connection with the Campaign, including, without limitation, any videos, photos and text in the Post(s) made by Influencer on the Properties (collectively, the “Influencer Content”). Influencer hereby grants Company, its parent entities, subsidiaries, licensees (Sponsor), a non-exclusive, non-transferable, irrevocable, universal, fully paid-up, royalty-free license to publish, in context, the Influencer Content and the Post(s) on Sponsor’s social media channels, mobile applications and internet websites (during the Campaign Window or for 30-90 days or in perpetuity) and pursuant to each platform’s applicable terms of use.

**Payment Schedule**: So long as Influencer is not in material, uncured breach, Company shall pay Influencer the Fee within thirty (30) days after Influencer’s completion of the services set forth herein and Company’s receipt and approval of an invoice therefor by Influencer. All compensation will be processed as “1099” income.

**Entire Agreement:** This Agreement, including Exhibit “A” Standard Terms and Conditions, and Addendum A, which are all hereby incorporated by this reference, expresses the entire agreement between Company and Influencer in connection with the subject matter hereof and supersedes any and all prior or contemporaneous agreements, whether oral or written, with respect thereto.

In Witness Whereof, Influencer and Company have each caused this Agreement to be executed by their duly authorized representatives.

|  |  |
| --- | --- |
| \_\_\_\_\_\_\_\_\_\_\_ | Influencer |
| By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

CONSENT OF PARENT OR GUARDIAN (if under 18)

I represent and warrant that I am the parent or legal guardian of the minor child (“Minor”) whose name appears above. The Minor and I, both individually and as the Minor’s parent or legal guardian have read the foregoing Agreement and hereby consent to the execution thereof, and we will not revoke our consent.

Name (Please Print) Signature

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**EXHIBIT A**

**TERMS AND CONDITIONS**

These Terms and Conditions are incorporated into the cover agreement (“Agreement”) between Company and Influencer. All capitalized terms contained, but not defined herein, shall have the same definitions as are accorded to such terms in the Agreement.

1. Duties of Influencer.

a. Services. Influencer shall perform the Services described in the Agreement. In the event of any conflict between that set forth in the Agreement and that set forth in these Terms and Conditions, that set forth in the Agreement shall govern (provided that any statements as to confidentiality or ownership of intellectual property shall supplement but not limit in any way the provisions of Section 4).

b. Performance. Influencer’s performance under this Agreement shall be conducted with due diligence and in full compliance with the highest professional standards of practice in the industry. Influencer shall at all times comply with all applicable laws in the course of performing the Services. If Influencer’s work requires a license, Influencer represents that he/she has obtained that license, and that such license is in full force and effect and will remain in full force and effect during the term of this Agreement.

2. Compensation. The fees payable by Company and the payment terms of such fees shall be as set forth in the Agreement. Such fees are Influencer’s sole compensation for rendering the Services to Company.

3. Term/Termination. This Agreement will be effective as of the Campaign Window set forth in the cover Agreement. Unless otherwise set forth in the Agreement, this Agreement may be terminated by Company at any time, with or without cause, by giving written notice of termination to Influencer. In the event of such termination, unless otherwise set forth in the Agreement, Company will be obligated to pay Influencer any outstanding fees or expense reimbursements due under this Agreement only for or in connection with such Services actually completed by Influencer and reasonably acceptable to Company as of the date of Company’s termination notice.

4. Confidentiality. In the course of performing services under this Agreement, the parties may acquire Confidential Information.

a. Confidential Information/Exceptions. “Confidential Information” means (1) the terms of this Agreement and (2) information or materials one party shares with the other which (a) is not subject to an exception below and (b) the disclosing party identifies as confidential or the recipient should reasonably understand to be confidential given the circumstances of disclosure and/or the nature of the information. Confidential Information does not include information that: (a) was already known to the recipient before it was disclosed by the party sharing the information; (b) is publicly available through no fault of the recipient; (c) is rightfully received from a third party without a duty of confidentiality that is known by the recipient; or (d) is independently developed by the recipient as evidenced by its business records.

b. Use. The recipient may use Confidential Information only in connection with this Agreement and must use a reasonable degree of care to prevent unauthorized use or disclosure. The recipient may only share Confidential Information with its employees, agents, contractors and/or with its respective business, legal, and financial advisors in the normal course of such party’s business, who need to know it, or as part of due diligence for any potential or actual financing or merger or sale transaction, as long as they are made aware of the confidential nature of such information.

c. Permitted Disclosures. The recipient may disclose the existence of the relationship between the parties. The recipient may disclose Confidential Information if compelled by law but will provide reasonable prior notice to the disclosing party (unless prohibited by law). The disclosing party reserves all rights not explicitly granted in this Section 4c.

d. Duration of Obligations. The recipient’s duty to protect Confidential Information will survive for two (2) years from the date of this Agreement.

e. Destruction. If the disclosing party requests, the recipient will return or destroy the disclosing party’s Confidential Information (such destruction to be duly certified).

5. Independent Contractor. Influencer is an independent contractor and is solely responsible for all taxes, withholdings, and other similar statutory obligations including, without limitation, Workers’ Compensation Insurance, Unemployment Insurance, or State Disability Insurance. Influencer understand and agrees that Influencer shall not be considered as having employee status with Company and Influencer will not participate in any benefit program Company may have for its employees. Influencer shall not have any authority to act on behalf of or to enter into any contract, incur any liability or make any representation on behalf of Company.

6. Representations and Warranties. Influencer represents and warrants that, as of Influencer’s execution of this Agreement and at all times during the term of this Agreement: (i) it will comply with all its obligations under hereunder; (ii) Influencer’s performance of the Services and all terms of this Agreement will not breach any agreement that Influencer has with another party including, without limitation, any agreement to keep in confidence proprietary information acquired by Influencer in confidence or trust prior to the execution of this Agreement; (iii) Influencer is not and will not be bound by any agreement, nor has assumed or will assume any obligation, which would in any way be inconsistent with the Services to be performed by Influencer under this Agreement; and (iv) in performing the Services, Influencer will not use any confidential or proprietary information of another party, or infringe the rights of another party, nor will Influencer disclose to Company, or bring onto Company’s premises, or induce Company to use any confidential or proprietary information of any person or entity other than Company or Influencer. Influencer and Company each represent and warrant that: (A) it has the right to enter into this Agreement and to grant all of the rights granted; (B) it will comply with all applicable laws, rules, regulations and generally accepted industry standards including, without limitation, the FTC’s Guides Concerning the Use of Endorsements and Testimonials in Advertising, (b) applicable terms of use, guidelines or other policies of any third party services (e.g., Musical.ly, Instagram, YouTube, Facebook, Twitter), and (c) the Company Influencer Endorsement Guidelines attached hereto as Addendum A ((a) through (c); and (C) the consent of no other person or entity is necessary for it to enter into and fully perform this Agreement. Furthermore, unless approved in advance by Company, Influencer will not include other people or identifiable locations in Deliverables. If any of the buildings in the background are well-known and/or immediately recognizable, Influencer will need to obtain a location release form. Any individuals (other than Influencer) featured in Deliverables will need to be 18 or older and will need to sign a release form providing Company with permission to use their image and likeness. Influencer will not include third-party names, logos, or trademarks in Deliverables.

7. Indemnity. Each party will indemnify and hold harmless the other, the other's heirs, parent companies, affiliates, divisions, subsidiaries, successors, transferees, assignees, licensees, and the agents, associates, officers, directors and employees of each, from and against any and all damages, costs, expenses, liabilities, claims and causes of action in any way arising by reason of the breach of any warranty, representation or obligation under this Agreement by the indemnifying party or any other provision in this Agreement, including, without limitation, reasonable outside attorneys' fees and costs in the defense and disposition of such matters. Company will indemnify, defend, and hold Influencer harmless from any and all claims arising from the Campaign and/or the use of materials created by Company hereunder.

8. Company shall have the right to terminate the Agreement upon written notice to Influencer without penalty if Influencer (a) uses any Company name, brand, product, or service in a disparaging, derogatory, pejorative, or offensive manner during the term of the applicable Agreement; (b) is charged with or convicted of any crime; (c) is involved in any activity, conduct, or speech that, in Company’s sole judgment, is viewed by the general public as offensive or morally or legally reprehensible, or is likely to adversely affect Company, including its image, brand, reputation, products or services; or (d) is found to have attempted to artificially grow Influencer’s audience or improve engagement (including through comment pods and any fraudulent behavior such as purchasing followers and comment bots). Company’s decision on all matters arising under this paragraph shall be conclusive. If Company decides to exercise this termination right, Company shall have no further obligations to Influencer and shall be entitled to a refund of any compensation paid to Influencer. Company’s rights under this paragraph shall be in addition to any other rights or remedies which it may have under the contract or at law or in equity.

9. Limit of Liability. NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT OR OTHERWISE, NEITHER INFLUENCER NOR COMPANY WILL BE LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES. THE FOREGOING LIMITATION DOES NOT APPLY TO INFLUENCER’S OBLIGATIONS OF CONFIDENTIALITY UNDER SECTION 4 HEREOF OR EITHER PARTY’S INDEMNITY UNDER SECTION 5 OR SECTION 7 HEREOF.

10. Miscellaneous.

a. Governing Law. Influencer agrees that any dispute in the meaning, effect or validity of this Agreement shall be resolved in accordance with the laws of the State of California without regard to the conflict of laws provisions thereof. The sole jurisdiction and venue for actions related to the subject matter of the Agreement shall be the state and federal courts having within their jurisdiction the location of Company’s principal place of business, and both parties hereby consent to such jurisdiction and venue.

b. Severability. If any provision of this Agreement is held to be illegal or unenforceable, such provision shall be limited or excluded from this Agreement to the minimum extent required, and the balance of the Agreement shall be interpreted as if such provision was so limited or excluded and shall be enforceable in accordance with its terms.

c. Assignment. This Agreement shall inure to the benefit of the parties hereto and their respective heirs, successors, assigns, and personal representatives; provided, however, that Influencer shall not assign any of its rights or delegate any of its duties hereunder without Company’s prior written consent.

d. Entire Agreement/Modifications. This Agreement contains the entire understanding of the parties regarding its subject matter. This Agreement may only be modified by a subsequent written agreement executed by authorized representatives of both parties.

e. Attorneys’ Fees. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys’ fees, court costs and necessary disbursements, in addition to any other relief to which the party may be entitled.

f. Survival. The provisions of this Agreement that may be reasonably interpreted as surviving its termination, including without limitation FTC endorsement disclosure obligations, shall continue in effect after termination of this Agreement.

**Addendum A**

**Influencer Endorsement Guidelines**

* The FTC requires disclosure of any material connection between an advertiser and Influencer of a product/service that might materially affect the weight or credibility of the endorsement, unless the relationship between the two is apparent from the context of the communication. Disclosures must be “clear and conspicuous” to ensure that an endorsement is not unfair or deceptive to consumers.
  + Compensation means compensation of any kind, including, money, free goods/services and points for prizes.
  + Endorsement means any advertising message that consumers are likely to believe reflects the opinions, beliefs, findings or experiences of a party other than the sponsoring advertiser.

**General Rule: would a reasonable consumer expect that there is a connection between the Influencer and the advertised product or service? If not, add additional disclosure.**

* Tweets, Facebook, YouTube or Instagram posts and other social media posts need disclosures.
* Disclosure should be placed as close as possible to the triggering claim and incorporated into the endorsement/ad when possible.
* In-post Tweets/Facebook posts/Instagram posts or any other social media platform posts, should include messaging of #sponsored, #brandpartner or #ad or other disclosure approved by us in advance in writing.
* For videos, the disclosure must be in the video itself, vocally said by the Influencer preferably, or written in the video itself in a clear and upfront way at the beginning of the video, disclosing that it is a sponsored video (“I teamed up with” or “the video is sponsored by” is acceptable). It’s OK for the Influencer to say, “Thank you to the team at [Product name] (or [Brand]) for sponsoring this video.”
* Additionally, the endorsement should be mentioned at the end of the text description for the video.
* Note disclosure in the textual description alone of the video is not sufficient.
* There should not be false or misleading statements from an Influencer.
* All Influencer content should be original and/or should not infringe or misappropriate any intellectual property any third party.