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## BRAND AGREEMENT

~~This~~ BRAND AGREEMENT (hereinafter "Agreement") made this \_\_\_\_\_ ("Effective Date"), by and between Exchange Collective, Inc., a Delaware corporation having a place of business at 1543 Canyon Creek, Santa Maria, CA 93455 ("Exchange Collective") and \_\_\_\_\_, a \_\_\_\_\_ business entity having a place of business at \_\_\_\_\_ ("Brand"). Exchange Collective and Brand shall be collectively referred to herein as "Parties" or individually as a "Party".

### **DEFINITIONS**

"Exchange Collective Platform" - a short term name reference for the proprietary non-downloadable software service developed and owned by Exchange Collective which is a subject of this agreement. The Exchange Collective Platform provides retailers with access to the inventory of brands and wholesalers to offer to the retailer's in-store and online customers. The Exchange Collective Platform allows a retailer to offer the inventory of a brand or wholesaler to customers for purchase and to display the inventory of the brand or wholesaler, for example, via the retailer's website or smartphone application. The Exchange Collective Platform further facilitates the placement of an order with the brand or wholesaler and may facilitate the distribution of payment to the appropriate parties.

### **RECITALS**

WHEREAS, Exchange Collective has designed and developed the Exchange Collective Platform for use by brands, such as manufacturers and/or wholesalers of products, to list their product inventory within the Exchange Collective Platform enabling a retailer access to the product inventory to sell to their customers, the Exchange Collective Platform facilitating the purchase of products from the Brand's inventory; and

WHEREAS, Brand sells products wholesale and desires to provide access to its product inventory to retailers to offer to customers to make additional sales via the Exchange Collective Platform.

NOW, THEREFORE, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

### **AGREEMENT**

#### **1. License Grant and Limitations**

Exchange Collective grants to Brand, and Brand hereby accepts, during the term of this Agreement and subject to all terms and conditions of this Agreement, a non-exclusive,

non-transferable and non-sub-licensable license to use the Exchange Collective Platform to list product inventory to be sold by retailers.

## 2. **Brand's Obligations**

- a. Brand may use the Exchange Collective Platform to provide information to a retailer for products to be sold by the retailer, for example, at their brick-and-mortar store and/or on the retailer's website or smartphone application via an automated electronic interface, such as an application programming interface (API), EDI and or Web app integration such as a Shopify app. Brand shall not alter the automated electronic interface without prior notification to Exchange Collective and a providing reasonable period of time before such alteration to allow Exchange Collective to modify and test the Exchange Collective Platform with the alternated automated electronic interface. Brand shall provide product inventory, information and pricing associated with the products listed in the Exchange Collective Platform including a retail price for each product to be sold at by the retailer (the "Retail Price"). Brand may use the Exchange Collective Platform to select which of Brand's products and inventory each retailer is permitted access to. Brand shall be solely responsible for ensuring that only retailers that are authorized to sell its particular products are permitted access to and able to sell its particular products via the Exchange Collective Platform. Brand shall be solely responsible for ensuring the retailer is selling and/or offering particular products for sale as provided under the terms of Brand's agreement with the retailer. Brand shall be solely responsible for ensuring the retailer has the right to list, display, sell, and offer for sale the products of Brand. Brand shall be solely responsible for ensuring the retailer is complying with the Brand's brand guidelines, and for properly listing or displaying product inventory, information and pricing to customers.
- b. Brand agrees to use the Exchange Collective Platform as provided by Exchange Collective. Brand agrees not to modify, edit, revise or reverse engineer the Exchange Collective Platform without the express written consent of Exchange Collective. Brand further agrees not to copy, sell, transfer, or otherwise provide access to the Exchange Collective Platform to another entity that is not a party to this Agreement.
- c. Brand acknowledges and understands that the Exchange Collective Platform facilitates provision of product inventory, information and pricing of the Brand to one or more retailers and serves to facilitate purchase of inventory from the Brand. Brand acknowledges that Exchange Collective is not liable or in any way responsible for a retailer's actions in advertising, promoting, displaying, selling or providing the product to a customer for purchases facilitated by the Exchange Collective Platform. Brand further acknowledges that Exchange Collective's sole role in any offer for sale or sale of a good is to facilitate the transfer of information and payment between the Brand and a retailer, so that Brand can provide product inventory, information and pricing to a retailer to offer to its customers, receive payment for orders from a retailer and/or retailer's customer and fulfil orders from a retailer and/or a retailer's customer, and so

that a retailer can receive product and inventory information from the Brand to display through its website or smartphone application and receive orders and payments from its customers and send orders and payments to Brand. Brand further acknowledges that Exchange Collective is responsible for payment to Brand for any product purchased by a customer in a transaction facilitated via the Exchange Collective Platform only to the extent Exchange Collective receives payment for the product from the retailer or retailer's customer. Brand further acknowledges that Exchange Collective is not responsible or liable for any product purchased by a customer in a transaction facilitated via the Exchange Collective Platform that is in transit including, as examples, in transit from the Brand to the customer or from the Brand to a retailer. And Brand acknowledges that Exchange Collective is not responsible for fulfilling customer orders or processing customer returns or refunds.

- d. Brand shall be solely responsible for entering into an agreement with any retailer that Brand permits to access its product inventory, information and pricing and permits to offer for sale and/or sell Brand's products. Exchange Collective shall not be liable for Brand's failure to comply with any term of such agreement, and Exchange Collective shall not be liable for any retailer's failure to comply with any term of such agreement.
- e. Brand acknowledges that Brand shall remain solely responsible for product defect and the quality of Brands products the sale of which is facilitated via the Exchange Collective Platform. Brand acknowledges that in no event shall Exchange Collective be responsible or liable for product defects, or retailer or customer complaints associated with Brand's products.
- f. In order to use the payment functionality of Exchange Collective application, you must open a "Dwolla Account" provided by Dwolla, Inc. and you must accept the [Dwolla Terms of Service](#) and [Privacy Policy](#). Any funds held in or transferred through your Dwolla Account are held or transferred by Dwolla's [financial institution partners](#). You must be at least 18 years old to create a Dwolla Account. You authorize Exchange Collective to collect and share with Dwolla your personal information including full name, [date of birth, social security number, physical address,] email address and financial information, and you are responsible for the accuracy and completeness of that data. You understand that you will access and manage your Dwolla Account through Exchange Collective application, and Dwolla account notifications will be sent by Exchange Collective, not Dwolla. Exchange Collective will provide customer support for your Dwolla Account activity, and can be reached at [www.exchangecollective.com](http://www.exchangecollective.com) and/or [hello@exchagnecollective.com](mailto:hello@exchagnecollective.com) and/or 855-762-7625

3. **Exchange Collective' Obligations**

- a. Exchange Collective shall provide Brand with access to the Exchange Collective Platform enabling Brand to list its product inventory, information and pricing to be accessed and sold by retailers. Exchange Collective shall maintain the Exchange Collective Platform during the term of this Agreement and provide updates, patches, or upgrades as necessary to address glitches or malfunctions in the Exchange Collective Platform. Exchange Collective shall not be responsible in any way for the accuracy of the product inventory, information or pricing provided by the Brand to retailers or retailer's customers via the Exchange Collective Platform, and Brand shall have sole responsibility for ensuring that a retailer's use of such product inventory, information and pricing is permitted under Brand's agreement with the retailer.
- b. Exchange Collective shall work to correct any errors in the Exchange Collective Platform of which Brand provides notice to Exchange Collective. Exchange Collective shall promptly address and diligently work to correct any glitches, malfunctions, and errors in the Exchange Collective Platform preventing Brand from completing transactions through the Exchange Collective Platform. Exchange Collective will work with Brand to ensure proper operation of the Exchange Collective Platform with the automated electronic interface provided by Brand. Exchange Collective will request additional information from Brand where necessary or helpful to assist Exchange Collective in correcting such errors and ensuring proper operation of the Exchange Collective Platform with the automated electronic interface.
- c. Exchange Collective shall not be responsible for entering or updating Brand's product inventory, information or pricing accessed by the Exchange Collective Platform through the automated electronic interface. Exchange Collective shall also not be responsible in any way for fulfilling product purchases from the Brand by a retailer or retailer's customer. Brand acknowledges that Exchange Collective is not a part of the product supply chain, but instead facilitates access to product inventory, information and pricing regarding products of Brand and may facilitate payment for the purchase of such inventory by a retailer or retailer's customer. In no event shall Exchange Collective transport, store, distribute, or otherwise handle a product of the Brand.

4. **Subscription Fee**  
[\$\_\_\_\_\_/month]

5. **Payment**

During the term of this Agreement, Brand shall receive the percentage of the Retail Price indicated by the Brand within the Exchange Collective Platform at the time of sale as agreed upon by both the Brand and a retailer for the retailer's sale of product of the Brand.

Exchange Collective shall receive payment for the purchase of a product of the Brand from the retailer or the retailer's customer. Upon receiving validated payment for both Exchange Collective's share and Brand's share, Exchange Collective shall pay the Brand for any amount owed to the Brand. Exchange Collective agrees to pay the Brand within the later of fifteen (15) days after the end of each month or five (5) business days from receipt of the validated payment for sales made by the Retailer in the previous month. In no event shall Exchange Collective be responsible for payment to the Brand of the Brand's share of a sale where Exchange Collective has not received validated payment from the retailer or the retailer's customer for the sale.

Brand agrees, if Exchange Collective has not received validated payment from the retailer within the requisite period of time, that (a) Exchange Collective may, within its sole discretion disable, suspend, or terminate the retailer's access to all or part of the Exchange Collective Platform; and (b) the retailer shall be solely responsible for any additional fees or interest due to the Brand and that Exchange Collective shall not be liable for any such fees or interest. Brand further acknowledges that the Brand also has control to restrict a retailer's access to the Brand's inventory and/or prohibit the retailer from selling or offering for sale the Brand's inventory as agreed upon in the agreement between the Brand and the retailer. The Parties agree that, in the event Exchange Collective does not receive validated payment from a retailer or the retailer's customer within the requisite time period, that Exchange Collective shall use commercially reasonable effort and actions to collect the payment from such retailer or retailer's customer.

## 6. **Confidentiality**

Brand agrees that aspects of the Exchange Collective Platform are confidential and proprietary, and as such agrees to use reasonable efforts to maintain confidentiality of and prevent unauthorized access to all screen displays, code, and functions of the Exchange Collective Platform except as necessary to utilize the Exchange Collective Platform for its intended function. Brand agrees not to permit access to the Exchange Collective Platform by persons outside of Brand or by persons accessing the Exchange Collective Platform to use it for purposes of than its intended function.

## 7. **Term of Agreement and Termination**

a. **Term:** This Agreement shall be effective as of the date signed hereof and shall continue in force for one (1) month thereafter for a Monthly Subscription or for one (1) year thereafter for an Annual Subscription ("Initial Subscription Term") as selected above. For Monthly Subscriptions, this Agreement shall automatically renew for successive one (1) month terms after the Initial Subscription Term, unless it is terminated as provided below, or, for Annual Subscriptions, this Agreement shall automatically renew for successive one (1) year terms after the Initial Subscription term, on the anniversary date, which is defined as the date exactly one year after entering into the

Agreement, unless it is terminated as provided below (“Renewed Term”). The Initial Subscription Term and any successive Renewed Terms are collectively referred to herein as the Term.

b. Termination: This Agreement may be terminated by either Party:

i. *Due to non-renewal*: Either Party may terminate this Agreement upon providing the other Party with notice of non-renewal at least seven (7) days prior to the next scheduled renewal date.

ii. *Due to material breach*: Either Party may terminate this Agreement before its expiration with 30 days’ prior notice and only after any cure period has expired, if the other Party materially breaches the Agreement. The Parties agree that a material breach by Exchange Collective shall occur if: Exchange Collective undertakes action that injures Brand, customer or potential customer relations with Brand; Exchange Collective fails to correct, within a reasonable time period, any glitches, malfunctions, errors, or other problems with the Exchange Collective Platform that prevent Brand from completing transactions with retailers and/or customers; Exchange Collective defaults or breaches any other material obligations; or Exchange Collective violates local, state, federal or international law, or the law of any country or jurisdiction in which Exchange Collective is engaged in business pursuant to this Agreement. The Parties agree that a material breach by Brand shall occur if: Brand undertakes action that injures Exchange Collective, customer or potential customer relations with Exchange Collective, including, but not limited to colluding with a retailer in setting the Retail Price of inventory sold via the Exchange Collective Platform; Brand defaults or breaches any other material obligations; Brand begins using the Exchange Collective Platform in a manner outside the scope of the license granted to Brand under this Agreement; Brand develops or begins selling or distributing a product that competes with the Exchange Collective Platform; or Brand violates local, state, federal or international law. The Parties agree to notify each other of any alleged breach in writing within ten (10) days of the discovery of an alleged breach and the alleged breaching Party shall have thirty (30) days to cure said breach with this time period being calculated from the date the last information needed to confirm the alleged breach is provided to the alleged breaching Party.

iii. *Performance of obligations are not reasonably practicable*: Either Party may terminate this Agreement before its expiration with 30 days’ prior notice if performance of a Party’s obligations under this Agreement are no longer reasonably practicable.

iv. *By mutual agreement*: Either Party may terminate this Agreement by mutual written agreement signed by both Parties provided it gives the other Party ninety (90) days written notice; or

v. *Bankruptcy*: Either Party may terminate this Agreement after thirty (30) days' written notice if either Party has filed or has filed against it a petition in bankruptcy (which is not dismissed within thirty (30) days of its filing).

8. **Obligations and Rights Upon Termination**

In the event of termination of this Agreement for any reason and subject to Paragraph 7 *supra*:

a. The License granted to Brand shall be immediately revoked and Brand shall have no right to use the Exchange Collective Platform. Brand shall immediately transfer to Exchange Collective, delete, and/or destroy any and all confidential and/or proprietary information of Exchange Collective pursuant to this Agreement.

a. Exchange Collective shall remit to Brand any balance or amount owed to Brand by Exchange Collective, for which Exchange Collective has received validated payment as described above, within thirty (30) days of termination.

9. **Remedies**

Brand acknowledges that any breach by Brand of the covenants set forth herein would result in irreparable harm to Exchange Collective for which monetary damages alone would be an insufficient remedy. Thus, although nothing in this Paragraph will prohibit Exchange Collective from pursuing any remedies available to it against any party under applicable law (which shall be cumulative with those remedies set forth herein), Brand specifically agrees that, in the event of any threatened or actual breach of this Agreement by Brand, Exchange Collective may pursue an injunction and other equitable relief including, without limitation, an equitable accounting of earnings, profits, and other benefits, from a court of competent jurisdiction, as well as reimbursement from Brand for any attorneys' fees and other costs incurred by Exchange Collective in obtaining such relief.

10. **Miscellaneous**

a. Successors and Assigns: This Agreement shall be binding upon and inure to the benefit of the Parties and to their respective successors and permitted assigns. No Party shall assign this Agreement in contravention of any clause herein. Notwithstanding the foregoing, either Party shall have the right to assign its rights under this Agreement to any affiliate company or any entity purchasing all or substantially all of its assets without the consent of the other Party.

b. Amendments, Waivers, and Consents: This Agreement shall not be amended or otherwise modified except in a writing signed by the Parties. No waiver or consent shall be binding except in a writing signed by the Party making the waiver or giving the

consent. No waiver of any provision or consent to any action shall constitute a waiver of any provision or consent to any other action, whether or not similar. No waiver or consent shall constitute a continuing waiver or consent except to the extent specifically set forth in writing.

c. Notices: All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person or by facsimile transmission with receipt acknowledged by the recipient thereof, (ii) one (1) business day, as defined below, after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) business days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

Brand:	Exchange Collective:
_____	Exchange Collective Inc.
Attn: _____	Attn: Dan Pankratz
_____	1543 Canyon Creek
_____	Santa Maria, CA 93455

d. Governing Law: This Agreement shall be governed by, and construed in accordance with, the laws of the State of California without regard to its choice of law provisions. In the event of any dispute or controversy regarding the terms of this Agreement or the breach thereof, the Parties agree that the first recourse will be to attempt to resolve such issue amicably with a sufficiently authorized member of each Party's management. In any action brought under or arising out of this Agreement, the Parties hereby consent to the jurisdiction of any federal or state court within Santa Barbara County, California (USA) and to any lawful service of process in California (USA). While the Parties consent to the jurisdiction of any federal or state court within Santa Barbara County, California (USA), the Parties agree that a suit, action, or proceeding relating to or arising out of this Agreement may be brought in any federal or state court having jurisdiction over the other Party.

e. Attorneys' Fees: If either Party brings any suit, action, counterclaim, or arbitration to enforce the provisions of this Agreement (including without limitation enforcement of any award or judgment obtained with respect to this Agreement), the prevailing party shall be entitled to recover reasonable attorneys' fees, litigation costs, and the cost of arbitration in addition to court costs.

f. Entire Agreement: This Agreement constitutes the entire agreement between the Parties with regard to the subject matter hereof. This Agreement supersedes all previous



or contemporaneous agreements between or among the Parties. There are now no agreements, representations, or warranties between the Parties other than those set forth in this Agreement or the documents and agreements contemplated in this Agreement. This Agreement may not be amended except by a written agreement executed by each Party.

g. Severability: If any provision of this Agreement, or the application of such provision to any person or circumstances, is held invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby. To the extent blue penciling is allowed to amend a provision to prevent it being deemed invalid or unenforceable and still in keeping with the Parties initial intent, the Parties agree to such blue penciling.

h. Counterparts: This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same Agreement. Each of the Parties agrees that a signature transmitted to the other Party or its counsel by facsimile transmission will be effective to bind the Party whose signature was transmitted, as a duly executed and delivered original. Each Party further agrees to promptly deliver its original signature pages to this Agreement to counsel for the other Party promptly following execution, but any failure to do so will not affect the binding effect of such signature.

i. Assignment: Brand shall not directly or indirectly assign or transfer this Agreement or any rights and/or obligations hereunder to any other party, including a subsidiary or affiliate of Brand, in whole or in part, without the prior written consent of Exchange Collective and any such assignment without Exchange Collective' consent shall be void and of no effect. In the event of any assignment or transfer which is approved by Exchange Collective, Brand agrees to remain liable for, and guarantee performance of, the assignee's obligations under this Agreement unless Exchange Collective consents to release of said liability in writing. Exchange Collective may assign or transfer this Agreement or any of its rights and/or obligations hereunder to any subsidiary, parent or affiliate, or any company of which Exchange Collective or its parent owns or controls at least 50% of any such assignee without the consent of Brand. Any other assignment by Exchange Collective shall be subject to the prior written consent of Brand.

j. Recitals and Exhibits: The Parties submit that the above Recitals and Exhibits attached hereto are true and correct and are fully incorporated as binding terms of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have placed their hands and seals effective the day and year first written above.

**EXCHANGE COLLECTIVE LEARNING CORPORATION,**  
a California corporation

**BRAND**  
a \_\_\_\_\_ corporation

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_