

# T.O.P.'S Brand Ambassador Agreement

This Brand Ambassador Agreement ("Agreement"), dated as of \_\_\_/\_\_\_/2018, is entered into between \_\_\_\_\_, ("Brand Ambassador") and *Texas Original Bar-B.Q. Pits n' Smokers* which includes the registered trade name *Texas Original Bar-B.Q. Pits n' Smokers*, ("Company"). For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

- 1. Services:** Brand Ambassador will perform certain services in connection with Company and is currently contemplated to engage with the Company's social channels, including but not limited to: Twitter, Facebook, Instagram, YouTube, Google+, Pinterest.
- 2. Compensation:** In consideration for the full performance of Brand Ambassador's services hereunder and the rights and releases granted herein, Company shall compensate Brand Ambassador and Brand Ambassador agrees to accept the compensation set forth on **Brand Ambassador Benefits**.
- 3. Ownership Rights:** Brand Ambassador acknowledges that the results and proceeds of the services provided hereunder, including without limitation all ideas, photographs, images, themes, materials, and designs developed, created and / or provided by Brand Ambassador (the "Work") is owned by Company, for all purposes. To the extent that any Work is deemed not to be a work made for hire, and without limiting the foregoing, Brand Ambassador hereby assigns and transfers all right, title, ownership and interest therein, presently known or hereafter ascertained, including, but not limited to, all copyright rights therein, the right to secure the copyright (and all renewals, reissues and extensions thereof) throughout the world, without any restrictions as to use, to Company. For the sake of clarity, and without in any way limiting the foregoing, Company may reproduce, modify, adapt, create derivative works from, distribute, display, license, assign, transfer and/or otherwise use the Work, and all elements and derivatives thereof, in whole or in part, in all media now known or hereafter developed (including without limitation in social media, including without limitation Pinterest), worldwide, in perpetuity, royalty-free and without restriction of any kind. Brand Ambassador acknowledges the ownership and validity of Company's copyrights, brands, trademarks, trade dress and patent rights, whether or not created by or contributed to by Brand Ambassador.
- 4. Use of Likeness:** Brand Ambassador further grants to Company the irrevocable right and permission to film, videotape, photograph and/or otherwise record Brand Ambassador and to reproduce, publish, distribute, display, broadcast, exhibit, and/or in any other way use Brand Ambassador's image, likeness, signature, voice, photographs, name (including nicknames), actual and/or paraphrased statements, biographical information and/or any other information or attribute identifying and/or otherwise associated with Brand Ambassador (collectively, "Likeness"), in whole or in part, distorted, altered, modified and/or adapted in character and/or in form, alone and/or accompanied by other material, in perpetuity and royalty-free, for any purpose whatsoever, including without limitation for the purpose of advertising, publicity, promotion, and/or other marketing for Company and/or the Work, in all media now known or hereafter developed (including without limitation in social media).
- 5. No Right of Approval:** Brand Ambassador hereby irrevocably waives any and all right to inspect and/or approve Company's use of the Work and/or Brand Ambassador's Likeness, including without limitation any text, image and/or other creative elements that may be used in connection with the Work and/or Brand Ambassador's Likeness.
- 6. Confidentiality:** Brand Ambassador will regard and retain as confidential and will not divulge to any third party, or use for any unauthorized purposes (including Brand Ambassador's own benefit) either during or after Brand Ambassador's engagement with Company, any proprietary, or confidential information or know-how that Brand Ambassador has acquired during Brand Ambassador's service or in consequence of Brand Ambassador's service or contacts with Company without the written consent of an authorized representative of Company. Brand Ambassador agrees to return to Company all such documentation and any other confidential information upon termination of Brand Ambassador's engagement with Company.
- 7. Representations and Warranties:** Brand Ambassador represents and warrants that: (i) Brand Ambassador has the full and unrestricted right and authority to enter into and perform this Agreement and to grant the rights granted herein; (ii) Brand Ambassador has complied and will comply with all applicable laws, rules and regulations in rendering the services to be performed under this Agreement, including without limitation, the current Company Guidelines (*Texas Original Bar-B.Q. Pits n' Smokers* "T.O.P.'S Guidelines") the Use of Endorsements and Testimonials in Advertising and all related disclosure requirements; and, notwithstanding the termination provisions set forth herein, Company reserves the right to immediately terminate this Agreement if Brand Ambassador fails to make social media or other disclosures in the manner set forth in the T.O.P.'S Guidelines, which failure shall be deemed a material breach of the Agreement; (iii) the Work is original to Brand Ambassador; (iv) the use of the Work and/or Brand Ambassador's Likeness does not and will not violate the rights of any third party, including without limitation, any contract, copyright, trademark, or rights of privacy or publicity of any third-party; (v) the Work will not contain any disparaging, pornographic, defamatory and/or offensive material; and (vi) Brand Ambassador will perform the services in a timely and professional manner.
- 8. Release/Indemnity:** Brand Ambassador hereby irrevocably and unconditionally releases, discharges and agrees to indemnify and hold harmless Company, its parents, subsidiaries, registered trade names, and affiliates, and the irrelative officers, directors, employees, agents, assignees and licensees (together, the "Company Parties"), from and against all actions, claims, demands, causes of action, liabilities, damages, judgments, losses, costs, and

expenses (including reasonable attorneys' fees) of any kind whatsoever, whether known or unknown, arising at any time out of and/or relating to the use of the Work and/or Brand Ambassador's Likeness and/or any breach or alleged breach of any of the terms of this Agreement.

9. **Term:** This Agreement will be effective as of \_\_\_/\_\_\_/2018 and will remain in effect for at least three months thereafter unless terminated in accordance with Section 10 below, and will automatically renew for successive three-month periods unless written notice of termination is given by either party to the other party prior to the end of the then-applicable term.

10. **Termination:** Company shall have the right, at its sole option, to terminate this Agreement immediately in the event that: (i) Brand Ambassador fails, neglects or refuses to fully perform any of the obligations to be performed hereunder; (ii) Brand Ambassador materially breaches the terms of this Agreement or any of the warranties or representations made herein; (iii) Brand Ambassador commits any act or does anything that is or shall be an offense involving moral turpitude under federal, state or local laws, or which brings Brand Ambassador, or any Company Party into public disrepute, contempt, scandal, or ridicule, or which insults or offends the community or any substantial organized group thereof, or which might tend to injure the success of any Company Party.

11. **Independent Contractor:** Each party is an independent contractor in relation to the other party with respect to all matters arising under this Agreement and nothing herein shall be deemed to establish a partnership, joint venture, association or employment relationship between the parties. Brand Ambassador shall have no express or implied right or authority to assume or create any obligations on behalf of or in the name of Company or to bind Company to any contract, agreement or undertaking with any third party.

12. **Assignment:** Any or all of Company's rights and obligations under this Agreement may be assigned by Company without Brand Ambassador's consent, and upon any such assignment, Company shall have no further obligation to Brand Ambassador, and shall no longer be liable to Brand Ambassador, in respect to any obligation so assigned. Brand Ambassador's rights and obligations under this Agreement may not be assigned by Brand Ambassador without Company's prior written approval.

13. **Choice of Law:** This Agreement shall be governed by the laws of the State of Texas, without regard to its conflict of law's provisions, and Brand Ambassador hereby irrevocably and unconditionally submits to the exclusive jurisdiction of the state and federal courts in the southern eastern district of Texas in connection with any action, litigation or proceeding relating to the subject matter of this Agreement.

14. **Miscellaneous:** This Agreement constitutes the entire understanding between the parties and supersedes all prior agreements between the parties with respect to the subject matter hereof and shall bind each party and its successors and permitted assigns. No amendment or modification of this Agreement shall be valid or binding on the parties unless made in writing and executed on behalf of each party by its duly authorized representative. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. If any part of this Agreement is determined to be invalid or unenforceable, then the invalid or unenforceable provision will be deemed superseded by a valid enforceable provision that most closely matches the intent of the original provision, and the remainder of the Agreement shall continue in effect.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the date first above written.

**Brand Ambassador**

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**Date**

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**Company**

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**Date**

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