

# INDEPENDENT CONSULTANT AGREEMENT

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## RECITAL:

Creata Direct Pty Ltd ('Creata') is a corporation incorporated under the laws of New South Wales, Australia engaged in the sale of fashion and educational products through retail and direct selling channels in Australia, New Zealand and the United States of America.

The purpose of this Agreement is to formalise the arrangements between Creata and those persons appointed by it to sell its products.

## INTERPRETATION:

In this Agreement:

- (1) Headings are for convenience only and have no effect on interpretation.
- (2) a reference to "including" and like terms means "including but not limited to".
- (3) a reference to the singular includes the plural and vice versa.
- (4) any words imputing one gender include the other.

## DEFINITIONS:

In this Agreement:

**Active consultant** means a Consultant who has submitted a qualifying order with a minimum value of \$100 + gst

**Commissionable sale** means the gross value of a sale less Postage & Handling, GST and any other discount or nonmonetary method of payment.

**Confidential information** means all information relating to the business of Creata, its products, Consultants, customers, suppliers and affiliated entities other than information in the public domain or that may come into the public domain.

**Consultant** means a person, partnership or corporate entity appointed under the terms of this Agreement to negotiate sales on behalf of Creata.

**Creata** means Creata Direct Pty Ltd (ACN 148 912 252) a company incorporated in New South Wales, Australia and having its principal place of business at Unit 6/3 Central Avenue, Thornleigh New South Wales, Australia.

**Creata Direct Rewards & Recognition Program** means the commission structure, bonus system and any policy and procedure relevant to the Creata business opportunity including products, which may be amended by Creata at its sole discretion from time to time.

**e commerce site** means any electronic commerce location available on the Internet via which sales may be transacted.

**Net sale** means commissionable sale.

**Policies and Procedures** means a set of rules devised and implemented by Creata within the parameters of which its business and those of its Consultants are to be conducted.

**Qualifying order** means a Preview, Customer or Consultant Saver Order

**Recruiter** means a Consultant who introduces a prospective Consultant to Creata who then becomes a Consultant

**Recruitment** means the process of recruiting, training and mentoring new Consultants by an existing Consultant

**Sales Account or Kit** means the predetermined literature and/or product purchased by a Consultant on the acceptance of their application by Creata to become a Consultant under the terms of this Agreement.

**Social networking site** means an online service platform or site that focuses on facilitating the building of social networks or social relations among a group of people which may include a user profile, social links and a means to interact over the internet through e mail and instant messaging.

**Website** means a set of interconnected webpages, usually including a Home Page, generally located on the same server and maintained as a collection of information by a person, group or organisation other than Creata

## 1. CONSULTANTS

### 1.1 Appointment

A prospective Consultant must be recruited by a currently active and authorised Consultant and complete an online application with Creata. Creata in its sole discretion may accept or reject any application.

Applications for appointment as a Consultant may be made in the names of an individual, a partnership or a company.

Appointment as a Consultant is limited to one per spousal relationship.

A prospective Consultant must:

- be a minimum 18 years of age
- be capable of managing their own affairs
- not be a current bankrupt, nor the subject of any insolvency proceedings
- not have served a term of imprisonment
- not previously have been terminated by Creaa (other than by way of inactivity)

## **1.2 Territory**

Consultants do not have an exclusive business territory and there are no restrictions placed on the Consultant as to territory within the Commonwealth of Australia or within the Realm of New Zealand or within the United States of America.

**1.2 (a)** Notwithstanding Clause 1.2 Consultants domiciled in Australia may not transact sales in New Zealand or the United States of America and vice versa; but Consultants in those countries may conduct recruitment activities across any of those territories.

## **1.3 Independent Agency**

Consultants are independent contractors and not employees of Creaa. Further, this Agreement is not a contract for the supply of services or the performance of any work by the Consultant.

Creaa shall not be responsible for any sick leave, PAYE, Payroll Tax, Superannuation, Workers Compensation, Kiwisaver (NZ), ACC levy (NZ) or any other insurance in respect of the operations of the Consultant unless Creaa is legally obliged to do so.

The Consultant is responsible for all expenses incurred in the conduct of their Consultancy business.

## **1.4 Termination Without Cause**

Either party may terminate this Agreement, without cause, at any time by giving one (1) months' written notice to the other party.

## **1.5 Termination With Cause**

Without limiting the operation of any other terminating event and without limiting any other rights under this Agreement or at law or equity Creaa may by written notice to the Consultant immediately terminate this Agreement if the Consultant:

- is in material breach (by omission or commission) of any provision of this Agreement and that breach is not in the opinion of Creaa capable of being remedied within 30 days after written notice of breach has been given by Creaa to the Consultant.
- becomes insolvent, threatens to become or is in jeopardy of becoming the subject of any form on insolvency administration.

## **1.6 Reinstatement**

A Consultant who has previously resigned from Creaa or has otherwise been terminated may only apply to become a Consultant and be accepted as a Consultant at the sole discretion of Creaa.

## **2. CONSULTANT RESPONSIBILITIES**

Upon acceptance of an online application by Creaata, the applicant is duly appointed as a Consultant with authority (but without any obligation) to sell the products of Creaata.

The Consultant agrees:

**2.1.** The Consultant agrees to adhere to this Agreement and each Policy and Procedure of Creaata.

**2.2.** to conduct themselves in a professional manner in promoting Creaata, Creaata products and the Creaata business opportunity including the training of prospective Consultants whom they introduce to Creaata.

**2.3** to comply with all laws, regulations, rules and relevant codes in relation to their Consultancy.

**2.4** to not misrepresent or make any exaggerated or otherwise misleading claims about their Consultancy or Creaata, the Creaata business opportunity, or their relationship with Creaata, its products and/or services. This extends to potential earnings and/or profitability; as well as to any conduct which may bring either them or Creaata or the Creaata business or products into disrepute.

**2.5.** to at all times cooperate with Creaata Management and staff.

**2.6.** to regularly familiarise themselves with the Creaata Direct Rewards & Recognition Program, as well as any other Policies and Procedures, communications and publications as issued or amended by Creaata at its sole discretion from time to time.

**2.7.** to only use recruiting, merchandising, training, business building and any other marketing materials produced and supplied by Creaata in connection with the promotion and sale of Creaata products and the Creaata business opportunity. Any materials proposed for use by a Consultant that is not produced and supplied by Creaata must first be approved for use in writing by Creaata.

**2.8.** to complete the necessary paperwork and payment in the required method to ensure a customer receives an invoice from Creaata correctly identifying the customer, their address and contact details to enable delivery of the order.

**2.9.** that Creaata may retain any net sale proceeds (commissions) and apply such funds towards payment of any amount that the Consultant owes Creaata.

**2.10.** that the information provided in their application form is true and accurate; and agrees to inform Creaata if any such information changes.

### **3. CREATA'S RESPONSIBILITIES**

Creata agrees:

**3.1.** to pay the Consultant the commissions, bonuses or other benefits which may become payable to the Consultant in accordance with the Creata Rewards and Recognition Program as may be amended by Creata in its sole discretion from time to time.

**3.2.** to not require the Consultant or any prospective Consultant to purchase any goods or services other than a Sales Account or Kit comprising a literature pack and/or a selection of Creata products at the time of their acceptance as a Consultant by Creata.

**3.3.** to not require the Consultant or any prospective Consultant to:

- sponsor a specific number of Consultants
- attend Consultant or other Creata meetings or events
- spend a specified time or any set hours conducting their Consultancy business.

**3.4.** to provide the Consultant with a means to place orders and make payment, and then deliver those orders to their customers in a timely manner.

### **4. INTERNET & SOCIAL MEDIA**

**4.1.** A Consultant must not develop, manage or host any Website or e commerce site promoting Creata products or the Creata business opportunity other than by using an authorised Personal Web Page as supplied and hosted by Creata.

**4.2.** Social networking sites are permitted but must comply with the Creata Social Media and Online Policy. The sale of Creata products cannot be transacted through these sites, but they can be used to advertise Creata's Public website.

### **5. INDEMNITY**

**5.1.** A Consultant must not make any representation, guarantee or warranty in the name of or on behalf of Creata other than such written guarantees as have been provided by Creata in respect of specific products.

**5.2.** A Consultant hereby indemnifies Creata and agrees to keep Creata indemnified against all actions, proceedings, liabilities, claims, damages, costs and expenses arising out of or in any way relating to:

- (i)** their activities hereunder;
- (ii)** a breach of any representation or warranty
- (iii)** a breach of this Agreement.

## **6. CONFIDENTIALITY**

The Consultant consents to Creata collecting and storing their personal information and using it in relation to their activities as a Consultant.

Creata will make all reasonable efforts to keep any information about you secure and ensure that any of our employees or agents who have access to information about you do not make any unauthorised use, modification, reproduction or disclosure of the information.

Creata will only disclose your personal information:

- (i) to the extent as is specifically required by law; or
- (ii) to your recruiter but only that information relevant to the day to day running of your Consultancy business.

## **7. RELATIONSHIP OF THE PARTIES**

Nothing in this Agreement is intended to create a partnership, joint venture, employment relationship or any other legal relationship of any kind that would impose liability on one party for the failure to act of the other party.

## **8. NOTICES**

Any notice required to be given under this Agreement shall be in writing and shall be served by delivering it either personally, or by sending it by registered post, or by fax, or by email, to the address or fax number or email address last notified by the Consultant.

A notice shall be deemed to have been received:

- (i) If delivered personally, at the time of delivery
- (ii) In the case of registered post, seven (7) working days from the date of posting
- (iii) In the case of fax or email, on the day of transmission if sent before 4.00pm (AEST) on any working day or otherwise at 9.00am (AEST) on the next working day provided that, at the time of transmission, an error free transmission report or email sent has been received/recorded by the sender.

## **9. ASSIGNMENT**

A Consultant may not transfer this Agreement or any of its rights or obligations by assignment or in any other way without the express permission of Creata.

## 10. VARIATION

The Consultant agrees that this Agreement represents the whole agreement between Creata and the Consultant and that it or any part of it may be varied, modified, amended, added to or substituted only by a document in writing executed by the parties.

## 11. GOVERNING LAW

This Agreement must be interpreted and governed by:

- (1) the laws of New South Wales, Australia for Australian domiciled Consultants; or
- (2) the laws of the Realm of New Zealand for New Zealand domiciled Consultants; or
- (3) the laws of the United States of America for U.S.A. domiciled Consultants.

Signed: .....  
(Consultant)

Name: .....  
(Print)

Date: .....

Signed: .....  
(Creata)

Name: .....  
(Print)

Title: .....

Date: .....