

## Appointment of a Selling Agent

THIS AGREEMENT is made on 1<sup>st</sup> June 2017

BETWEEN:

**Lose Baby Weight Pty Limited** of Level 3, 43 East Esplanade, Manly, NSW, 2093  
ABN: 12 153 827 751 (“the Company”)

AND:

**The Independent Healthy Mummy Agent (Consultant)**

THE PARTIES AGREE as follows:

### **1. Appointment by the Company of the Agent**

1.1. The agent as independent healthy mummy consultant is appointed as a non exclusive agent of the Company for selling goods of the Company of the kinds set out in the inventory of products that healthy mummy provides to the independent healthy mummy consultants from time to time.’ (“the goods”) from the date of this agreement on the terms contained in this agreement.

### **2. Responsibilities of the Agent**

2.1. The independent healthy mummy consultant agrees with the Company that they will perform the terms set out in this agreement and in particular:

- a) will use their best endeavors to promote and extend the sales of the goods to all potential buyers and work diligently to obtain orders for the goods;
- b) will in all matters act loyally and faithfully to the Company and obey its instructions and in the absence of any instructions for any particular matter will act in a manner they reasonably consider to be most beneficial to the Company’s interests;
- c) will not engage or be interested either directly or indirectly as principal agent or employee in selling goods of any description or kind similar to those of the Company or designed to perform the like functions as those of the Company whether alone or

- in conjunction with any other goods without obtaining the consent in writing of the Company;
- d) will at all times adhere to the company's Brand Guidelines when managing the content of Facebook pages/groups that are within their control. Content that mentions Healthy Mummy and appears on Facebook pages/groups must be constructed in a positive style.
  - e) will not sell to any person goods which they know or have reason to believe are intended for resale.
  - f) hard product goods must not be sold on any digital product selling marketplace, such as Buy & Sell Pages, Amazon, Ebay or Gumtree, either in Australia or Overseas.
  - g) Will not house clients personal details with a No 3rd party digital platforms
  - h) Will conform with the affiliate program guidelines and utilise affiliate links on all digital platforms within their control to drive increased sales for Healthy Mummy. The affiliate links are to be established with some care as Healthy Mummy will not accept responsibility for commission payments where the links have not been established according to the affiliate program guidelines.
  - i) will not sell the goods on terms other than for cash against delivery unless the consent of the Company is provided in writing to give credit to a particular purchaser. In each case where credit is approved the Company may use its discretion to determine an increase in the price of the goods over and above the full list price.
  - j) will not, in selling the goods, make any representations or give any warranties other than those contained in the Company's conditions of sale;
  - k) in the event of any dispute arising between the agents and a buyer for the sale of the goods, they will immediately inform the Company of the dispute and will not, without the Company's consent in writing, take any proceedings for or compromise the dispute or grant a release to any debtor of the Company;
  - l) will promptly bring to the notice of the Company any information received by them which is likely to be of use or benefit to the Company in marketing the goods;
  - m) all products are to be bought on an upfront basis from The Healthy Mummy Pty Ltd using the healthy mummy consultant 44% discount with the intention of then on selling the products to customers.

- n) will from time to time upon the written request of the Company supply to the Company reports, returns and other information relating to the agency;
- o) will not assign, transfer, charge or in any manner make over or purport to assign, transfer or charge the whole or part of this agreement or their rights under this agreement without obtaining the previous consent in writing of the Company;
- p) will not alter, remove or tamper with the marks or numbers on the goods deposited with them by the Company;
- q) will not incur any liability on behalf of the Company or in any way pledge or purport to pledge the Company's credit;
- r) will, in all correspondence, commercial documents and on the name plate or other signs at their place of business describe themselves as selling agents for the Company and will not describe themselves as the Company's agent except in conjunction with the word "selling";
- s) will defray all expenses of and incidental to the agency.

2.2. It is expected that as an Independent Sales Consultant that you will make regular sales and to do this will make regular purchases from the Healthy Mummy or Lose Baby Weight website for stock.

- a) At any stage if you are unable to maintain a regular pattern of sales we expect that you will bring this to our attention so that other consultants may be permitted this opportunity.
- b) Upon creating exercise groups with the Healthy Mummy customers you will only participate in paid fitness activities that are branded Healthy Mummy with a registered Healthy Mummy Fitness Trainer.

### **3. Responsibilities of the Company**

3.1. The Company agrees that during the continuance of this agreement it will:

- a) at its own expense supply the independent healthy mummy consultant with an amount of instruction books, technical pamphlets, catalogues and advertising material as it considers reasonably sufficient with a view to promoting sales of the products;
- b) provide the independent healthy mummy consultant with a stock of the goods. The

independent healthy mummy consultants have no right of action against the Company for delay caused by shortage of stock delays in transit, accidents, strikes or other unavoidable occurrence in providing the stock of the goods.

#### **4. Company's reservations**

- 4.1. Despite anything else stated or implied in this agreement, the Company reserves to itself the right:
- a) to continue to sell and supply the goods to its customers and no right to commission accrues to the agent for any sale;
  - b) to vary the list of products, either by removing / or adding any class or classes of goods should the Company cease producing that class or those classes of goods or by adding to the list after consultation with the agent, a further class or of further classes of goods of the Company;
  - c) if in the opinion of the Company the agents are not at any time producing adequate sales and without prejudice to any other of its rights under this agreement, to vary the First Schedule to exclude from the agreement one or more of the classes of goods set out as it thinks fit
  - d) if the whole or parts of its business is transferred to any other Company to assign its rights and obligations under this agreement to that other Company after giving one month's notice of an assignment in writing to the agent.

#### **5. Agents' commission**

- 5.1. In consideration for their services to the Company under this agreement the independent healthy mummy consultants are allowed to deduct and retain 44% per cent off the full list price of the goods sold by them on behalf of the Company.

#### **6. Company's right to cancel agency**

- 6.1. Without prejudice to any other remedies the Company may have against the agent, the Company has the right at any time by giving notice in writing to the agent to cancel the agreement immediately in any of the following events:
- a) if the agents commit a breach of any of the terms or conditions of this agreement that is not rectified promptly after the Company serves on the agents a notice requiring

- the rectification of the breach;
  - b) where the Brand Guidelines of Healthy Mummy have been found not to have been followed.
  - c) if the agents enter into liquidation whether compulsorily or voluntarily (otherwise than for the purposes of amalgamation or reconstruction) or compound with their creditors or take or suffer any similar action in consequence of debt;
  - d) if the agents or any of the members of the firm become insolvent or enter into any arrangement with their creditors or take or suffer any similar action in consequence of debt;
  - e) if from any cause the agents are prevented from performing their duties under this agreement for a period of 30 days or for a total period of 60 days in any one period of 12 calendar months;
  - f) if the agents are guilty of any conduct which in the opinion of the Company is prejudicial to the Company's interests;
  - g) if the agent purport to assign the burden or benefits or charge or secure the benefits of this agreement without the consent in writing of the Company.
- 6.2. Either party may cancel this agreement at any time by giving to the other party one month's notice in writing sent by registered post or recorded delivery service to the registered office of the Company or the agents as the case may be.
- 6.3. If at any time the Company ceases to carry on business or deal in the goods this agreement is canceled immediately unless the rights of the Company under this agreement are assigned under clause 4(d).

## **7. Confidentiality and restraint**

- 7.1. The agent agrees that they will not:
- a) at any time whether during the continuance in force of this agreement or at any time after its cancellation divulge any information for the Company's affairs or business or method of carrying on business except under compulsion of law or with the Company's consent;
  - b) during the period of 12 months after the cancellation of this agreement for any reason be associated whether as principals, agents or employees in the manufacture, sale or distribution of any products of a like or similar kind to or designed to perform functions

like or similar to the products of the Company of which the agent are at any time selling agent under this agreement without the consent in writing of the Company.

## **8. Agent responsibilities following cancellation**

- 8.1. Upon the cancellation of this agreement from any cause or at any time previous to cancellation at the request of the Company:
- a) the agent must promptly return to the Company or otherwise dispose of as the Company may direct all samples, patterns, instruction books, technical pamphlets, catalogues, advertising material, specifications and other materials, documents and papers sent to the agents and relating to the business of the Company (other than correspondence between the Company and the agents) which the agents may have in their possession or under their control;
  - b) deliver up to the Company all separate books of account and records relating to the agency kept under clause 2(a) of this agreement.
- 8.2. Upon cancellation of this agreement, the agent must immediately deliver up to the Company or otherwise dispose of, as the Company directs, the goods and any parts or accessories of the goods which are in their possession or under their control and must account to the Company for the value at list prices less the deduction referred to in clause 5.1 of any deficiency in the stock of goods.
- 8.3. If you cease to be a Healthy Mummy Sales Consultant, you agree to transfer the admin rights of the Facebook page/group to The Healthy Mummy within 48 hours.

## **9. Arbitration of disputes**

- 9.1. Any dispute, difference or question which may arise at any time between the Company and the agent concerning the construction of this agreement or the rights and liabilities of the parties must (unless otherwise expressly provided) be referred to the decision of a single arbitrator to be agreed upon between the parties or in default of agreement for 14 days to be appointed at the request of either party by Law Society of NSW under and subject to Commercial Arbitration Act 1984 (NSW) any statutory modification or re-enactment of that enactment for the time being in force.

## **10. Notices**

- 10.1. Except as otherwise provided any notice required or permitted to be given under this agreement:
- a) is taken to be given to the agent if forwarded by registered post, recorded delivery service, telex or telegraph to the last known postal address of the agents in the agency district; and
  - b) is taken to be given to the Company if forwarded to its registered office under the provisions for service of notices or documents under the Corporations Law.
- 10.2. Every notice is taken to have been received and given at the time when in the ordinary course of transmission it should have been delivered at the address to which it was sent.

#### **11. Waiver**

- 11.1. The waiver by the Company of any breach of any term of this agreement does not prevent the subsequent enforcement of that term and is not to be taken to be a waiver of any subsequent breach.
- 11.2. Any waiver by the Company, whether under clause 11.1 or outside clause 11.1 must be in writing and signed by an officer of the Company.

#### **12. Entire agreement**

- 12.1. This agreement embodies the entire understanding of the parties and there are no promises, terms, conditions or obligations, oral or written, express or implied other than those contained in it.
- 12.2. All previous agreements and arrangements (if any) made between the Company and the agents relating to this agency are cancelled but without prejudice to any rights which have already accrued under those agreements or arrangements to either party.

**EXECUTED as an AGREEMENT**

EXECUTED for the Company by its duly authorised officer:

\_\_\_\_\_  
*Print name*

\_\_\_\_\_  
*Signature*

In the presence of:

\_\_\_\_\_  
*Print name of witness*

\_\_\_\_\_  
*Signature of Witness*

Date \_\_\_\_\_

EXECUTED by the Agent (Healthy Mummy Consultant)

\_\_\_\_\_  
*Print Name*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Print name of witness*

\_\_\_\_\_  
*Signature of Witness*

Date \_\_\_\_\_