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SOCIAL MEDIA OWNERSHIP

The question of who owns a company's social media presence – the employer, versus the employee who develops / maintains the company's social media account – is a developing area of law. This topic often rears its head when an employee responsible for the social media account leaves the company, and refuses to cede passwords or controls to the accounts back to the company. The best way for employers to ensure stable ownership and control of business-related social media accounts and work product is to enter into contractual agreements with any employees responsible for maintaining or developing the company's social media presence. It is also advisable for companies to maintain policies regarding ownership of social media.

Section I, below, contains a sample "Ownership of Social Media Work Product" policy. Section II contains sample language to be inserted into agreements with employees.

I. Social Media Ownership Policy

Ownership of Social Media Work Product

All social media accounts, developments, and intellectual property (including computer programs, blogs, copyrighted works, online journals, and profiles on social networking sites such as Twitter, Facebook, LinkedIn, YouTube, My Space, etc.) created or used by employees at the direction of the Company, and / or in the course of their job responsibilities, are "Company Work Product," and belong solely to the Company. The Company shall own and have the right to control all Company Work Product whether you open the account or use, manage, or access it. Company Work Product includes any and all log-in information, data, passwords, trademarks, and content related to the account, including all followers, friends, connections, subscribers, and contacts. Company Work Product shall include no social media accounts that are created or used by you exclusively for your own personal use. The Company shall not require or request you to provide personal social media account information or passwords in accordance with applicable laws. To this end, personal accounts should be kept separate from business accounts.

You agree you will not create, develop, or maintain any Company Work Product without the Company's express prior authorization. All approved Company Work Product shall where possible be registered, in whole or in part, using the Company's name and contact information. After registration, the login and password information for all Company Work Product, which you agree to keep confidential, shall be promptly reported to the Chief Information Officer and shall not be changed without prior written authorization from the Chief Information Officer.

If you have any questions about creating or managing a social media account for the Company, please contact the Chief Information Officer for guidelines and restrictions related to the creation, development, and maintenance of Company Work Product and all business use of social media.

Upon the Company's request during employment or immediately after your separation from employment with the Company, you will cease accessing, using, updating, or modifying the Company Work Product.

Upon your separation of employment from the Company, you understand that the Company will retain ownership and control of all Company Work Product created or used during your employment, including all related data and information. Prior to your separation of employment, you agree to provide to the Company the login information, including the administrative rights, usernames and passwords, for Company Work Product you created, modified, or used. You will also agree to assist the Company, both during and after your employment, with the transition and maintenance of Company Work Product created or used by you during employment, including providing information that may be necessary to ensure the Company can access the Company Work Product.

II. Proposed Social Media Contractual Provisions

Definitions.

1. "Confidential Social Media Information" includes all data and information concerning the Company's social media accounts which is proprietary and confidential, including but not limited to Trade Secrets, intellectual property rights, confidential strategic business initiatives (e.g., a new secret product line, acquisition, or "secret sauce"), customer requirements, customer lists (including but not limited to non-public social media account followers, friends, connections, subscribers, and contacts), business plans, finances, sales and training methodologies, pricing, or confidential personal information about customers or employees (which is defined as another employee's social security number, protected health information, credit card numbers, drivers' license numbers, mother's maiden name, complete date of birth, minor children's names).
2. "Copyrightable Works" are those defined by 17 U.S.C.A. § 102(a).
3. "Social Media Developments" means all inventions, whether or not patentable, Confidential Information, computer programs, copyrighted works, mask works, trademarks, including on any online journal or blog, or on any social media or social networking sites (such as Twitter, Facebook, LinkedIn, YouTube, MySpace) and other intellectual property made, conceived, or authored by you, whether alone or jointly with others, while employed with the Company, whether or not during normal business hours or on the Company's premises, that are within the existing or contemplated scope of the Company's businesses when such developments are made, conceived, authored, or which result from or are suggested by any work you or others may do for the Company.
4. "Trade Secrets" includes all information including, any formula, drawing, pattern, compilation including customer list, program, device, method, technique, or process that derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use. ***{NOTE: "trade secrets" are often specifically***

defined by state law; this definition should be substituted to comply with state law where applicable.}

Return of Social Media Information. Employee shall immediately upon termination of Employee's employment with the Company or at any other time the Company so requests, deliver to the Company all social-media-related property, including but not limited to, documents in any form including electronic, software, records, reports, data, passwords, memoranda, notes, models, drafts and equipment of any nature prepared or acquired in Employee's employment with the Company, including but not limited to all Confidential Social Media Information, Trade Secrets, and/or Social Media Developments, which are in the possession of or under the control of Employee. Employee shall take no such Confidential Social Media Information, Trade Secrets, and/or Social Media Developments with them upon separation of employment with the Company. If Employee has stored Confidential Social Media Information, Trade Secrets, and/or Social Media Developments on any personal desktops or laptops, Personal Digital Assistants, mobile/smart phones, external hard drives, "flash" or similar drives, USB storage devices, FireWire storage devices, digital music players, digital tapes, floppy discs, CDs, DVDs, memory cards, zip discs, and maintained in personal email accounts (including web-based email accounts such as Hotmail, Gmail, Yahoo) and other electronic or online communications applications such as instant messaging, text messaging, blogs, social media (Facebook, My Space, LinkedIn, chat rooms and similar environments)¹ and all other similar mediums that can store or transmit electronic data, then Employee consents and agrees to make those devices immediately available to the Company upon separation from employment, or provide access and/or passwords to those accounts or communications to enable the Company to search for such Confidential Social Media Information, Trade Secrets, and/or Social Media Developments, and to remove and/or make complete copies of the medium/communications and all information stored. Employee agrees this list is not comprehensive and includes technological advancements in methods, devices, and locations for storing and communicating data that could include Confidential Social Media Information, Trade Secrets, Social Media Developments, or information covered by this paragraph. For this purpose, Employee agrees to waive and agrees he or she has no expectation of privacy regarding the media and communications referred to in this paragraph.

Inventions, Ideas, and Other Social Media Intellectual Developments. Employee assigns, and agrees to assign, to the Company all Employee's present and future right, title, and interest in any inventions, ideas, and Social Media Developments (collectively "Social Media Intellectual Property") *{NOTE: more specificity may be in order as to a blog or site}* conceived, discovered, reduced to practice, and/or made by Employee during the time Employee is employed by the Company (whether before, on or after this Agreement), whether such Social Media Intellectual Property was conceived, discovered, reduced to practice, and/or made by Employee solely or jointly with others, on or off the premises of the Company's business, or during or after working hours, if such Social Media Intellectual Property: (i) was conceived, discovered, reduced to

¹ "Social media" is defined as on-line social structures made up of individuals or organizations tied together or affiliated by one or more specific types of interdependency, such as values, visions, ideas, financial exchange, friendship, business operations, professional exchange, and the like and operate on many levels, from familial to national to worldwide, for the exchange of information, collaboration, problem solving, photosharing, and/or other social goals.

practice and/or made with the Company's facilities, equipment, supplies, or trade secrets; or (ii) relates to the Company's current, potential, or anticipated business activities, work, or research; or (iii) results from work done or to be done by Employee or under Employee's direction, alone or jointly, for the Company. Employee further agrees that such Social Media Intellectual Property belongs to the Company and that the Company may keep such Social Media Intellectual Property and/or processes pertaining thereto, whether patented or copyrighted or not, as trade secrets and make all decisions regarding whether and how to use such Social Media Intellectual Property and/or processes. Employee further agrees not to use or seek any commercial exploitation of or otherwise use any Social Media Intellectual Property required to be assigned under this Agreement for personal use.

Employee acknowledges, agrees, and intends that all Copyrightable Works Employee creates during the time Employee is employed by the Company (whether before, on or after this Agreement) and within the scope of Employee's employment shall be "works made for hire" as defined under the U.S. Copyright Act, 17 U.S.C. §§ 101 *et seq.* Employee also acknowledges, agrees, and intends that the Company will be deemed the author of all such works made for hire and the owner of all of the rights comprised in the copyright of such works.

Employee agrees that Employee will: (i) promptly disclose such Social Media Intellectual Property and Copyrightable Works to the Company; (ii) assign to the Company, without additional compensation, the entire rights to Social Media Intellectual Property and Copyrightable Works for the United States and all foreign countries; (iii) execute assignments and all other papers and do all acts necessary to carry out the above, including enabling the Company to file and prosecute applications for, acquire, ascertain, and enforce in all countries, letters patent, trademark registrations, and/or copyrights covering or otherwise relating to Social Media Intellectual Property and Copyrightable Works and to enable the Company to protect its proprietary interests; and (iv) give testimony in any action or enforcing rights in the Intellectual Property and Copyrightable Works.

Employee understands and agrees that: (i) no license or conveyance of any rights or warranty to Employee is granted or implied by the Company furnishing or disclosing any Social Media Intellectual Property or Copyrightable Works to Employee; and (ii) the Company shall retain whatever ownership and other proprietary rights it otherwise has in all Social Media Intellectual Property and Copyrightable Works.

If you have any questions about this form, please contact William E. Grob | Tampa, FL | Telephone: 813-221-7228 | E-mail: william.grob@ogletreedeakins.com; Dee Anna D. Hays | Tampa, FL | Telephone: 813-221-7239 | E-mail: deeanna.hays@ogletreedeakins.com

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