**DISCLAIMER: This sample policy has been drafted to incorporate the Federal Trade Commission (FTC) Act’s guidance on the level of control the FTC expects Companies to use when engaging social media influencers for brand promotions. This sample policy should not be interpreted as accomplishing or achieving the necessary balance between a brand’s FTC compliance while maintaining an influencer’s status as an independent contractor under applicable law.**

**SOCIAL MEDIA INFLUENCER ENDORSEMENT POLICY**

**[Sample Clauses]**

This Social Media Influencer Endorsement Policy (the “Influencer Endorsement Policy”) sets forth the Company’s guidelines and expectations for Influencers when promoting our corporate brand, products and services to their followers.

**Key Regulations and Guidance Governing Social Media Influencer Endorsements – An Overview**

* **Section 5 of the Federal Trade Commission Act** – Section 5 of the Federal Trade Commission (“FTC”) Act (the “FTC Act”) protects consumers from deceptive advertising by prohibiting “unfair or deceptive acts or practices in or affecting commerce.” An unfair practice is conduct which causes or has the potential to cause misinformed purchasing decisions to consumers. Deceptive practices are practices which involve a material representation, omission or practice that are likely to mislead a consumer into making a purchasing decision that they would not have made absent the deceptive conduct.
* **FTC Endorsement Guides –** The FTC Endorsement Guides (the “Endorsement Guide”) embody the truth-in-advertising principle that endorsements must be honest and not misleading. The Endorsement Guide contains information about disclosure of “material connections” between advertisers and endorsers and the application of the FTC’s consumer protection principles to social media and influencer marketing.

The Influencer is responsible for making these disclosures and being familiar with the FTC Act, Endorsement Guides and complying with laws against deceptive advertising.

**Material Connections and Compliance with FTC Disclosure Guidelines**

In accordance with the FTC’s disclosure guidelines, each of the Influencer’s social media endorsements must clearly, obviously and unambiguously disclose their “material connection” with the Company’s brand. A “material connection” is one which would impact the weight or credibility that the Influencer’s audience gives the endorsement. “Material connections” include personal, family, or employment relationship or a financial relationship - such as free products and/or payment from the Company in exchange for the Influencer’s product/service endorsement.

The Company expects the Influencer to comply with the FTC Act and the FTC’s social media endorsement guidelines and disclosure obligations throughout the course of their engagement with the Company.

**Guiding Principles for Effective Disclosures**

In accordance with the FTC’s endorsement guidelines, the Influencer must ensure that their disclosure is clear and easy for their audience to read and understand. In addition, the Influencer must prominently display the disclosure with the endorsement post.

The Influencer must also be mindful of the medium and social media platform that they use for the product/service endorsement to ensure that the disclosure is effective and compliant with the FTC endorsement guidelines. For photographic endorsements, the Influencer should superimpose the disclosure over the picture to allow the viewer sufficient time to notice and read the disclosure. For video endorsements, the Influencer should make the disclosure verbally and also superimpose the disclosure language in the video itself. For live stream endorsements, the Influencer should make the disclosure verbally and repeat the disclosure periodically throughout the live stream to ensure that viewers who see only part of the stream receive the disclosure.

Regardless of the social media platform used for the brand promotion, the Influencer must use simple and clear language and/or hashtags that is hard for the Influencer’s audience to miss. Below are a few examples of simple and clear disclosure language and hashtags that the Company recommends for promoting our brand, which are modeled after the FTC guidance:

* “Thank you [Company] for the free product.”
* “Paid partnership with [Company]”
* “In collaboration with [Company].”
* “[Company] Promoter”
* “[Company] Ambassador”
* “[Company] Sponsorship”
* “Advertisement”
* “Sponsored”
* [\***NOTE**: The Company should consider any content specific hashtags, mentions or key words that the Company would like included or omitted based on the type of product/service the Influencer is endorsing.]

The FTC cautions against the use of short-form or abbreviated terms like “spon” or “collab”, which could potentially mislead the viewer or reader. When using hashtag disclosures, the Influencer must use language that clearly identifies Influencer’s relationship with the brand and should similarly avoid using vague or confusing short-form or abbreviated terms.

**Company Product/Service Influencer Endorsement Protocol – Guidelines for Responsible Use**

The Company and the Influencer both have an obligation under the FTC to protect consumers from deceptive advertising by prohibiting unfair or deceptive acts or practices in or affecting commerce. In addition to the necessary disclosures, the Influencer must ensure that their endorsement is truthful and based on their personal experience with the product/service they are endorsing. The Company expects the Influencer to honestly and transparently include their commercial relationship with the Company in all social media posts which promote our Company’s brand, products and/or services.

Influencers should keep the following protocol in mind as a guide on what they can and cannot say about the Company’s brand, product, service they are endorsing:

* The Influencer’s endorsement must reflect Influencers the honest opinion, finding, belief and experience with the Company’s brand, product or service.
* The Influencer’s endorsement must not make any claims that would be false, misleading or unsubstantiated information if the Company made them directly.
* The Influencer cannot discuss experience with a product/service that they have not personally tried.
* The Influencer is prohibited from using fake information (including, but not limited to a fake alias or fake post) when promoting the Company’s brand, product or service.

The Influencer must promptly correct any false, inaccurate, erroneous or otherwise misleading information in an endorsement post in a manner which visibly apprises the reader that the post has been altered to correct prior misstatements.

Furthermore, the Influencer is prohibited from posting or forwarding written statements, audio, video, pictures or other materials that could be considered offensive, malicious, obscene, harassing or threatening to any readers or viewers, including, but not limited to, Company employees, customers, clients, subscribers or followers.

The Influencer should direct any questions regarding the Company’s endorsement protocol to the Company’s Social Media Endorsement Coordinator [or other company contact].

**Interplay of Social Media Influencer Endorsement Policy and Company Code of Conduct/Ethics**

The Influencer is expected to abide by the Company’s Code of Conduct/Ethics, which also governs social media activities relating to product promotion and endorsements. In addition, the Influencer should be familiar with and consider the following Company policies which work together with the Code of Conduct/Ethics and the Influencer Endorsement Policy when promoting the Company’s brand:

* [**NOTE:** This list may include reference to the Company’s sexual harassment/anti-discrimination policy; confidentiality and trade secret policy; or other relevant Company policies]

**Confidentiality Obligations**

The Influencer acknowledges that they will receive, have access to and create documents, materials and information of a confidential and proprietary nature (“Confidential Information) to the Company and customers of the Company during the course of the Influencer’s engagement with the Company. The Influencer acknowledges and agrees that such Confidential Information is an asset of the Company and/or its clients, must be kept strictly confidential and used only in connection with the performance of the Influencer’s services as set forth in their Influencer Agreement[[1]](#footnote-1). The Influencer agrees that they will not use, disclose, communicate, copy or permit the use or disclosure of any such Confidential Information to any third party in any manner whatsoever except to the existing employees of the Company or as otherwise directed or approved by the Company in the course of the Influencer’s performance of services under their Influencer Agreement, and thereafter only with the Company’s written permission. Upon termination of the Influencer’s engagement with the Company or upon request of the Company, the Influencer will return to the Company all Confidential Information, including all copies or reproductions thereof, which are in the Influencer’s possession, custody or control.

**Monitoring Compliance with Influencer Endorsement Policy**

In accordance with FTC requirements, the Company will monitor the Influencer’s endorsement efforts to ensure that the Influencer makes appropriate disclosures of any material connection(s) with our Company’s brand and reflect their honest opinion, finding, belief and experience with the endorsed product/service. The Company will also review the Influencer’s social media endorsements to ensure that they that the incorporates any required promotional language, hashtags or mentions related to the endorsed product/service, if any, set forth in the Influencer Agreement.

**Repercussions for Identified Influencer Endorsement Violations**

Should the Company identify any social media posts which violate the Influencer Endorsement Policy, the Company will take appropriate action against the Influencer based on the nature and extent of the identified violation. Repercussions for violation of the Influencer Endorsement Policy may include, but are not limited to a request for immediate removal of the post from all social media platforms; a post or statement to the Influencer’s followers which corrects the identified violation; suspension of all promotional endorsements; training and/or re-training on compliance with the Company’s Influencer Endorsement Policy and the FTC guidelines; and/or termination of the Influencer’s contract with the Company.

**ACKNOWLEDGEMENT**

I, \_\_\_\_\_\_\_\_\_ [Influencer name] acknowledge that on \_\_\_\_\_\_ [date], I received and read a copy of the Company’s Social Media Influencer Endorsement Policy and understand that it is my responsibility to be familiar with and abide by its terms.

By signing below, I indicate my understanding and agreement to all terms stated in this Social Media Influencer Endorsement Policy.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Influencer Signature Date

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ­­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Company Representative Signature Date

1. An Influencer Agreement is a separate written agreement between the Company and the Influencer. A separate Influencer Agreement is recommended as a means of setting forth the Company’s expectations for the engagement, including, engagement deliverables, compensation, independent contractor status, and to comply with any applicable state or federal law and reiterate the Influencer’s obligation to comply with FTC Guidelines. [↑](#footnote-ref-1)