

# AMAZON E-COMMERCE CONSULTING AGREEMENT

**NOW COME** Kyncey Investments, LLC a Florida Limited Liability Company, whose address is 1624 North Jasmine Avenue, Tarpon Springs, Florida 34683 (“Consultant”) and *April Campbell Willis*, whose address is *7001 Diamond Oaks Dr Mansfield, TX 76063* (Client) and hereby agree to the following terms and conditions regarding Consultant’s proposal to create an online e-commerce store on the Amazon platform (the “Store”) for Client.

## 1. OFFER

For consideration received, as set forth herein, Consultant agrees to perform the following services for Client:

(A) Product research and selection – Consultant will review, research and select products using its proprietary methods and databases. Consultant will, at its discretion, select products that, in Consultant’s judgment, have a high probability of commercial success once placed into Client’s Store and build said Store around the selection(s).

(B) Store Implementation – Consultant employs teams of individuals skilled in different aspects of e-commerce who are responsible for creating and maintaining Client’s store. These teams shall be responsible for the Store’s creation, including configuring the Amazon storefront, establishing the necessary relationships with suppliers, and configuring the front and back end systems necessary to implement the Store.

(C) Customer Support – Consultant shall arrange and provide a Customer Support Team in support of Client’s store. Said Customer Support Team shall be responsible for responding to customers’ phone and/or email inquiries without needing Client’s involvement. Said Team shall exercise their best efforts to resolve all customer inquiries, handle product returns, and manage billing matters.

(D) Ongoing Account Management – Consultant maintains oversight of all Client stores and their performance. Consultant shall make online tools available to Client that permit Client to periodically monitor their Store’s performance.

## 2. CLIENT RESPONSIBILITIES

(A) Long Term Business Venture – Client hereby accepts and understands that the subject Store is a long-term investment. While Consultant exercises its best efforts to

create and maintain stores that perform quickly, Client understands and accepts that, like any new venture, there is a “ramp up” period of approximately 2-4 months (or perhaps longer) in which sales and/or store performance may be slow, including a 4-8 week configuration period that begins once Client completes all of Client’s ramp up steps (which steps include setting up accounts and a company through which Client will be conducting Store business) during which Consultant is creating Client’s store. Following this configuration period there is additional time that must pass as the Store gains traction within the Amazon environment in the form of search visibility and account integrity. Client accepts and understands that this “ramp up” period may not reflect that store’s eventual profitability, and agrees to fully and patiently cooperate with Consultant in making any adjustments to bring the Store to its full potential over a period of not less than one year.

(B) Business Risk – Client hereby accepts and understands that e-commerce is an ever- changing industry that is subject to many different types of business risk, including but not limited to: (i) a changing legal environment in which regulations can emerge or change that affects the marketability of Amazon products; (ii) macroeconomic changes that affect consumer spending, the emergence of recessions and the like; (iii) changes in the popular appeal of and demand for different types of Amazon products; (iv) changes in Amazon’s terms and conditions, to which Consultant and Client are bound alike, which may affect the marketability of Client’s store’s products; (v) changes in international politics or economics, which may affect, among other things, the ability to package, distribute and/or ship Amazon products, and the costs thereof; (vi) market forces, including increased and/or changing levels of competition for any given product from other sellers of such product; (vii) unforeseen events, force majeure, and other external events that could affect the performance of any Amazon store. Client hereby agrees and understands that there are no guarantees as to the Store’s profitability at any time, and acknowledges that Client is at risk of a total loss of his, her or its investment. Consultant encourages Client to only invest funds that Client can afford to lose, and to consult Client’s legal and/or business advisors prior to investing.

(C) Amazon Terms and Conditions – Client hereby agrees and understands that Consultant, Client and all Amazon stores are subject to all of Amazon’s terms and conditions at all times. Consultant is bound to operate Client’s store consistently with these terms and conditions, including in deciding which products to sell and how to sell them. Client hereby agrees and understands that Amazon, from time to time, with or without cause, can and does suspend accounts for various reasons, some of which may not be obvious or justified. Consultant shall in the case of any such suspension exercise

all reasonable efforts to return Client's store to operating status. Consultant makes no guarantees, however, that Amazon will in such cases return accounts to active status.

### **3. COMPENSATION**

(A) Client shall pay to Consultant a one-time fee of **thirty thousand dollars (\$30,000.00)** (the "fee") for Consultant's package of services as described herein, via wire transfer or ACH to Consultant's account.

(B) Client agrees to pay Consultant **forty percent (40%)** of Client's store's profit net of all other expenses, including but not limited to the cost of goods sold and Amazon's fees (the "ongoing commission").

(C) Client shall continue to pay the ongoing commission for as long as the Client's store is in operation.

(D) Client shall not be responsible for payment of the ongoing commission or the maintenance fee in cases in which there is no activity whatsoever in Client's Store for that month (or portion thereof, where such portion exceeds 15 days) such as where the Client's store is paused or suspended.

(E) Consultant shall bill Client on a monthly basis for the maintenance fee or ongoing commission, as applicable, after which Client shall have seventy-two (72) hours to remit payment to Consultant. Consultant reserves the right to pause any store belonging to any Client for failure to pay any amount due within this period.

### **4. REFUND**

Consultant hereby agrees to make the Client enough profit in the first twelve (12) months to cover the up-front investment of thirty thousand dollars (\$30,000). Failure to do so will result in a refunded amount of the up-front investment minus the profit made in the twelve (12) month period. The refund will be voided if the store is suspended or frozen due to a change in Amazon's terms and conditions. Any potential refund is void in the event of any suspension of the Client store, a lack of necessary capital that restricts store growth, abuse of guidelines within this Contract, extended "vacation mode" of the Client store initiated by Client, and/or closure of the Amazon business or sudden and unforeseen adjustments to the Amazon Seller Central policies.

### **5. TERM**

This Agreement shall be effective on **12-28-2019** and shall continue in effect for a period of one (1) year. The parties may, but shall not be required to, continue the term of this Agreement for an additional one (1) year by written agreement.

## **6. TERMINATION**

Consultant reserves the right to terminate its Services to Client for cause, with fourteen (14) days written notice to Client. For these purposes “cause” shall include, but not be limited to, any act or omission on Client’s part that makes the smooth operation of the Store successful, including by attempting to duplicate, replace or contravene any of Consultant’s efforts with respect to the Store, such that, in Consultant’s sole discretion, the Store cannot be successful in the face of such act(s) or omission(s). Consultant further reserves the right to pause the operation of any store belonging to any Client who violates the terms and conditions of this Agreement. In such cases Consultant may, in its discretion, reactivate the Store for a five thousand-dollar (\$5,000.00) re-activation fee. This policy is only enforceable by the Consultant when Client abuses the guidelines within this contract. No termination of Contract can be made by Consultant until one written warning is issued to Client.

## **7. NON-DISPARAGEMENT**

Client agrees and accepts that any issues or problems that Client could encounter with the Store, or Consultant’s services, should be discussed in a professional and private manner. Client therefore hereby agrees never to disparage, insult, or fabricate information regarding Consultant in any online or offline forum whatsoever, including but not limited to social media channels, regardless of whether such comments or information would constitute libel or slander, and regardless of whether such comments could be deemed factually true or false. Client agrees that any such disparagement or insult constitutes a material breach of this Agreement, for which Consultant may pause or close Client’s Store, with no obligation to refund any amount whatsoever.

## **8. SALES / USE TAX**

Consultant does not provide tax reporting or tax management services of any kind. Client is responsible for determining if he, she or it is responsible for collecting and remitting sales or use tax and in which state. Client’s reporting tools include data that Client may review and download for sales / use tax reporting purposes, as applicable.

## **9. INTELLECTUAL PROPERTY**

Client agrees and understands that Client's Store is a service hosted on the Amazon platform and not a distinct or severable product that can be ported, removed or installed in or on a different place or platform. Consultant grants no claim of right, title to or ownership in the Store, its trade name or trade dress, or any other intellectual property to Client or to any other entity or person under this Agreement.

## **10. NON-COMPETITION**

Client hereby agrees that he, she or it will not create or seek to create any Amazon store or service that in any way competes with the Store that Consultant shall create for Client, including but not limited to selling the same or substantially similar products, or using the Store trade name or trade dress, anywhere in the world, for the Term of this Agreement plus two (2) years, which Client agrees is a reasonable limitation in time and scope. Client further Agrees that it will not in any way, shape or form, offer to third parties services that are the same or substantially similar to Consultant's, including the ability or willingness to set up Amazon stores, services or sales channels, anywhere in the world, for the term of this Agreement plus two (2) years, which Client agrees is a reasonable limitation in time and scope.

## **11. LIMITATION OF LIABILITY**

UNDER NO CIRCUMSTANCES WILL CONSULTANT OR ANY OF ITS THIRD PARTY SERVICE PROVIDERS, PARENTS, AFFILIATES OR VENDORS, OR ANY OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS OF THE PARTIES, OR ITS PARENTS, AFFILIATES OR VENDORS, BE LIABLE FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES, HOWEVER OR WHENEVER ARISING, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST REVENUE, LOST PROFITS, ANTICIPATED PROFITS, LOST BUSINESS OR INJURY TO BUSINESS REPUTATION, COST OF PROCUREMENT OF SUBSTITUTE SERVICES, UNDER ANY THEORY OF LIABILITY OR CAUSE OF ACTION WHETHER IN TORT, INCLUDING NEGLIGENCE, CONTRACT OR OTHERWISE, REGARDLESS OF WHETHER OR NOT IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## **12. DISCLAIMERS**

CONSULTANT'S SERVICES ARE PROVIDED ON AN "AS IS" "AS AVAILABLE" BASIS WITHOUT ANY REPRESENTATIONS OR WARRANTIES CLIENT MAY NOT RELY UPON.

### **13. GENERAL PROVISIONS**

(A) Non-exclusivity - This Agreement shall not confer on either party any exclusive rights. Each party is free to contract with others with respect to the subject matter of this Agreement.

(B) Relationship of the Parties – The Parties hereto are engaged in the payment of a fee for Services. No other relationship, including a joint venture, partnership or other formal affiliation, is intended.

(C) Notices - All notices to either Party shall be sent electronically to the email address(es) provided by each Party to the other. All notices to Consultant shall be sent to kmcdougal5@icloud.com if to Consultant. Such written notice will be deemed given upon personal delivery, or three (3) days after the date of mailing if sent by certified or registered mail, or by a recognized private delivery service.

(D) Non-solicitation – Client shall not in any way endeavor to hire or contract with any member of Consultant's team(s), including but not limited to any individual with whom Client may have contact in the course of running Client's Store, nor shall Client in any way ever attempt to encourage any member of Consultant's team(s) to terminate their relationship with Consultant.

(E) Severability, Headings - In the event any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way. The parties agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision. Headings are used for convenience of reference only and in no way define, limit, construe or describe the scope or extent of any section, or in any way affect this Agreement.

(F) Dispute Resolution - Any dispute or claim arising out of or relating to this Agreement will be resolved by binding arbitration. The arbitration of any dispute or claim shall be conducted in accordance with the American Arbitration Association ("AAA") rules, as modified by this Agreement, which shall take place in Miami, Florida, unless the Parties mutually agree otherwise. This Agreement evidences a transaction in interstate

commerce and this arbitration provision shall be interpreted and enforced in accordance with the Federal Arbitration Act and federal arbitration law. An arbitrator may not award relief in excess of or contrary to what this Agreement provides, or order consolidation or arbitration on a class wide or representative basis, except that the arbitrator may award damages required by statute on an individual basis and may order injunctive or declaratory relief pursuant to an applicable consumer protection statute. Any arbitration determination or award shall be confidential, and neither Party may disclose the existence, content or results of any arbitration, except as may be required by law or for purposes of enforcement of the same. Judgment on any arbitration award may be entered in any court having proper jurisdiction. All administrative fees and expenses will be divided equally between the Parties, though each Party will bear its own expense of counsel, experts, witnesses and preparation and presentation of evidence at the arbitration. IF FOR ANY REASON THIS ARBITRATION CLAUSE IS DEEMED INAPPLICABLE OR INVALID, THE PARTIES FOREVER AND WITHOUT EXCEPTION WAIVE, TO THE FULLEST EXTENT ALLOWED BY LAW, ANY RIGHT TO PURSUE ANY CLAIMS ON A CLASS OR CONSOLIDATED BASIS OR IN A REPRESENTATIVE CAPACITY. No action, regardless of form, arising out of or in conjunction with the subject matter of this Agreement may be brought by either Party more than one (1) year after the cause of action arose.

(G) Amendment - Both Parties acknowledge and agree the Internet and e-commerce industries evolve and change over time, and therefore agree that Consultant may modify this Agreement, from time to time, to comply with any additional rules or policies that may be required under the laws of the United States or any other governing body, or to adjust to changing business circumstances. Consultant may from time to time provide to the other Party modifications to or updated versions of this Agreement via electronic means. In such cases, the Client shall have thirty (30) days in which to accept said modifications or new version. Said modifications or new version shall be deemed to be rejected by Client in the event that it either affirmatively rejects, or does not affirmatively accept, the same within such period of time, in which case this Agreement shall terminate with no further obligations due from Consultant to Client.

(H) Electronic Signatures - Under the Electronic Signatures in Global and National Commerce Act (E-Sign), this Agreement and all electronically executed documents related hereto are legally binding in the same manner as are hard copy documents executed by hand signature when (1) a Party's electronic signature (which may be evidenced by either Party clicking the "Submit," "Accept" or other equivalent indicator on the applicable website) is associated with this Agreement and related documents, (2) such Party consents and intends to be bound by this Agreement and related

documents, and/or (3) the Agreement is delivered in an electronic record capable of retention by the recipient at the time of receipt (i.e., print or otherwise store the electronic record). This Agreement and all related electronic documents shall be governed by the provisions of E-Sign. By pressing Submit, Accept or other equivalent indicator, such person or Party agrees (i) that this Agreement and related documents shall be effective by electronic means, (ii) to be bound by the terms and conditions of this Agreement and related documents, (iii) that said person or Party has the ability to print or otherwise store the Agreement and related documents.

(I) Governing Law, Jurisdiction, Conflicts of Law, Forum - This Agreement and performance thereof shall be interpreted, construed and enforced in all respects in accordance with the laws of the State of Florida. Partner hereby irrevocably consents to the personal jurisdiction of and venue in the state and federal courts located in Miami Dade County, Florida, with respect to any action, claim or proceeding arising out of or related to this Agreement and agrees not to commence or prosecute any such action, claim or proceeding other than in such courts. The parties hereto agree that Florida law shall apply regardless of any choice or conflicts of law principles. The parties further agree that Miami Dade County, Florida is a convenient forum, and waives any objection to the same under forum non convenient principles.

(J) Waiver - The failure of any party to insist on or enforce strict performance of any provision of this Agreement, or to exercise any right or remedy under this Agreement or applicable law will not be construed as a waiver or relinquishment of the right to assert or rely upon any such provision, right or remedy in that or any other instance. Waiver by either party of a breach of any provision contained herein must be in writing, and no such waiver may be construed as a waiver of any other and/or succeeding breach of such or any other provision of this Agreement, or a waiver of the provision itself.

(K) Force Majeure - Neither Party shall be responsible for any failure to perform beyond its reasonable control, including, without limitation acts of God, acts or omissions of civil or military authority, civil disturbances, wars, strikes or other labor disputes, fires, transportation contingencies, or interruptions in telecommunications or internet services, third party vendors or network provider services.

(L) Merger - This Agreement, constitutes the entire agreement between the parties and supersedes all prior memoranda or agreements relating thereto, whether oral or in writing.

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**SO AGREED:**

CONSULTANT

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Kyle McDougal, Owner

Kyncey Investments, LLC

CLIENT

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*April Campbell Willis*