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David W. Slayton,
Executive Officer/Clerk of Court,
By D. Williams, Deputy Clerk

4 *Attorneys for Plaintiff Humo Corp.*

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6 SUPERIOR COURT OF THE STATE OF CALIFORNIA
7 FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT
8

9 HUMO CORP.,

10 Plaintiff,

11 vs.

12 NIGHTSHIFT DIGITAL LLC, SUSANA
13 PLASCENCIA, ROBERT LADY, and DOES
1 – 100, inclusive,

14 Defendants.

CASE NO.: 23STCV17937

COMPLAINT

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COMPLAINT

1 **COMPLAINT**

2 1. Plaintiff Humo Corp. alleges as follows against Nightshift Digital LLC, Susana
3 Plascencia, Robert Lady, and Does 1 through 100, inclusive (“Defendants”).

4 **THE PARTIES**

5 2. Plaintiff Humo Corp. (“Plaintiff” or “Humo”) is a corporation organized under the
6 laws of California with its principal place of business in Monterey County, California. Humo-
7 branded cannabis products are sold in licensed cannabis retail stores throughout California.
8 Humo’s parent company, Kind Farms Corp, operates a duly-licensed cannabis cultivation,
9 processing, and distribution facility in Monterey County through another wholly-owned
10 subsidiary, Kind Op Corp. Kind Op Corp. and Kind Farms Corp. do business as POSIBL, and
11 are herein referred to as POSIBL.

12 3. Defendant Nightshift Digital LLC (“Nightshift”) is a limited liability company
13 organized under the laws of California with its principal place of business in Inglewood,
14 California.

15 4. Defendant Susana Plascencia (“Ms. Plascencia”) is an individual who resides in
16 Inglewood, California.

17 5. Defendant Robert Lady (“Mr. Lady”) is an individual who resides in Inglewood,
18 California.

19 6. Ms. Plascencia and Mr. Lady own and operate Nightshift.

20 7. Plaintiff does not know the true names and capacities of defendants sued in this
21 Complaint as Doe 1 through Doe 100, inclusive, and therefore sue these defendants by fictitious
22 names under Section 474 of the California Code of Civil Procedure. Plaintiff will amend this
23 Complaint to allege the true names and capacities of Doe 1 through Doe 100 when ascertained.
24 Plaintiff is informed and believe, and on that basis allege, that each of the defendants named
25 herein as Doe 1 through Doe 100 is responsible in some manner for the occurrence, injury, and
26 other damages alleged in this Complaint (collectively hereinafter referred to as the “Doe
27 Defendants”).
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1 **JURISDICTION AND VENUE**

2 8. Jurisdiction and venue are proper in the Superior Court of California, County of
3 Los Angeles because Defendant Nightshift has its principal place of business in Los Angeles
4 County and because Defendant Ms. Plascencia and Mr. Lady reside in Los Angeles County.

5 9. The subject matter in this action is properly heard in this Court because the action
6 incorporates an amount in controversy exceeding \$25,000.00.

7 **FACTUAL BACKGROUND**

8 10. Humo and POSIBL are authentically Mexican-American owned and operated
9 businesses. Their Chief Executive Officer, Jesus Burrola, is a proud first-generation immigrant.
10 Their workforce is predominantly Latino, and nearly their entire ownership group is comprised of
11 Mexicans or Mexican-Americans, including many women.

12 11. POSIBL conceived of and developed the Humo brand in early 2021. Humo
13 translates to “smoke” in Spanish, and the brand is an outgrowth of POSIBL’s Mexican roots.
14 Kind Farms Corp. filed its first trademark application for Humo on June 11, 2021. As POSIBL
15 was working to launch the Humo brand, it formed Plaintiff Humo Corp.

16 12. Humo wished to retain an outside contractor to perform services relating to the
17 Humo brand and products. Ms. Plascencia responding to a posting for this opportunity, and in the
18 conversations that follows, explained that any services would be provided by her agency,
19 Nightshift.

20 13. Nightshift offered to provide services and the parties negotiated an agreement.
21 Ms. Plascencia, on behalf of Nightshift, provided the initial draft of the agreement and the parties
22 went back and forth on the terms and conditions, including the compensation that Nightshift
23 would receive for its provision of services.

24 14. Ultimately, Ms. Plascencia, as CEO of Nightshift, and Jesus Burrola, as CEO of
25 Humo, signed a written Services Agreement effective December 1, 2021. A copy of the Services
26 Agreement is attached hereto as Exhibit A and incorporated herein.

1 15. Under the Services Agreement, Ms. Plascencia and Mr. Lady’s business,
2 Nightshift, agree to provide a range of marketing, brand development, social media management,
3 influencer relations, and sales services. Humo and Nightshift agreed on the compensation for
4 these services, which included a \$11,500 payment per month, plus incentive compensation in the
5 event that Humo or its corporate parent experienced an “exit,” as defined in the agreement.
6 Nightshift had the opportunity to earn up to 3% of the proceeds from such an exit event, under the
7 terms and conditions specified in the Services Agreement.

8 16. Nightshift and Humo agreed in Section 1.2 of the Services Agreement that the
9 Services Agreement could be terminated by either party on 15 days written notice.

10 17. Nightshift and Humo agreed in Section 1.3 of the Services Agreement that upon
11 either party providing notice of termination of the Services Agreement, Nightshift would “use
12 commercially reasonable efforts to pursue all opportunities already in progress at the time for a
13 period of 15 days after the issuance of the Termination Notice.”

14 18. Nightshift and Humo agreed in Section 5.1 of the Services Agreement that
15 Nightshift required prior written approval from Humo for statements to the public or any third
16 party in connection with the services under the Services Agreement.

17 19. Nightshift and Humo agreed in Section 5.2 that Nightshift would indemnify,
18 defend, and hold Humo harmless from all third-party claims based on breach of the Services
19 Agreement by Nightshift or its affiliates, officers, directors, managers, employees, and
20 consultants, including payment of attorney’s fees and litigation costs.

21 20. Nightshift and Humo also agreed in Section 6 of the Services Agreement that
22 Humo would own the intellectual property rights to all the materials developed in the course of
23 the agreement.

24 21. Nightshift and Humo also agreed in Section 9.1, 9.2, 9.3 and 9.4 of the Services
25 Agreement that Nightshift would operate as an independent contractor, and not an employee of
26 Humo, and that Nightshift was responsible for its own tax obligations, and was required to

1 provide its own workers compensation and other insurance.

2 22. Nightshift and Humo also agreed in Section 9.5 of the Services Agreement that
3 Nightshift would not disparage Humo in any manner whatsoever.

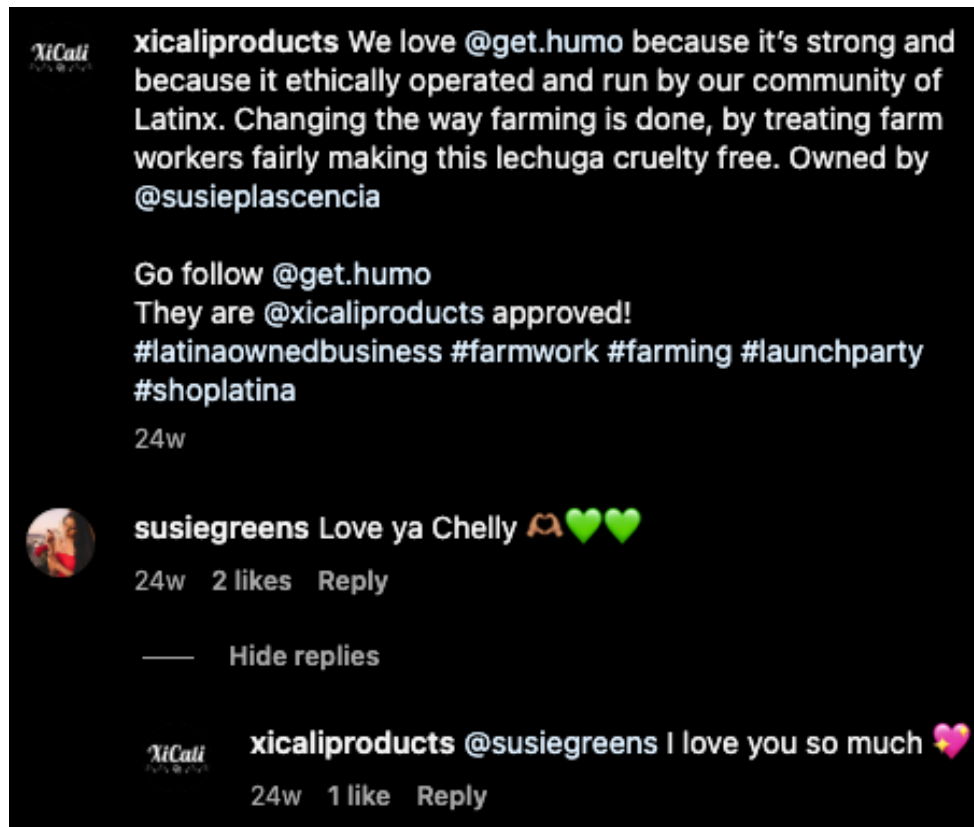
4 23. Nightshift began to provide services to Humo to support the further development
5 and launch of the Humo brand and was paid pursuant to the Services Agreement. Nightshift
6 asked for additional compensation, and Humo paid even more than the Services Agreement
7 required, ultimately up to \$15,500 per month.

8 24. Problems began to develop in the relationship between Humo and Nightshift.
9 One recurring problem was that Nightshift could not collaborate effectively with others working
10 in support of the Humo brand. In an apparent desire to be the center of attention, Nightshift (and
11 Ms. Plascencia in particular) attempted to take control of important commercial relationships,
12 such as with buyers at important retail stores, rather than work together with the broader team.
13 Nightshift, through Ms. Plascencia, threatened to terminate its relationship with Humo unless its
14 demands were met, including to terminate another outside agency that Nightshift saw as
15 competition. This dysfunctional and unprofessional behavior negatively impacted Humo, its
16 development, and its sales.

17 25. In addition, among other things, Ms. Plascencia, performing work for Nightshift,
18 began to falsely hold herself out as a “founder” and “owner” of Humo in order to elevate her own
19 status and profile. She began to claim publicly that Humo was “her” brand, she said in interviews
20 that “I built the brand” and that “I built” Humo’s reputation, and she claimed that she made all
21 decisions relating to Humo and its products. All of this was untrue, and it ignored and
22 disrespected the rest of the team at Humo and POSIBL whose hard work made the brand’s
23 success possible.

24 26. As one example, an Instagram account run by a friend of Ms. Plascencia,
25 @xicaliproducts, placed a post in support of the Humo brand and asserted it was “Owned by
26 @susieplascencia” (followed by a #latinaownedbusiness hashtag). Rather than correct this
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1 misstatement (which clearly had its origins in misrepresentations by Ms. Plascencia to her friend),
2 Ms. Plascencia ratified it with approval in a comment from her @susisegreens Instagram account
3 as follows:



17 27. Humo explained to Nightshift and Ms. Plascencia that these statements were
18 incorrect and inappropriate, and directed them to stop, but to no avail. It appears that Nightshift,
19 Ms. Plascencia, and Mr. Lady were more interested in promoting Ms. Plascencia and building her
20 “brand” rather than providing the services for which Nightshift was hired and paid, including to
21 develop and promote the Humo brand and sell Humo products.

22 28. Ultimately, pursuant to Section 1.2 of the Services Agreement, on May 26, 2023,
23 Humo provided notice to Nightshift that Humo was terminating the Services Agreement effective
24 June 10, 2023. The notice was personally delivered to Ms. Plascencia, on behalf of Nightshift, by
25 Humo’s CEO, Jesus Burrola on May 26, 2023.

26 29. Despite Nightshift’s promise to “use commercially reasonable efforts to pursue all
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1 opportunities already in progress at the time for a period of 15 days after the issuance of the
2 Termination Notice,” i.e., starting from May 26, 2023, immediately upon Humo’s notice of
3 termination, Nightshift and its owners, Ms. Plascencia and Mr. Lady, began a campaign of
4 retaliation, using false and misleading statements to tarnish Humo and to disrupt its relationships
5 with employees, customers, vendors, and others with which Humo does, or could do, business.

6 30. To support the campaign against Humo, Nightshift, Ms. Plascencia, and Mr. Lady
7 concocted a false story aimed to put Humo in a negative light. Defendants claimed that Ms.
8 Plascencia had been mistreated, that Nightshift or Ms. Plascencia had been promised ownership
9 of Humo, and that Nightshift had been terminated because of Ms. Plascencia’s gender or ethnic
10 background. All of these assertions were false, and Defendants knew they were false.
11 Defendants spread those claims broadly to tarnish Humo and its affiliates and disrupt Humo’s
12 relationships with customers, vendors, employees, and others.

13 31. At the center of Defendants’ false claims is the assertion that Nightshift or Ms.
14 Plascencia was promised ownership of Humo and that Humo terminated Nightshift’s Services
15 Agreement to avoid meeting that promise. Nightshift, Ms. Plascencia, and Mr. Lady knew this
16 claim was false, including because:

- 17 a. The Services Agreement clearly and plainly set forth the compensation that
18 Nightshift was to receive for its provision of services, including incentive
19 compensation in the event a qualifying “exit” was achieved, and the Services
20 Agreement provides in Section 12 that the Services Agreement, “together with any
21 documents incorporated herein by reference, constitutes the sole and entire
22 agreement of the parties, and supersedes all prior or contemporaneous
23 understandings, agreements, negotiations, representations and warranties, and
24 communications, both written and oral” and that it “may only be amended or
25 modified in a writing that specifically states that it amends this Agreement and is
26 signed by an authorized representative of each party”;

- 1 b. No one from Humo or POSIBL had ever made any promise to Nightshift or Ms.
2 Plascencia of ownership or equity in Humo, whether in a signed writing or
3 otherwise, beyond the incentive compensation set forth in the Services Agreement;
4 and
- 5 c. Jesus Burrola, Humo’s CEO, had explained to Ms. Plascencia, in writing, that he
6 lacked authority to provide equity to her or Nightshift, and that any such awards
7 would need to be approved by the board of directors, and Nightshift and Ms.
8 Plascencia knew such approval had never been obtained. As Mr. Burrola wrote,
9 an “equity component is not an easy ask and not a decision I can make. All of it
10 would need to go for board vote and I don’t know how they would receive it . . .”

11 32. Defendants, as part of their campaign of retaliation, also made extraordinary
12 efforts to convince employees of Humo or POSIBL to quit their jobs. This includes telling the
13 concocted story that Nightshift or Ms. Plascencia was promised ownership in Humo, and also
14 includes at least once instance in which Mr. Lady attempted to intimidate and threaten a physical
15 altercation with an employee as part of this campaign, ultimately threatening the employee by
16 saying, twice, “Wait and see what happens.”

17 33. In support of this campaign, before June 10, 2023, Ms. Plascencia asked an
18 employee working on Humo matters why he had not already quit, and told him that “This brand is
19 dead. My people are going to stand with me, and this brand is going to die,” or words to that
20 effect.

21 34. On June 2, 2023, Humo, through counsel, wrote to Nightshift and Ms. Plascencia,
22 reminded them of their obligations under the Services Agreement, and insisted that they comply
23 with their obligations and cease their wrongdoing.

24 35. Despite Nightshift, Ms. Plascencia, and Mr. Lady’s knowledge that their claims
25 were false, they continued to spread the false and disparaging claims about Humo and continued
26 their efforts to disrupt Humo’s relationships with customers, vendors, employees, and others.

1 36. As one example, before June 10, 2023, Ms. Plascencia called a contact at one of
2 Humo’s most important customers, relayed to them Ms. Plascencia’s false claims about alleged
3 mistreatment, broken promises, and discrimination, and asked them to immediately stop ordering
4 Humo products. The customer stopped ordering Humo product as a result.

5 37. As another example, on information and belief, prior to June 10, 2023, Nightshift,
6 Ms. Plascencia, and Mr. Lady organized a “Humo Funeral Sesh” to be held on June 11, 2022, to
7 support a boycott of Humo based on the false claim that Humo “exploited its Latina co-founder
8 and pushed her out.” On information and belief, Defendants collaborated with others prior to
9 June 10, 2023 to prepare promotional material spreading these false claims, “Boycott Humo and
10 demand that shops no longer carry Humo,” and containing the false assertion that this event is
11 “completely unaffiliated with susie.” These communications were publicly released by Ms.
12 Plascencia’s close friend on her @xicaliproducts Instagram account on June 11, 2023:



25 38. As another example, Ms. Plascencia asserted her false claims to other cannabis
26 companies that have relationships with Humo or POSIBL to discourage them from doing business
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1 with Humo, POSIBL, or others in the industry that do business with them.

2 39. As a result of Defendants' campaign of disruption and false claims, Humo has
3 been injured. Humo has lost sales. Relationships with employees have been strained, and
4 workplace cohesion has suffered. Humo has also incurred significant expenses addressing the
5 false claims.

6 40. This is not the first time that Defendants have engaged in similar conduct. Ms.
7 Plascencia had participated in a campaign to disparage against another cannabis brand, La
8 Chingona. On information and belief, Ms. Plascencia threatened the brand owner that she and
9 those allied with her would lead a boycott of La Chingona products, and Ms. Plascencia offered
10 to use her social media and public relations skills to save the brand, but made clear that she would
11 do so only the brand owner provided her a substantial ownership interest in the company. Ms.
12 Plascencia has said that she was only offered a small amount of equity for this work which she
13 felt was inadequate. Because Ms. Plascencia did not receive the compensation she wanted, she
14 carried through with the boycott and the brand went out of business shortly thereafter. The brand
15 owner was quoted publicly claiming that he believed that Ms. Plascencia was engaged in
16 extortion.

17 41. Separately, Ms. Plascencia was also involved in a boycott of the cannabis brand
18 Napalm. The rapper Xzibit, the owner of Napalm, said publicly that Ms. Plascencia was
19 Napalm's first social media manager and had been fired by Napalm, and that after she was fired,
20 Ms. Plascencia and Mr. Lady sought to create a boycott of the brand based on complaints about
21 alleged racism and alleged insensitivity to veterans arising from the brand's name. If Ms.
22 Plascencia and Mr. Lady (a veteran) had authentic concerns about the Napalm brand name,
23 presumably Ms. Plascencia never would have worked there. On information and belief, Ms.
24 Plascencia and Mr. Lady only began to raise these concerns after Ms. Plascencia was fired, which
25 demonstrates their bad faith and willingness to use disingenuous claims of racism and other
26 unethical behavior for their personal economic benefit.

1 42. Indeed, Defendants’ pattern of behavior with the La Chingona and Napalm brands
2 is further corroboration of their bad faith and malicious intent with regard to Humo.

3 43. On July 14, 2023, Nightshift and Ms. Plascencia, through counsel, wrote and
4 demanded that Humo and its affiliates no longer communicate with the press or vendors
5 regarding Nightshift and Ms. Plascencia, i.e., they demanded that Humo cease correcting the false
6 statements so that they would go unchallenged. Nonetheless, despite this demand, Nightshift,
7 Ms. Plascencia, and Mr. Lady continued their campaign to disrupt Humo’s business.

8 44. Separately, notwithstanding the clear representations and covenants of Nightshift
9 in the Services Agreement that Nightshift would operate as an independent contractor, Nightshift
10 and Ms. Plascencia have also claimed that Ms. Plascencia was actually an employee of Humo and
11 was not adequately compensated as such.

12 45. The claim that Ms. Plascencia was an employee of Humo is wrong and, indeed,
13 frivolous. Pursuant to Labor Code §2776, the Services Agreement was a bona fide business-to-
14 business contracting relationship.

15 46. Nightshift holds itself out as “boutique brand development agency,” and lists
16 NASA, MOTA Glass, and Yapstone among its clients. Ms. Plascencia has stated publicly that
17 Nightshift is an agency that has provided services to multiple clients, and that she has a “team”
18 behind her at Nightshift to provide these services.

19 47. Nightshift has (and still has) a job posting listed for a social media manager to
20 manage the social media presence of “tasked with managing the social media presence of Humo,
21 MOTA Glass & Latinas in Cannabis.” Thus, it was clear that Nightshift could and intended to
22 support Humo and other customers with other employees, not just Ms. Plascencia.

23 48. The Services Agreement did not prohibit Nightshift or Ms. Plascencia from taking
24 work for other companies. In fact, during the term of the Services Agreement, Ms. Plascencia
25 continued to engage in other businesses independent of the Services Agreement. Among other
26 things, Ms. Plascencia and Mr. Lady, her partner, continued to own and operate Somos Mota
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1 LLC. Somos Mota LLC sells a line of Mota Glass-branded smoking accessories, including water
2 pipes (commonly called bong), in California and around the country. Indeed, many of the
3 actions that Nightshift undertook pursuant to the Services Agreement also served to support Mota
4 Glass. For example, many of the sales and promotional appearances that Nightshift made to
5 promote Humo also supported marketing for and sales of Mota Glass products.

6 **FIRST CAUSE OF ACTION**

7 **BREACH OF CONTRACT**

8 (Against Nightshift and Doe Defendants)

9 49. Plaintiff repeats, realleges and incorporates herein by reference paragraphs 1
10 through 48 as though fully set forth herein.

11 50. Humo and Nightshift entered into the Services Agreement on or about December
12 1, 2021, and it was signed by Ms. Plascencia as CEO of Nightshift and Jesus Burrola as CEO of
13 Humo.

14 51. The Services Agreement is a valid and enforceable agreement.

15 52. Humo performed all of its obligations under the Services Agreement, except those
16 obligations that were waived or excused.

17 53. Nightshift breached the Services Agreement, including by:

- 18 a. Failing to use commercially reasonable efforts to pursue all opportunities already
19 in progress during the 15-day period following receipt of the Termination Notice
20 on May 26, 2023;
- 21 b. Disparaging Humo;
- 22 c. Failing to obtain prior written consent from Humo prior to making statements to
23 the public or any third party;
- 24 d. Claiming Ms. Plascencia was an employee of Humo in contravention of
25 representations and covenants of Section 9.1, 9.2, 9.3, and 9.4 of the Services
26 Agreement; and

1 e. Failing to indemnify Humo from Ms. Plascencia's claim pursuant to Section 5.2 of
2 the Services Agreement.

3 54. Humo has been injured by Nighthshift's breach of contract.

4 55. Humo has suffered damages proximately caused by Nighthshift's breach of
5 contract.

6 **SECOND CAUSE OF ACTION**

7 **BREACH OF THE IMPLIED COVENANT**

8 (Against Nighthshift and Doe Defendants)

9 56. Plaintiff repeats, realleges and incorporates herein by reference paragraphs 1
10 through 55 as though fully set forth herein.

11 57. Humo and Nighthshift entered into the Services Agreement on or about December
12 1, 2021, and it was signed by Ms. Plascencia as CEO of Nighthshift and Jesus Burrola as CEO of
13 Humo.

14 58. The Services Agreement is a valid and enforceable agreement.

15 59. The Services Agreement contains an implied covenant of good faith and fair
16 dealing.

17 60. Humo performed all of its obligations under the Services Agreement, except those
18 obligations that were waived or excused.

19 61. To the extent that the conduct alleged in this Complaint is not a violation of the
20 express terms of the Services Agreement, Nighthshift has breached the covenant of good faith and
21 fair dealing implicit in the Services Agreement by denying Humo the benefits of the Services
22 Agreement.

23 62. To the extent that the conduct alleged in this Complaint is not a violation of the
24 express terms of the Services Agreement, Humo has been injured by Nighthshift's breach of the
25 implied covenant.

26 63. To the extent that the conduct alleged in this Complaint is not a violation of the
27

1 express terms of the Services Agreement, Humo has suffered damages proximately caused by
2 Nightshift's breach of the implied covenant.

3 **THIRD CAUSE OF ACTION**

4 **INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS**

5 (Against All Defendants)

6 64. Plaintiff repeats, realleges and incorporates herein by reference paragraphs 1
7 through 63 as though fully set forth herein.

8 65. Humo had economic relationships with customers, vendors, service provides, and
9 others that likely would have led to future benefits.

10 66. Nightshift and Ms. Plascencia knew of the economic relationships between Humo
11 and its customers, vendors, service provides, and others .

12 67. Defendants took intentional, wrongful acts to interrupt Humo's economic
13 relationships with its consumers and vendors, including by making false allegations against Humo
14 that Humo mistreated Nightshift and/or Ms. Plascencia, including failing to provide an allegedly-
15 promised equity interest in Humo, and discriminating against them based on Ms. Plascencia's
16 gender and/or ethnic background, which claims Nightshift and Ms. Plascencia knew were false.

17 68. Defendants intended to disrupt and interfere Humo's relationships with its
18 customers, vendors, service provides, and others, and knew that undertaking their actions were
19 certain or substantially certain to disrupt and interfere with Humo's relationships with its
20 customers, vendors, service provides, and others.

21 69. Defendants' actions actually interfered with Humo's relationships with customers,
22 vendors, service provides, and others.

23 70. Defendants' actions proximately cased economic harm, including lost sales of
24 Humo products.

1 **FOURTH CAUSE OF ACTION**

2 **DECLARATORY JUDGMENT**

3 (Against All Nightshift and Ms. Plascencia)

4 71. Plaintiff repeats, realleges and incorporates herein by reference paragraphs 1
5 through 70 as though fully set forth herein.

6 72. An actual controversy has arisen and exists between Plaintiff Humo and
7 Defendants Nightshift and Ms. Plascencia concerning their respective rights, duties, and
8 obligations toward each other.

9 73. Humo contends that the Services Agreement that it entered into with Nightshift is
10 a valid and enforceable agreement, that constitutes the sole and entire agreement of the parties,
11 and that it could not be amended or modified except in a writing that specifically states that it
12 amends this Agreement and is signed by an authorized representative of each party, that no
13 promise was made to Nightshift and Ms. Plascencia for ownership in Humo, that the Services
14 Agreement constitutes a bona fide business-to-business contracting relationship pursuant to Labor
15 Code § 2776, that Ms. Plascencia at no time was an employee of Humo, and that Humo owes
16 neither Nightshift nor Ms. Plascencia any compensation except pursuant to the express terms of
17 the Services Agreement.

18 74. Nightshift and Ms. Plascencia contend that Nightshift and/or Ms. Plascencia is
19 entitled to an ownership interest in Humo, and that Ms. Plascencia was an employee of Humo
20 entitled to pay and other benefits as an employee.

21 75. Thus, Humo requests a declaration of the parties' respective rights and obligations
22 with respect to the Services Agreement, Nightshift's and Ms. Plascencia's claim to ownership of
23 Humo, and Ms. Plascencia's claim that she was an employee of Humo and entitled to pay and
24 benefits as such.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff Humo Corp. prays for judgment in its favor and jointly and
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1 severally against Defendants as follows:

- 2 1. For damages in an amount to be proved at trial;
- 3 2. For costs of suit herein;
- 4 3. For attorneys' fees pursuant to Sections 5.2 and 8 of the Services Agreement;
- 5 4. For a declaration of the legal rights and obligations of the parties including that:
 - 6 a. The Services Agreement is a valid and enforceable agreement that constitutes the
 - 7 sole and entire agreement of the parties, and that it cannot be amended or modified
 - 8 except in a writing that specifically states that it amends the Services Agreement
 - 9 and is signed by an authorized representative of each party;
 - 10 b. Humo owes neither Nightshift nor Ms. Plascencia any ownership interest in
 - 11 Humo;
 - 12 c. The Services Agreement constitutes a bona fide business-to-business contracting
 - 13 relationship pursuant to Labor Code § 2776;
 - 14 d. Ms. Plascencia at no time was an employee of Humo; and
 - 15 e. Neither Nightshift nor Ms. Plascencia are owed any compensation except pursuant
 - 16 to the express terms of the Services Agreement;
- 17 5. For equitable or injunctive relief; and
- 18 6. For such other and further relief as the Court may deem proper and just.

19
20 Respectfully submitted,

Feuerstein Kulick LLP

21
22 Dated: July 28, 2023

By: *Kieran Ringgenberg*
Kieran Ringgenberg

23
24 *Attorneys for Humo Corp.*

EXHIBIT A



NightShift Cannabis and HUMO Corp. Partner to Develop HUMO Cannabis

Title: Partner, HUMO Cannabis

SCOPE OF WORK

Marketing and Brand Development

- Develop brand story to represent target consumer and reflect Latinx heritage pride
- Lead in brand strategy, promotion, and creative
- Provide brand review for all marketing content and ensure it is in line with overall brand positioning and voice
- Plan and execute experiential events that bring the brand to life
- Lead brand merch art direction and development
- Assist in the development of annual, long and short-term sales and marketing strategy and plans
- Collaborate and support the sales team to provide best-in-class retailer specific merchandising and shopper marketing materials as needed distribution growth opportunities
- Coordinate and lead cross-functional teams (Operations, Sales, Accounting) to ensure successful and on-time execution of company initiatives.
- Provide leadership across product launches for commercialization in a cross-functional manner
- Oversee coordination of external agency partners on the development, design, and production of creative materials
- Manage the marketing budget, through accurate tracking and forecasting of marketing spend
- Stay within budget and performance goals outlined internally
- Actively gather, analyze, and present brand, competitor insights, trends, and data.
- Create and support a positive, professional, collaborative, harassment-free work environment by understanding and complying with the Company's policies, by demonstrating the Company's values, and being a positive role model for the HUMO Brand
- Maintain relationships with key agencies and partners to deliver on brand goals
- Send to Client all relevant business contacts relevant to Marketing and Brand development and other relevant contacts related to this Agreement.

Rate: \$3,500/mo

Social Media Management

PR-driven social media strategy and copywriting that reinforces brand messaging paired with aesthetically consistent high-quality photography showcasing products and company culture in a lifestyle setting.

Channels:

- Instagram, Facebook & Twitter
- Content optimized for each channel

Goals:

- Leverage holidays and special announcements for priority messaging
- Establish and increase demand for Humo products in CA Build online community and encourage user-generated content

Deliverables:

- Daily feed and IG story posting
- DM response and light customer service
- Engage with existing and potential customers and retailers on social media
- Align with sales team and retailers for product drop announcements
- Develop and maintain content calendar and custom brand messaging
- Professional product and lifestyle photography

Rate: \$3,000/mo

Influencer Relations

- Point of contact for influencer inquiries, partnerships, and on-site tours
- VIP product gifting ideation, outreach, and coordination
- Does not include paid influencer fees

Deliverables:

- Send to Client all contact information of Influencers and other relevant contacts related to this Agreement.

Rate: \$1,500/mo

Sales

- Work closely with PetalFast team and participate in dispensary visits
- Recruit and develop service-driven, responsive sales team
- Establish D2C, delivery and dispensary sales channels
- Facilitate and oversee the development of dispensary budtender education material
- Support the development brand education program and manage retail marketing campaigns
- Represent both HUMO and POSIBL at industry trade shows, events and press opportunities
- Bring awareness and interest to POSIBL as a premier white-label cannabis solution for new brands looking to enter the cannabis industry
- Conduct onsite tours for potential brands
- Facilitate the onboarding of new brands

Deliverables:

- Send to Client all contact information of retailers and other relevant contacts related to this Agreement.

Rate: \$3,500/mo

Monthly Rate:

Brand Development and Marketing - \$3,500

Social Media Management - \$3,000

Influencer Relations - \$1,500

Sales - \$3,500

Total: \$11,500/mo

SERVICES AGREEMENT

NightShift Digital's Marketing and Brand Development, Social Media Management, Influencer Relations and Sales Agreement (this "Agreement") is entered into as of [December 1, 2021] ("Effective Date") by and between Nightshift Digital LLC, a California limited liability company ("NightShift Digital"), and Humo Corp, a California corporation ("Client"). NightShift Digital and Client may hereafter from time to time be referred to as a "Party" or collectively, the "Parties"). Client wishes to retain NightShift Digital to provide marketing, brand development, social media management, influencer relations and sales services for Client. In consideration of the covenants and obligations set forth in this agreement, the parties agree as follows:

1. Term.

1.1 Unless terminated by either Party pursuant to Section 1.2 below, this Agreement shall be continuous.

1.2 Either Party retains the right to unilaterally terminate this Agreement without cause or the consent of the other Party at any time upon 15 days written (by U.S. mail or email) notice to the other Party (the "Termination Notice"). Client will be responsible to pay NightShift Digital for services performed between the issuance of any Termination Notice and the Agreement's termination.

1.3 Unless instructed otherwise by Client, if either Party elects to terminate this Agreement pursuant to Section 1.2 above, NightShift Digital will be required to use commercially reasonable efforts to pursue all opportunities already in progress at the time for a period of 15 days after the issuance of the Termination Notice.

2. Scope of Services.

2.1 NightShift Digital will provide marketing, brand development, social media management, influencer relations and sales services to Client ("Services"), which may include, but are not limited to the following: Collaborating and supporting the sales team, planning and executing experiential events, influencer outreach and relationship management, social media posting and post monitoring, visiting dispensaries, coordination of necessary approvals among internal departments and external partners, content calendar maintenance, team meetings/calls, and ad-hoc content creation projects, all as further set forth in the Scope of Work ("SOW") or any additional SOW. NightShift Digital believes they will provide Client with services that will enhance the Client's branding and recognition among desired target audience.

2.2 While NightShift Digital, in their sole discretion, will try to leverage opportunities for the Client and provide maximum exposure utilizing the provided services for the Client, Client agrees and understands that NightShift Digital does not make any express or implied warranties or guaranties, concerning the results of those services.

2.3 Should the scope of services change, NightShift Digital and Client shall negotiate a new SOW with respect to the new scope of services.

3. Payment.

3.1 In consideration for the services that NightShift Digital shall provide during the Term of this Agreement, Client agrees to pay NightShift Digital eleven thousand and five hundred dollars (\$11,500) per month as listed in the SOW.

3.2 Payment in full will be due no more than five (5) business days after an invoice is issued to the Client during the Term. As discussed in Section 4.2 below, NightShift Digital may in its discretion also issue Interim Expense Invoices.

3.3 NightShift Digital reserves the right to charge interest on any unpaid amount more than thirty (30) days overdue, at a rate of 10% annum of unpaid amount. Client further agrees to pay any and all collections costs associated with unpaid balances, including late fees, attorney's fees and court/arbitration costs.

3.4 Client agrees to pay any fees incurred by NightShift Digital by check or electronic transfer of funds.

3.5 In addition to the compensation described above, NightShift Digital will have the opportunity to earn additional incentive compensation, in accordance with the terms of Exhibit A to this Agreement, so long as this Agreement remains in effect and it continues to perform the Services.

4. Expenses.

4.1 Client acknowledges that NightShift Digital may incur normal expenses in relation to the representation, included but not limited to social media advertising fees, influencer partnership fees, travel expenses, or special social media applications.

4.2 Client and NightShift Digital agree that all expenses in excess of \$250 must be pre-approved in writing by the Client.

4.3 NightShift Digital may issue Interim Expense Invoices for approved expenses and Client agrees to pay the same within five (5) days.

5. Content of any Public Statements and Indemnification.

5.1 NightShift Digital will secure Client's written pre-approval of any and all outgoing content or statement that NightShift Digital proposes to release or disseminate to the public or any third-party ("Publicized Content") on behalf of the client. Client will assume full responsibility for the content of any such Publicized Content that it has pre-approved and NightShift Digital will subsequently not bear any responsibility or liability for any such Publicized Content that Client has pre-approved.

5.2 Notwithstanding anything to the contrary contained in this Agreement, each Party shall indemnify, defend, and hold the other Party, its affiliates and their officers, directors, managers, employees, and consultants (collectively "Representatives") harmless from and against any and all damages or other amounts payable to a third-party claimant, as well as

any reasonable attorneys' fees and costs of litigation arising out of or resulting from any claim, suit, proceeding or cause of action brought by a third-party against a Party based on the negligence, willful misconduct, violation of applicable law, or breach of this Agreement by such indemnifying Party including their Representatives.

6. Intellectual Property; Trade Secrets; Confidentiality.

6.1 Nightshift Digital agrees that Client owns all worldwide right, title, and interest in and to all advertising, marketing, merchandising and promotion, documents, work product, and other materials (including, but not limited to concepts, music, artwork, writings, drawings, slogans, photographs, graphic materials, in digital and analog formats, web designs and links, whether finished or unfinished) that are delivered to Client under this Agreement, including those described within the SOW, or prepared by or on behalf of the Nightshift Digital in the course of performing the Services, whether used or unused, including all copyright, trademark, trade name, patent and other intellectual property rights therein, together with all of the goodwill associated therewith (collectively, the "Deliverables"). Deliverables shall include, without limitation, whether finished or unfinished and whether used by Client or not, all advertising, marketing, promotion and merchandising materials, copy, storyboards, concepts, ideas, trademarks, trade names, domain names, logos, slogans, taglines, inventions, discoveries, website style, content, structure and look and feel, internet portals, press releases, research, videos, presentations and proposals, artwork, videos, telephone numbers for use by Client's consumers, and original music and lyrics.

6.2 Any Deliverables that may qualify as "works made for hire" as defined in the Copyright Act (17 U.S.C. § 101), are hereby deemed owned by Client as "works made for hire." To the extent that any of the Deliverables do not constitute a "work made for hire," Nightshift Digital hereby irrevocably assigns to Client, in each case without additional consideration, all right, title, and interest throughout the world in and to the Deliverables. Upon Client's request, Nightshift Digital will promptly take such further actions, including execution and delivery of all appropriate instruments of conveyance, as may be necessary to assist Client to prosecute, register, perfect, or record its rights in or to any Deliverables.

6.3 Nightshift Digital shall cause its employees, permitted subcontractors and other agents (collectively, "Nightshift Digital Personnel") to: (a) agree that any Deliverables that may qualify as "works made for hire" will be deemed "works made for hire" for Client and, to the extent that any of the Deliverables do not constitute "works made for hire," to irrevocably assign, to Client, in each case without additional consideration, all right, title, and interest throughout the world in and to the Deliverables; (b) irrevocably waive, to the extent permitted by applicable law, any and all claims such Nightshift Digital Personnel may now or hereafter have in any jurisdiction to so-called "moral rights" concerning the Deliverables; (c) upon Client's request, promptly take such further actions, including execution and delivery of all appropriate instruments of conveyance, as may be necessary to assist Client in prosecuting, registering, perfecting, or recording its rights in or to any Deliverables.

6.4 Notwithstanding anything herein to the contrary, Client's ownership of the Deliverables shall be subject to (a) the rights of third parties whose materials or services are contained in the Deliverables with Client's prior knowledge and written approval (e.g., stock

footage, photos, music, software, etc.) and used under a license or other permission granted to Nightshift Digital or Client ("Third Party Materials"), and (b) all materials owned by Nightshift Digital prior to, or independent from, the performance of Services under this Agreement, and all methodologies, software, applications, processes or procedures used, created or developed by Nightshift Digital in the general conduct of its business, excluding those developed specifically for Client or at Client's request or funded by Client (collectively, "Nightshift Digital Materials"). Nightshift Digital hereby grants Client a royalty-free, perpetual, worldwide license to any Nightshift Digital Materials to the extent incorporated in, combined with, or otherwise necessary for the use of the Deliverables for any and all purposes. Nightshift Digital shall disclose in writing to Client all usage limitations on Third Party Materials prior to their use in any advertising or launch of any Deliverable.

6.5 NightShift Digital acknowledges and agrees that all books and records and other financial and business information (including, without limitation, Deliverables, data, information, personal or private information, know-how, show-how, processes, mock-ups, methods, practices, designs, specifications, yields, efficiencies, capacities, computer software, documentation, business and marketing plans, customer, price, and vendor lists as well as documentation of planned or existing projects) pertaining to Client's business, whether prepared by NightShift Digital or otherwise coming into NightShift Digital's possession, constitute confidential and/or trade secret information of Client and shall be the exclusive property of Client and shall be maintained in confidence ("Confidential Information"). All Confidential Information shall be immediately returned to Client or destroyed by NightShift Digital upon termination of this Agreement. NightShift Digital shall not disclose or make any use and/or distribution whatsoever of Client's Confidential Information, either directly or indirectly, either on her own account or for any other person, firm, association or corporation, except as may be required to carry out her duties herein. NightShift Digital covenants and agrees that if any such Confidential Information is disclosed to anyone despite NightShift Digital's diligent efforts to prevent such disclosure, NightShift Digital shall promptly notify Client of any such disclosure and the person or persons to whom such disclosure has been made.

7. Representations and Warranties. Each Party represents and warrants to the other Party that:

7.1 Duly Organized. Such Party: (i) is duly organized, validly existing, and in good standing under the laws of California, (ii) has the power, authority, and legal right to own and operate its property and assets, and to carry on its business as it is now being conducted, and (iii) is in compliance with all requirements of the Applicable Law.

7.2 Authority. Such Party (i) has the power, authority, and legal right to enter into this Agreement and to perform its obligations hereunder; and (ii) has taken all necessary action on its part to authorize the execution and delivery of this Agreement and the performance of its obligations hereunder.

7.3 Binding Agreement. This Agreement constitutes a legal, valid, binding obligation, enforceable against each Party by the other in accordance with its terms.

7.4 Regulatory Compliance. All necessary consents, approvals and authorizations of all regulatory authorities and other persons required to be obtained by such Party in connection with this Agreement have been obtained.

7.5 Future Regulatory Compliance. Each Party covenants that it shall comply with all applicable law.

8. Governing Law; Disputes; Attorney's Fees.

This Agreement shall be exclusively governed by and construed in accordance with the laws of the State of California. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in Los Angeles, California. The arbitration shall be administered by Judicial Arbitration Medication Service ("JAMS") pursuant to its Comprehensive Arbitration Rules and Procedures and in accordance with JAMS' Streamlined Arbitration Rules and Procedures. Judgment on any award may be entered in any court having jurisdiction. This clause shall not preclude Parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. The substantially prevailing party in any dispute arising out of or relating to this Agreement shall be entitled to its reasonable attorney's fees and costs. Notwithstanding the foregoing, NightShift Digital acknowledges that a breach or threatened breach by such party of any of its obligations under Section 6 would give rise to irreparable harm to the Client for which monetary damages would not be an adequate remedy and hereby agrees that in the event of a breach or a threatened breach by NightShift Digital of any such obligations, Client shall, in addition to any and all other rights and remedies that may be available to it in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance, and any other relief that may be available from a court of competent jurisdiction (without any requirement to post bond).

9. Independent Contractor Status.

9.1 This Agreement calls for NightShift Digital to provide remote services for Client as an independent contractor. NightShift Digital is not an employee of Client and will not be considered an employee of Client for any purpose. No work, act, commission or omission of any act by NightShift Digital pursuant to the terms and conditions of this Agreement shall be construed to make or render the NightShift Digital an employee of Client. Furthermore, NightShift Digital shall be entirely liable for their own debts and obligations and shall not, under any circumstances, hold themselves or any of their employees out to be employees of Client. Client is free to assign or not to assign work to NightShift Digital at its sole discretion, and nothing herein shall be deemed to require Client to utilize NightShift Digital on any specific project or assignment.

9.2 NightShift Digital acknowledges that as an independent contractor, it is not entitled to and will not receive any overtime compensation or benefits which Client may otherwise provide to its employees, including but not limited to medical insurance, life insurance, profit sharing or other retirement benefits, workers' compensation and unemployment insurance.

9.3 NightShift Digital acknowledges that as an independent contractor, it will be solely liable for any taxes or other payments which may be required by federal, state or local law to be deducted from any payments made to NightShift Digital by Client under this Agreement.

9.4 NightShift Digital shall, at its own expense, carry adequate workers' compensation and automobile insurance, if applicable, to fully protect both NightShift Digital and Client from any and all claims and damages which may arise from the performance of this Agreement.

9.5 NightShift Digital represents that it will not divulge, disclose or use during the rendering of services to Client any trade secret and/or confidential information acquired by NightShift Digital at a prior place of employment (other than Client) or with a prior party with whom it has had an independent contractor relationship. NightShift Digital further agrees not to disparage the Client in any manner whatsoever, including on social media, blogging or the Internet.

10. Third-Party Beneficiary. The parties hereby designate Kind Op Corp., a California corporation doing business as POSIBL ("POSIBL") as third-party beneficiaries of this Agreement having the right to enforce Section 2, including the SOW and Section 6 of this Agreement. Except for POSIBL, this Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

11. Severability. If any provision of this Agreement or any portion thereof is held by a court of competent jurisdiction to be unenforceable or invalid, the validity and enforceability of the remaining provisions of the Agreement shall continue in full force and effect and shall not be adversely affected.

12. Entire Agreement; Amendment and Modification. This Agreement, together with any documents incorporated herein by reference, constitutes the sole and entire agreement of the parties, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. The terms of this Agreement prevail over any terms and conditions contained in any other documentation and expressly exclude any of Nightshift Digital's standard terms and conditions or any other document issued by Nightshift Digital under this Agreement. This Agreement may only be amended or modified in a writing that specifically states that it amends this Agreement and is signed by an authorized representative of each party.

13. Further Assurances. Each of the parties hereto shall execute and deliver such additional documents, instruments, conveyances, and assurances and take such further actions as may be required to carry out the provisions hereof

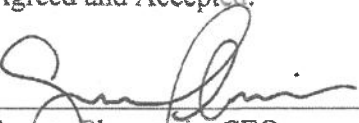
14. Assignment. Neither party may assign any of its rights or delegate any of its obligations hereunder without the prior written consent of the other party. Any purported assignment or delegation in violation of this Section shall be null and void. Without limiting the

foregoing, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted successors and permitted assigns

15. Waiver . 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

IN WITNESS WHEREOF, the Parties do execute this Agreement.

Agreed and Accepted:



Susana Plascencia, CEO
NightShift Digital



Jesus Burrola, CEO
Humo Corp

EXHIBIT A Incentive Compensation

In consideration of the anticipated value of NightShift Digital's Services under the Agreement, NightShift Digital will have the opportunity to earn incentive compensation in accordance with the terms of this Exhibit.

1. Definitions. For purposes of this Exhibit, the below definitions apply. Capitalized terms not otherwise defined in this Exhibit have the corresponding meaning ascribed thereto in the Agreement.

"Cliff Period" means the initial 6-month period of the Agreement term following the Effective Date.

"Exit Event" means: (i) a change in the ownership or control of the Client effected through a transaction or series of related transactions (other than an offering of securities to the general public through a registration statement filed with the Securities and Exchange Commission) whereby any "person" or related "group" of "persons" (as such terms are used in Sections 13(d) and 14(d)(2) of the Exchange Act of 1934, as amended (the "Exchange Act")), other than an Affiliate, directly or indirectly acquires beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act) of securities possessing more than fifty percent (50%) of the total combined voting power of the securities outstanding immediately after such acquisition; or (ii) the sale or conveyance of all or substantially all of the assets of the Client to a person who is not an Affiliate.

"Parent" means Client's immediate parent company Kind Op Corp, a California corporation.

"Parent Exit Event" means (i) a change in the ownership or control of Parent effected through a transaction or series of related transactions (other than an offering of securities to the general public through a registration statement filed with the Securities and Exchange Commission) whereby any "person" or related "group" of "persons" (as such terms are used in Sections 13(d) and 14(d)(2) of the Exchange Act, other than an Affiliate, directly or indirectly acquires beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act) of securities possessing more than fifty percent (50%) of the total combined voting power of the securities outstanding immediately after such acquisition; or (ii) the sale or conveyance of all or substantially all of the assets of Parent, including the ownership and/or assets of Client, to a person who is not an Affiliate.

"Vesting Cap" means three percent (3%).

"Vesting Percentage" means the portion of the Exit Payment NightShift Digital will receive upon an Exit Event, measured as a percentage.

"Vesting Period" means three (3) years from the Effective Date.

2. Vesting Percentage. On the first day following the Cliff Period, provided the Agreement then remains in effect, NightShift Digital will earn a Vesting Percentage of 0.5%, and for each calendar quarter during the Vesting Period in which the Agreement remains in effect following

the Cliff Period, NightShift Digital will earn a Vesting Percentage of 0.25%. NightShift Digital's aggregate Vesting Percentage cannot exceed the Vesting Cap.

3. Exit Payment. Upon final closing of an Exit Event or Parent Exit Event transaction, NightShift Digital will be entitled to a payment ("**Exit Payment**") in an amount equal to:

- a. In the case of an Exit Event, the product of:
 - i. the Vesting Percentage; and
 - ii. the net proceeds of the Exit Event transaction, less any applicable transaction fees and taxes in accordance with the definitive transaction documents therefor.
- b. In the case of a Parent Exit Event, the product of:
 - i. the Vesting Percentage; and
 - ii. the net proceeds of the Parent Exit Event transaction attributed to the valuation ascribed to Client in such transaction, less any applicable transaction fees and taxes in accordance with the definitive transaction documents therefor.

For purposes of the above calculations, Client's (or Parent's) books and records will be deemed conclusive absent manifest error. For clarity, net proceeds used to calculate Exit Payments shall also include any and all contingent payments, escrowed amounts, holdbacks, earnouts, or other features with delayed consideration, subject to the timing provisions of Section 4 below.

4. Exit Payment Timing. The Exit Payment will be due and payable ninety (90) days following the final closing of the Exit Event or Parent Exit Event transaction, provided that any Exit Payment will be subject to the terms and conditions of the definitive legal documents for the Exit Event or Parent Exit Event transaction, such that, for example, if the Exit Event or Parent Exit Event includes contingent payments, escrows or holdbacks, seller financing, earnouts, or other features with delayed consideration, the timing of the Exit Payment (or applicable portion thereof) will be subject to those contingencies and payment timelines.

5. No Equity Interest. Nothing in this Exhibit creates or conveys any equity or ownership interest in Client or any rights commonly associated with such interests, including, without limitation, the right to vote.

6. Survival; Termination. The provisions of this Agreement will survive the termination or expiration of the Agreement such that NightShift Digital will remain entitled to an Exit Payment based on any Vested Percentage earned up to the time of such termination or expiration.