

BRAND PARTNER AGREEMENT

This Brand Partner Agreement (“**Agreement**”) is entered into by and between

Zupain Tech Private Limited, a private limited company incorporated under Companies Act, 2013 having its registered office situated at, Door No. H2B, Ground Floor, Bharathidasan Colony, K.K Nagar, Chennai, Tamil Nadu – 600078 (hereinafter referred to as the “**Company**” which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors, executors, administrators and assigns) of the FIRST PART;

AND

The user is the Party entering into this Agreement (hereinafter referred to as the “**Brand Partner**” / “**You**” which expression shall, unless it is repugnant to the context or meaning thereof, be deemed to mean and include its successors, executors, administrators and assigns) of the SECOND PART;

The Company and the Brand Partner shall be referred to individually as “**Party**” and collectively as “**Parties**” as the context may require;

THIS AGREEMENT CONSTITUTES IS AN ELECTRONIC RECORD IN THE FORM OF AN ELECTRONIC CONTRACT FORMED UNDER INFORMATION TECHNOLOGY ACT, 2000 AND RULES MADE THEREUNDER AND THE AMENDED PROVISIONS PERTAINING TO ELECTRONIC DOCUMENTS / RECORDS IN VARIOUS STATUTES AS AMENDED BY THE INFORMATION TECHNOLOGY ACT, 2000. THESE TERMS DOES NOT REQUIRE ANY PHYSICAL, ELECTRONIC OR DIGITAL SIGNATURE.

RECITALS

WHEREAS:

- A. The Company is engaged in the business of providing a Software-as-a-Service (SAAS) platform offering e-commerce solutions for social sellers to establish online stores and digitize their operations.
- B. The Parties are desirous to collaborate to facilitate the marketing and sale of the Company’s Products (*defined hereinafter*) by the Brand Partner in accordance with the terms and conditions agreed upon by the Parties herein.

NOW THEREFORE, in consideration of the Purpose (*defined hereinafter*) and the mutual covenants and agreements contained herein, the Parties enter into this Agreement that govern the terms and conditions of their engagement herein.

1. DEFINITIONS

- 1.1. “**Applicable Law**” shall mean shall mean and include without limitation, all applicable statutes, enactments, acts of legislature or Parliament, state laws, ordinances, rules, by-laws, regulations, notifications, guidelines, policies, directions,

directives and orders of any governmental, statutory and judicial authority, tribunal, board, or court.

- 1.2. **“Customer”** shall mean and include any person(s) and/or entities to whom the Company’s Products are sold to by the Brand Partner, in accordance with the Company’s instructions from time to time;
- 1.3. **“Commission”** shall mean and include any commission granted to the Brand Partner by the Company on a Sale in accordance with **Annexure 1** and/or as agreed by the Parties from time to time in this regard;
- 1.4. **“Confidential Information”** shall mean and include without limitation – any information, of the disclosing Party, in any form such as physical, digital, etc. including but not limited to the information relating to the such disclosing Party’s Products, development or business activities, any data of the Customer, business Leads provided by the Company to the Brand Partner, etc. or any part thereof (and the terms and conditions of this Agreement), whether marked as confidential or not.
- 1.5. **“Effective Date”** shall mean the date that the Brand Partner enters into this Agreement by digital acceptance of the terms contained herein;
- 1.6. **“Existing Intellectual Property”** shall and include without limitation mean patents, know-how, trade secrets, ideas, inventions or any other form of intellectual property and proprietary rights of any and every kind and nature, no matter how designated, and including all registrations, applications, renewals and extension thereof owned, licensed or otherwise controlled by a Party prior to the Effective Date or that are conceived, developed, licensed or otherwise brought under the control of a Party.
- 1.7. **“Leads”** shall mean and include the details of any potential customers for the Products including but not limited to name, phone number, email address, etc. as provided by the Company to the Brand Partner solely for the Purpose;
- 1.8. **“Products”** shall mean and include the products of the Company including but not limited to a Zupain E-commerce website that helps businesses of all sizes create, manage, and grow their online stores, Zupain Clic is a platform that helps service-based businesses build a professional online presence and any other offerings under the Company’s brand.
- 1.9. **“Registered Email ID”** shall mean and include the email address provided by the Brand Partner to the Company for the fulfillment of the Purpose herein;
- 1.10. **“Representatives”** shall mean and include (without limitation) the employees, personnel, affiliates, consultants engaged by each Party (as context may require) for the fulfillment of the Purpose;
- 1.11. **“Sale”** shall mean and include any sale of any of the Company’s Product(s) to a Customer by the Brand Partner in accordance with the terms and conditions of this Agreement;

2. SCOPE

- 2.1. The Brand Partner shall market and sell the Company’s Products to Customers in accordance with the terms and conditions of this Agreement and/or any other instructions issued by the Company in this regard from time to time (**“Purpose”**)

3. PAYMENT TERMS

- 3.1. Any and all payments between the Parties and the terms of payment shall be in accordance with the details as outlined in **Annexure 1** to this Agreement or as agreed upon by the Parties to the contrary from time to time.
- 3.2. The payment terms and Commission as specified in this Agreement are subject to change based on various factors, including but not limited to market conditions, Product adjustments, etc. Any changes to **Annexure 1** of this Agreement shall be affected in writing and on the mutual agreement by both Parties.

4. OBLIGATIONS OF THE BRAND PARTNER

- 4.1. The Brand Partner shall ensure:
 - 4.1.1. That any and all training to ensure that the Brand Partner has achieved the status of “Verified Partner” is achieved in the sole determination of the Company and the Brand Partner shall take all necessary efforts and cooperate with all instructions issued by the Company in this regard;
 - 4.1.2. That the Brand Partner shall take all reasonable efforts to market and sell the Products to Customers, in accordance with the terms of this Agreement and any instructions issued by the Company in this regard from time to time;
 - 4.1.3. The Brand Partner shall ensure strict compliance of all of its Representatives in the fulfillment of its obligations under this Agreement;
 - 4.1.4. That the Brand Partner shall maintain strict confidentiality with respect to the Leads shared by the Company by not sharing such Leads with any third party whatsoever, without the prior written approval of the Company and the Brand Partner shall use such Leads solely for the Purpose of this Agreement;
 - 4.1.5. That the details of each Customer to whom the Products are sold including but not limited to the Customer’s name, email address, phone number, transaction details, etc. are conveyed to the Company within a period of forty eight (48) hours from the date of such Sale of the respective Products;
 - 4.1.6. That an invoice is issued to every Customer on the occurrence of any Sale of any Product(s) by the Brand Partner and such invoice generated shall be in accordance with the format as specified by the Company from time to time;
 - 4.1.7. The Brand Partner shall offer any and all support required to the Customer in the use of the Products as required and indicated by the Company in this regard from time to time, to the sole satisfaction and in accordance with the instructions of the Company;
 - 4.1.8. That in the event that the Company raises in complaints, grievances, issues and/or issues any instructions to the Brand Partner relating to the manner of fulfillment of its obligations under this Agreement, the Brand Partner shall take reasonable efforts to implement the same to the satisfaction of the Company, within a period of four (4) business days of receipt of such communication from the Company in writing in this regard;
 - 4.1.9. That the Brand Partner shall not engage in any immoral or illegal acts to facilitate the Sale of the Products including but not limited to cheating,

spreading misinformation about the Products, intimidation, etc. in any manner whatsoever;

4.1.10. That the Brand Partner shall employ and use only those materials to market, promote and sell the Products as provided by and/or approved by Company in writing, in this regard;

4.1.11. That the Brand Partner shall fulfill its obligations under this Agreement with the utmost professionalism and in accordance with the best industry standard practices and shall at all times take reasonable efforts to uphold the Company's reputation and goodwill; and

4.1.12. That the Brand Partner shall make any and all payments due to the Company and Sales to the Customer in accordance with **Annexure 1** and/or as otherwise dictated by the Company from time to time. The Brand Partner shall make Sales in accordance with the terms as specified in **Annexure 1** to this Agreement and/or instructions of the Company in this regard and in the event any deviation from the same by the Brand Partner, any and all liability and responsibility shall be borne solely by the Brand Partner and the Company shall bear no liability and/or responsibility in this regard.

4.2. The Brand Partner hereby acknowledges and agrees that any refund on any Sale can only be initiated with the prior written consent of the Company and in the Company's sole determination. Further, in the event of any refund granted to the Customer, any Commission granted to the Brand Partner in this regard shall be revoked by the Company, in its sole determination.

5. OBLIGATIONS OF THE COMPANY

5.1. The Company shall ensure:

5.1.1. That the Brand Partner receives adequate support and training in order to fulfill its obligations under this Agreement to the satisfaction of the Company;

5.1.2. That the Brand Partner shall be featured on the Zupain Select platform;

5.1.3. That the Company shall provide qualified leads and resources to boost and increase Sales, in a manner as decided by the Company, in its sole determination;

5.1.4. That the tasks related to Product hosting, maintenance and updates to the Products to facilitate successful Sale by the Brand Partner are undertaken and completed by the Company; and

5.1.5. That it provides a prompt response to the Brand Partner in the event of any issues, queries, grievances, etc. expressed by the Brand Partner relating to the fulfillment of its obligations under this Agreement.

6. TERM AND TERMINATION

6.1. This Agreement shall remain in effect as commencing from the Effective Date and terminate in accordance with the terms of this Agreement ("**Term**").

- 6.2. Any of the Parties may terminate this Agreement by providing prior written notice of thirty (30) days to the other Parties in writing to this effect.
- 6.3. The Company shall have the right to terminate this Agreement without any requirement for notice in the event of occurrence of the following, in its sole determination: (“**Default**”)
 - (a) breach of the terms and conditions of this Agreement by the Brand Partner and/or its Representatives; and/or
 - (b) violation of any Applicable Laws by the Brand Partner and/or its Representatives.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1. Each Party shall be the sole and exclusive owner of all rights, title and interest in and to its respective Existing Intellectual Property. Nothing in this Agreement shall be construed as granting any right, title and/or interest by any Party whatsoever to the other with respect to the Existing Intellectual Property of each Party.
- 7.2. The Company hereby grants to the Brand Partner a non-exclusive, non-transferable, revocable right to use and display the intellectual property of the Company including but not limited to its name, logo, mark, etc., for the furtherance of the Purpose during the Term, such as for marketing and advertising purposes, provided that the prior written consent of the Company is obtained in this regard.
- 7.3. The Parties hereby agree that the Company shall retain the right to take suitable and appropriate action against the Brand Partner in the event that the Brand Partner infringes upon the Company’s intellectual property rights or uses its intellectual property in any manner other than as specified in this Agreement.

8. CONFIDENTIAL INFORMATION

- 8.1. Each Party understands and acknowledges that it may receive Confidential Information (“**Receiving Party**”) of the other Party (“**Disclosing Party**”) during the Term of this Agreement.
- 8.2. The Receiving Party shall not disclose the Disclosing Party’s Confidential Information to any third party(ies) and shall use any and all Confidential Information solely for the furtherance of the Purpose and in accordance with the provisions of this Agreement.
- 8.3. The Disclosing Party hereby retains all right, title and interest in and to and ownership of the Confidential Information herein. The Disclosing Party does not by way of execution of this Agreement and/or by the disclosure of Confidential Information hereunder, transfer either the title and/or the Intellectual Property Rights of the Confidential Information to the Receiving Party.
- 8.4. The Confidential Information may be disclosed by the Receiving Party to its Representatives, on a need to know basis in connection with the furtherance of the Purpose under this Agreement, with the prior written consent of the Disclosing Party. The Receiving Party shall ensure and be solely liable for the strict adherence of any Representatives to whom the Confidential Information is disclosed, to the provisions of this Agreement.

- 8.5. In the event of any unauthorised disclosure and/or breach of Confidential Information by the Receiving Party, the nature and extent of such a breach must be notified to the Disclosing Party in writing within a period of five (5) business days from the date of occurrence of such a breach.
- 8.6. The Receiving Party shall, upon the request of the Disclosing Party or upon expiry/termination of this Agreement, return/dispose/destroy in accordance with the instructions of the Disclosing Party, all Confidential Information together with all copies and reproductions thereof within a period of five (5) days from the receipt of such request and/or date of expiry/termination of this Agreement.
- 8.7. The obligations under this Section of this Agreement shall remain in effect for a period of one (1) year following the date of termination/expiry of this Agreement.

9. REPRESENTATIONS AND WARRANTIES

- 9.1. Each Party hereby represents, covenants and warrants that:
 - 9.1.1. it is not prevented, either under any Applicable Laws, agreements and/or otherwise howsoever from entering into and performing its obligations under this Agreement;
 - 9.1.2. it possesses any and all rights, power and technical capabilities to undertake and fully perform its obligations to the best of its abilities as detailed under this Agreement.

10. INDEMNITY

- 10.1. The Brand Partner shall both indemnify the Company and its Representatives against any and all third-party claims, suits, proceedings, costs, and expenses (including, without limitation, attorneys' fees) arising from or related to the Brand Partner's and/or its Representatives' acts and omission that amount to: (i) breach of the provisions of this Agreement; (ii) non-compliance with its duties and obligations under this Agreement; (iii) willful misconduct and gross negligence; and (iv) violation of any Applicable Law.
- 10.2. The Parties hereby understand, agree and acknowledge that as damages may not be a sufficient remedy for any breach of this Agreement, the Company shall be entitled to seek specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach, in addition to any other remedies at law or in equity.

11. LIMITATION OF LIABILITY

- 11.1. It is hereby understood and agreed by the Parties that the marketing, promotion and Sale of the Products is the sole responsibility of the Brand Partner and the Company shall not bear any liability in this regard.
- 11.2. Any and all interactions and/or Sales between the Brand Partner and the Customer shall be in accordance with this Agreement and/or any instructions issued by the Company from time to time in this regard. Further, it is hereby understood and agreed by the Parties that the Brand Partner shall be solely liable and responsible for any and all interactions and/or Sales between the Brand Partner and/or its Representatives the Customer and any and all consequences arising thereof. It is further clarified that the

Company shall under no circumstance be responsible and/or liable in any manner, for any interactions and/or Sales and any consequences thereof between the Brand Partner and the Customer and the Company shall not be a party to any claims, suits, proceedings, costs, and expenses brought by the Customer against the Brand Partner and/or its Representatives in any manner whatsoever.

- 11.3. IN NO EVENT SHALL THE COMPANY BE LIABLE TO THE BRAND PARTNER AND/OR THE CUSTOMER FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE AND/OR INDIRECT DAMAGES, HOWEVER CAUSED AND REGARDLESS OF THEORY OF LIABILITY, INCLUDING WITHOUT LIMITATION, NEGLIGENCE.
- 11.4. IN NO EVENT SHALL THE TOTAL AGGREGATE LIABILITY OF THE COMPANY, FOR ALL CLAIMS ARISING OUT OF OR UNDER THIS AGREEMENT, EXCEED THE AMOUNT PAID BY THE BRAND PARTNER TO THE COMPANY FOR THE PRODUCTS IN ACCORDANCE WITH ANNEXURE 1, WITH RESPECT TO WHICH ANY SUCH CLAIM ARISES.

12. DISCLAIMERS

- 12.1. The Company hereby disclaims and the Brand Partner hereby acknowledges and understands that the Products are provided by the Company to the Brand Partner on an “as is” and “as available” basis and the Company makes no representations or warranties of any kind, express or implied, as to the operation of the Products or the information and content included on the Products.
- 12.2. The Brand Partner hereby expressly agree that any use of the Products is at the user’s sole risk and the Company does not warrant that: (i) the Products will perform error-free or uninterrupted or that the Company will correct all errors and defects and/or will operate in combination with all devices, or with any other hardware, software, systems or data; (iii) will meet exact requirements, specifications or expectations of the user, (iv) information/content displayed within the Products will be updated on a day-to-day basis, (v) will be accessible and functional at all times, without any technical error/malfunction/deficiency.
- 12.3. To the fullest extent permissible by Applicable Law, the Company disclaims all warranties, express or implied. The Company does not warrant that the Products, its servers, or email/ other communication sent from the Products are free of viruses or other harmful components. The Company will not be liable for any damages of any kind arising from the use of the Products, including, but not limited to direct, indirect, incidental, punitive and consequential damages.
- 12.4. The Company hereby disclaims that all interaction, communication, dealing, or transaction between the Brand Partner and any third-party provider in respect of any products/services offered by the third-party provider within the Products, is a separate and independent transaction between the Brand Partner and such third-party provider without any liability accruing to the Company for any matters arising out of or in relation to the same. The Company does not warrant, endorse, guarantee, or assume responsibility for any product or service advertised or offered by a third-party provider within the Products in any manner and the Company shall not be a party to

or in any way be responsible for any transaction between the Brand Partner and such party provider whatsoever.

13. NON-SOLICITATION

- 13.1. It is hereby understood and agreed by the Parties that the Company shall reserve the right to obtain the same services provided by the Brand Partner under this Agreement from any other third parties, without any requirement for notice or consent of the Brand Partner in this regard.
- 13.2. The Brand Partner hereby acknowledges and agrees that its shall not during the Term of this Agreement and for a period of one (1) year following the termination and/or expiration of this Agreement, engage in the following:
 - 13.2.1. interfere with and/or attempt to interfere with any relationship between the Company and any of its Representatives, employees, consultants, affiliates and Customers;
 - 13.2.2. employ, hire or otherwise engage, or attempt to employ, hire or otherwise engage, any current or former employee, representatives and/or any other Representatives and/or affiliates of the Company in any business competitive with the Company;
 - 13.2.3. divert and/or attempt to direct from the Company any business and/or interfere with any relationship between the Company and any of its Customers, and/or any other business relations acquired/introduced to the Brand Partner during the Term of this Agreement and/or through the performance of its obligations under this Agreement herein.

14. MISCELLANEOUS

- 14.1. Force Majeure

The Parties shall not liable for any losses, and/or breaches caused under this Agreement due to occurrence of any force majeure event. Force Majeure Event shall mean any event, or a series of related events, that is outside the reasonable control of the Party affected (including without limitation failures of the internet or any public telecommunications network, attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks, pandemic, epidemic, Central and State Government orders, and its impact and wars);
- 14.2. Assignment

The Brand Partner shall not assign this Agreement and/or any rights herein without the prior, written consent of the Company.
- 14.3. Waiver

Failure or delay on the part of a party to exercise any right, power, privilege or remedy hereunder shall not constitute a waiver thereof. A waiver of default shall not operate as a waiver of any other default or of the same type of default on future occasions.
- 14.4. Notices

All notices and other communications pertaining to this Agreement shall be in writing and shall be deemed to have been given by a Party hereto as set forth below and shall either be (a) personally delivered; (b) sent via postage prepaid certified mail, return receipt requested; (c) sent by nationally-recognized private express courier or (d) sent via electronic mail and/or one of the other methods described herein to the addresses and email addresses as provided hereunder. Notices shall be deemed to have been given on the date of receipt if personally delivered or via fax, or two (2) days after deposit via certified mail or express courier. A Party may change its address for purposes hereof by written notice to the other in accordance with the provision of this section. The addresses for the parties are as follows:

- *Company*: resellers@zupain.com
- *Brand Partner*: Registered Email Address

14.5. Severability

In the event that any portion of this Agreement is held invalid, the Parties hereby agree that such invalidity shall not affect the validity of the remaining portions of this Agreement, and the Parties further hereby agree to substitute for the invalid provision a valid provision that most closely approximates the economic effect and intent of the invalid provision.

14.6. Amendment

No amendment to this Agreement shall be effective or binding on the Parties hereto unless the same is agreed to in writing and executed by the Parties, by their respective duly authorized representatives.

14.7. Relationship

The relationship between the Parties is that independent contractors and this Agreement is being entered into on a principal-to-principal basis. Nothing contained in this Agreement shall be construed or be deemed to create any association, partnership, or joint venture or employer-employee relationship in any manner whatsoever between the Parties.

14.8. Entire Agreement

This Agreement, including the relevant Annexures hereto sets forth and shall constitute the entire agreement between the Parties with respect to the subject matter hereof, and shall supersede any and all prior agreements, understandings, promises, and representations made by one Party to the other concerning the subject matter.

14.9. Counterparts

This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

14.10. Survival

Any and all obligations detailed under this Agreement which shall reasonably survive the termination and/or expiration of this Agreement, shall so survive including but not limited to Clauses 7, 8, 9, 10, 11, 12 and 13 of this Agreement.

15. GOVERNING LAW AND JURISDICTION

15.1. This Agreement shall be governed and construed in accordance with the laws of India.

- 15.2. The courts in Chennai, India shall have exclusive jurisdiction with respect to any and all disputes arising between the Parties in connection to the enforcement and interpretation of this Agreement.

16. DISPUTE RESOLUTION

- 16.1. All disputes, controversies and differences of opinion arising out of or in connection with this Agreement including for the breach and termination of the Agreement which cannot be settled amicably shall be submitted to final and binding arbitration at the request of any of the disputing Party upon written notice to that effect to the other, which arbitration shall be conducted in the following manner:
- i. The arbitration shall be conducted in accordance with the rules prescribed by the Arbitration and Conciliation Act, 1996 as amended from time to time (which is deemed to be incorporated into this Agreement by reference);
 - ii. The arbitration panel shall consist of a sole arbitrator, to be appointed mutually by the Parties;
 - iii. Any arbitration award rendered shall be final, binding and not subject to any form of appeal.
 - iv. The existence of a dispute, or the commencement or continuation of arbitration proceedings shall not, in any manner, prevent or postpone the performance of those obligations of Parties under the Agreement which are not in dispute;
 - v. Nothing shall preclude the Parties from seeking interim equitable or injunctive relief, or both. The pursuit of equitable or injunctive relief shall not be a waiver of the right of the Parties to pursue any other remedy or relief through the arbitration described in this Section;
 - vi. All proceedings of the arbitration shall be in the English language; and
 - vii. The seat and venue of the arbitration shall be Chennai, India.

ANNEXURE 1

Upon successful store creation, defined as a client's store being active for more than 30 days, Zupain compensates the brand partner with a commission starting at 35% of the product price.