



TOUR GUIDE-RETAILER PARTNERSHIP PROGRAM TERMS & CONDITIONS FOR TOUR GUIDES

1. The company or individual (hereinafter collectively “Tour Guide”, such term to include any and all persons or entities associated or affiliated with Tour Guide, including but not limited to Tour Guide’s owners, directors, employees, employers, agents, principals, representatives, associations, contractors, contracting parties, customers, tour group members, and officers) submitting a Tour Guide Information Form (“Information Form”) to ImmixRed LLC (“ImmixRed”) to participate in ImmixRed LLC’s Tour Guide-Retailer Partnership Program (“Program”) agrees that submission of an Information Form, whether by oral, written, electronic, or any other means, or participation in the Program, constitutes Tour Guide’s acceptance of the terms and conditions set forth in this document (“Agreement”).

2. Tour Guide agrees that it shall use its best efforts to take tour groups to retail locations participating in the Program (“Stores”) and shall encourage tour group members to make purchases at Stores. In addition, Tour Guide agrees that it shall abide all by Program procedures and rules issued by ImmixRed (“Program Procedures”), and shall:

a. Provide a completed Information Form, a completed W-9 form, and any other information that ImmixRed requests; and,

b. Promptly notify ImmixRed in writing of any changes in the data in the Information Form or W-9 form.

3. Tour Guide understands and agrees that ImmixRed has no contractual or other duties to Tour Guide except as expressly set forth herein. ImmixRed agrees that it shall:

a. Subject to Number 4, below, pay Tour Guide a commission (“Commission”) for purchases made by members of Tour Guide’s tour groups at participating Stores (“Purchases”), such Commission to be based on the actual sale price (excluding sales tax) of such Purchases, the rate and amount of such Commission determined by ImmixRed at its sole discretion;

- b.** Prepare and make available to Tour Guide upon Tour Guide's request, a list of participating Stores and the then-applicable Commission rate for Purchases at such Stores ("List"). The Commission rates and other information on the List shall be for informational purposes only, subject to change without notice, and shall not be construed as binding upon ImmixRed; and,
- c.** Notify Tour Guide of any changes to this Agreement or to the Program by such means as ImmixRed, in its sole discretion, deems appropriate.
- 4.** Tour Guide understands and agrees that ImmixRed shall not be obligated to pay a Commission for Purchases unless all of the following conditions have been satisfied with respect to each Purchase:
- a.** Tour Guide has acted in accordance with all Program Procedures; and,
- b.** Tour Guide has presented a completed Identification Card to a Store employee upon arrival at a Store, and where required by ImmixRed, has notified ImmixRed and/or the Store of the Store visit in advance; and,
- c.** Tour Guide has provided ImmixRed with current, complete, and accurate Information Forms and W-9 forms prior to the date of any Purchases; and,
- d.** ImmixRed has received payment from the participating Store for the Purchases.
- 5.** Subject to the other provisions of this Agreement, ImmixRed shall make payments to Tour Guide pursuant to the following procedure:
- a.** Within 15 (fifteen) business days of receiving payment from the Store for Purchases attributed to Tour Guide's tour groups, ImmixRed will send a check payable to Tour Guide for the amount of Commission owing under this Agreement; and,

- b.** ImmixRed shall send the check via United States mail or such other carrier as it, in its sole discretion, selects, to the address provided by Tour Guide on the Information Form.
- 6.** ImmixRed and Tour Guide each agree that this Agreement shall not create a partnership, joint venture, agency, employer/employee, fiduciary or similar relationship between ImmixRed and Tour Guide and further agree that the rights and obligations of the parties shall be limited to those expressly set forth in this Agreement.
- 7.** Tour Guide may withdraw from the Program at any time for any reason by written notice to ImmixRed. ImmixRed may terminate this Agreement at any time for any reason by giving notice to Tour Guide by any means ImmixRed, in its sole discretion, deems appropriate. Tour Guide understands and agrees that Tour Guide shall not be entitled to Commission payments for any Purchases made after the date of withdrawal or termination. Tour Guide further agrees that upon termination or withdrawal, Tour Guide shall return to ImmixRed the Identification Card and any other materials provided to Tour Guide by ImmixRed and shall not represent him or herself as being affiliated with ImmixRed.
- 8.** Tour Guide understands and agrees that ImmixRed has the sole right to modify any part or all of this Agreement at any time without prior notice, at its sole discretion. Such modifications may include, but are not limited to:
- a.** The rate of Commission for Purchases at participating Stores;
 - b.** The number and identity of participating Stores;
 - c.** The timing and method of Commission payments to Tour Guide.
- 9.** Tour Guide shall be solely responsible for payment of all applicable taxes arising from payments made by ImmixRed to Tour Guide.
- 10.** During the course of Tour Guide's participation in the Program, Tour Guide has had and will have access to and gain knowledge of highly confidential and proprietary information
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("Confidential Information") which is the property of ImmixRed, or which ImmixRed is under an obligation not to disclose, including but not limited to: the terms of this Agreement and any other agreements or contracts used by ImmixRed, information regarding the identity of Stores, key contact persons at Stores, commission rates, the number and amounts of Purchases, ImmixRed marketing plans and materials, other information related to the foregoing, other information which gives ImmixRed an opportunity to gain a competitive advantage, and information about the means which by which ImmixRed operates the Program including without limitation ImmixRed's organizational structure, technology, and corporate procedures.

11. Tour Guide agrees to use best efforts and the utmost diligence to guard and protect ImmixRed's trade secrets and Confidential Information, and Tour Guide further agrees that Tour Guide shall not, during or after the period of Tour Guide's participation in the Program, use or disclose, directly or indirectly, any of these trade secrets or Confidential Information which Tour Guide may develop, obtain, or learn about during or as a result of Tour Guide's participation in the Program, unless previously authorized to do so by ImmixRed in writing. Tour Guide acknowledges that the trade secrets and Confidential Information are owned and shall continue to be owned by ImmixRed and that misuse, misappropriation or disclosure of trade secrets or Confidential Information could cause irreparable harm to ImmixRed both during and after Tour Guide's participation in the Program.

12. Except with the prior written consent of ImmixRed, at all times while this Agreement is in force, and for 2 (two) years after the date of withdrawal from or termination of this Agreement, Tour Guide agrees that (a) it shall not solicit, accept, or make any agreements whatsoever with participating Stores, and (b) it shall not request or accept any commissions or other payments whatsoever from participating Stores.

13. Tour Guide acknowledges that the damages which may arise from a breach of Sections 10, 11, or 12 of this Agreement are irreparable and difficult to prove with certainty. If any covenant contained in Sections 10, 11, or 12 of this Agreement is breached, in addition to any other legal remedies which may be available, ImmixRed shall be entitled to an

immediate injunction from a court of competent jurisdiction to end such breach without further proof of damage.

14. Indemnification. Tour Guide agrees to indemnify and hold harmless ImmixRed and its contractors, officers, owners, directors, agents, representatives and employees against all claims, losses, suits, damages, judgments, expenses, costs and charges of any kind, including attorneys' fees and fees incurred as a result of establishing ImmixRed's right to indemnification hereunder, resulting from or related to this Agreement including without limitation any or all of the following: (a) Tour Guide's travel to and from Stores; (b) Tour Guide's visits to Stores' premises; (c) Personal injuries, death, property damages or loss or any other damages sustained by any person, including any consequential, punitive, special, and indirect damages, all of which Tour Guide agrees are excluded hereunder, and all of which are hereby disclaimed by the parties.

Tour Guide understands and agrees that this provision and all other provisions set forth herein apply to any and all persons associated or affiliated with Tour Guide, including but not limited to Tour Guide's owners, employees, agents, representatives, contractors, officers, customers, and tour group members.

15. If any portion of this Agreement is changed or determined to be unenforceable, all other terms and conditions shall remain in full force and effect.

16. No waiver or failure to assert a right by either party of any default or breach by the other party of any provision of this Agreement will operate as or be deemed a waiver of any subsequent default or breach.

17. This Agreement constitutes the entire understanding between the parties. It cancels and supersedes all prior agreements and understandings.

18. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida without regard for its conflicts of laws principles.



19. Tour Guide and ImmixRed each agree that the venue for any action brought pursuant to or related to this Agreement shall be Pensacola, Florida. ImmixRed shall be entitled to reimbursement from Tour Guide for any costs or expenses that ImmixRed incurs in enforcing this Agreement, including reasonable attorney's fees.

20. This Agreement shall not take effect unless and until ImmixRed's Florida office signifies its acceptance of Tour Guide's Information Form by confirming (or by instructing another party to confirm) to Tour Guide that ImmixRed has received and accepted Tour Guide's Information Form.