

# **Original Pawprints: Ceramic Hand Print Business Opportunity In Studio Personalized Training Program Contract and Agreement**

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This Agreement is made and entered into at Morro Bay, California, by and between Free As A Breeze, Ltd., a California corporation, which is represented by Hedy and Ross Hale (hereafter referred to as "Trainer"), and \_\_\_\_\_ (hereafter referred to as "Trainee"), both of whom together are sometimes referred to hereafter as the "parties".

## **1. BENEFITS TO TRAINEE.**

Trainer is the owner of the special process used to create a particular ceramic artifact known as "Original Pawprints", primarily used for hand, foot or pet prints. That special process is hereafter referred to as the "Special Process".

Trainee wishes to learn that Special Process owned by Trainer and wants to purchase the right to produce a similar product to "Original Pawprints" under a different trade name and in a different geographical location.

Trainee shall purchase from Trainer, and Trainer shall provide to Trainee, on the terms and conditions set forth herein below, the following (collectively referred to hereafter as the "Benefits"):

(a) A three (3) day hands-on workshop consisting of twelve (12) hours total instruction (hereafter referred to as the "In-Studio Training");

(b) Six (6) months of on-line consultation commencing with the date of execution of this Agreement;

(c) A take home manual, list of all clay and kiln supplies and vendors required in producing the ceramic impressions, and enough supplies to make approximately twenty-five (25) ceramic hand prints; and

(d) A marketing Plan to help Trainee's business grow.

## **2. FEE FOR TRAINING.**

The total non-refundable price for the Benefits is Six Thousand Dollars (\$6,000.00), which is due and payable as follows: a One Thousand Dollar (\$1,000.00) deposit is required to hold Trainee's dates and the remaining balance of Five Thousand Dollars (\$5,000.00) is due on the first day of training. Payment shall be by certified check or money order made payable to "Free As A Breeze, Ltd."

## **3. TRADE SECRETS AND CONFIDENTIAL INFORMATION.**

Trainee understands that, in order to obtain the Benefits, Trainee will necessarily learn many of Trainer's Trade Secrets and Confidential Information. Trainee agrees not to disclose any of Trainer's Trade Secrets or Confidential Information to anyone and to hold all such information in strict confidence; provided, however, that Trainee may disclose any and all such information to Trainee's

employees provided that each such employee signs a written agreement in which he or she agrees not to disclose any such information to any third party. As used herein,

(a) **"Trade Secret"** means any formula, practice, process, design, instrument, pattern, computer program, method, pricing information, customer lists or compilation of information used by Trainer to obtain an advantage over competitors who do not know or use the Trade Secret including, without limitation, the Special Process; and

(b) **"Confidential Information"** means any of Trainer's proprietary information, technical data, Trade Secrets or know-how including, but not limited to, research, product plans, products, services, the Special Process, customer lists and customers.

#### **4. USE OF NAME PROHIBITED.**

The names "Original Pawprints", "Pawprints" and "PawsNtime" (collectively referred to hereafter as the "Names", belong to Trainer and are not a part of the Benefits to be received by Trainee under this Agreement. Accordingly, Trainee is prohibited from using any or all of the Names in any manner whatsoever and agrees that Trainee will not do so.

#### **5. DISCLOSURES AND REPRESENTATIONS BY TRAINER.**

(a) Educational Relationship. The relationship between the Trainer and the Trainee is intended by the parties to be that of teacher-pupil, in which Trainer is the teacher and Trainee is the pupil. By entering into this Agreement Trainee will receive the Benefits set forth above at Paragraph 1; there are no other benefits to be purchased or received by Trainee. It is not intended that any other legal or economic relationship exist after the training provided by Trainer has been completed. For those reasons, it is specifically intended that this Agreement not be construed as a franchise agreement or a Seller Assisted Marketing Plan for the following reasons:

(1) Not a Franchise. This is not a franchise agreement because:

A. Trainee may not use Trainer's product Names;

B. Trainer will have no control over any and all products to be produced and sold by Trainee following the completion of the In-Studio Training;

C. Trainee is not required to purchase any product from Trainer after the completion of the In-Studio Training; and

D. Trainee will not be required to make any further payments to Trainer based on Trainee's sales or any other criteria.

(2) Not a Seller Assisted Marketing Plan. This is not a Seller Assisted Marketing Plan agreement, as defined in California Civil Code Section 1812.200 et. seq. (and related statutes), because:

A. Trainer has not made any representations as to Trainee's earning potential as a result of entering into this Agreement;

B. Trainer has not represented that there is a market for the products (including equipment, supplies, or services or anything derived therefrom); and

C. Trainer has not represented that it will buy back or is likely to buy back any product directly or indirectly generated by Trainee as a result of Trainee entering into this Agreement.

(b) No Guarantees. Trainer has not and cannot make any guarantee or promises of any kind with respect to the specific results of Trainee's efforts. Each person is a unique individual with special talents but also weaknesses. It is impossible for Trainer to know in advance of working with Trainee what ability Trainee may have to produce ceramic hand, foot or pet prints. Accordingly, Trainer makes no guarantees of any kind, and is not responsible for, the following:

A. The success of Trainee's business as a result of having entered into this Agreement;

B. The defect of any ceramic prints produced by Trainee;  
and

C. Any injuries to persons, pets or property caused by Trainee.

(c) No Express Warranties. Trainer has not and does not make any express warranties of any kind or nature with respect to Trainee's ability to earn money or produce defect-free products as a result of entering into this Agreement.

## **6. DISCLOSURES AND REPRESENTATIONS BY TRAINEE.**

(a) Selection and Use of Kiln. Trainee understands and acknowledges that, as a part of Trainee's Benefits, Trainer will show Trainee how to fire a kiln for the sole purpose of firing ceramic hand and foot prints. However, Trainee agrees that It is the sole responsibility of Trainee to decide on a kiln model and the purchase of a kiln for Trainee's own ceramic business. Trainee further agrees that Trainer is not responsible for the selection, comprehensive training, purchase and/or maintenance of Trainee's kiln.

(b) Responsibility for Injuries. Trainee acknowledges that working with clay, glazes and kilns can be dangerous. After the completion of the In-Studio Training, Trainee will be producing product without the benefit of Trainer's physical presence. For those reasons, Trainer has prepared written materials which are a part of the In-Studio Training and which deal in part with safety issues. Trainee represents that Trainee will carefully read all such written materials before beginning to work with clay, glazes and/or kilns. When the In-Studio Training is completed and Trainee begins to operate Trainee's own business, Trainer cannot supervise Trainee's production of product as described herein (hereafter referred to as "Production") . Therefore, Trainee agrees that Trainer is not responsible for any injury sustained, whether to person, pet or property, in the process of Trainee making any ceramic print or other like product as a result of entering into this Agreement.

(c) Hold Trainer Harmless. Because of the possibility of injuries, and because Trainer will not be either directly or indirectly involved in Trainee's Production, in the event that there is any claim, damage, loss, liability, cost or expenses against Trainer resulting from Trainee's Production then Trainee agrees to save, defend and hold Trainer (including its agents, servants, employees, attorney's, officers and directors) harmless from any and all expenses associated therewith, including attorney's fees and related expenses.

(d) Waiver of Implied Warranties. Trainee has not relied upon any implied warranties as a condition of entering into this Agreement. Therefore, to the fullest extent permitted by law, Trainee waives any and all implied warranties which otherwise might apply.

## **GENERAL PROVISIONS.**

### **7. AMENDMENTS.**

The provisions of this Agreement may be waived, altered, amended, or repealed, in whole or in part, only on the written consent of all parties to this Agreement.

### **8. NOTICES.**

All notices given pursuant to this Agreement shall be in writing and shall be given by personal service, by United States mail or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, addressed to the appropriate party at their last known address. The person and address to which notices are to be given may be changed at any time by any party upon written notice to the other party. All notices given pursuant to this Agreement shall be deemed given upon receipt. For the purpose of this Agreement, the term "receipt" shall mean the earlier of any of the following:

(a) Delivery. The date of delivery of the notice or other document to the address specified pursuant to subparagraph a. above as shown on the return receipt;

(b) Receipt. The date of actual receipt of the notice or other document by the person or entity specified pursuant to subparagraph a. above, or

(c) Refusal. In the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (i) the date of the attempted delivery or refusal to accept delivery, (ii) the date of the postmark on the return receipt, or (iii) the date of receipt of notice of refusal or notice of nondelivery by the sending party.

### **9. COUNTERPARTS.**

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

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**10. NO ACTS CONTRARY TO LAW.**

Nothing contained in this Agreement shall be construed to require the commission of any act contrary to law, and whenever there is any conflict between any provision of this Agreement and any statute, law, ordinance, or regulation, contrary to which the parties have no legal right to contract, then the latter shall prevail; but in such an event, the provisions of this Agreement so affected shall be curtailed and limited only to the extent necessary to bring it within the legal requirements. The several rights and remedies provided for in this Agreement shall be construed as being cumulative, and no one of them shall be deemed to be exclusive of the others or of any right or remedy allowed by law.

**11. WAIVERS.**

No waiver by any party of any failure by the other, respectively, to keep or perform any provision of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or other provision.

**12. ASSIGNMENT.**

Neither this Agreement nor any duties or obligations hereunder shall be assignable by either party without the prior written consent of the other first had and obtained.

**13. SUCCESSORS AND ASSIGNS.**

Subject to the provisions regarding assignment, this Agreement shall be binding on the heirs, executors, administrators, successors, and assigns of the respective parties.

**14. ATTORNEY'S FEES.**

If an administrative proceeding is brought, or if arbitration is sought, or if any action is commenced at law or in equity to enforce or interpret the provisions of this Agreement, including, subject to any limits under applicable law, any attorney's fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate or obtain relief from any automatic stay or injunction), appeals, and any collection services incurred to enforce a judgment or order, the prevailing party shall be entitled to reasonable attorney's fees in addition to any other relief to which it may otherwise be entitled.

**15. COVENANTS AND CONDITIONS.**

All of the provisions of this Agreement are to be construed as covenants and conditions as though the words importing such covenants and conditions are used in each instance. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, or unenforceable by reason of any rule of law or public policy, all other provisions of this Agreement shall nevertheless remain in effect. No provision of this Agreement shall be deemed dependent on any other provision unless so expressed herein.

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**16. GOVERNING LAW.**

The validity and construction of this Agreement and of any of its terms or provisions, as well as the rights and duties of the parties hereunder, shall be governed by the laws of the State of California. This Agreement was made and is to be performed in San Luis Obispo County, California. Therefore, to the fullest extent permitted by law, it is agreed that venue on any action hereunder shall be in the courts of San Luis Obispo County, California.

**17. ENTIRE AGREEMENT.**

Except as otherwise provided herein, this Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof and contains all of the covenants and agreements between the parties with respect to such subject matter in any manner whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement shall be effective only if it is in writing, signed by the party to be charged.

**18. GENDER.**

In this Agreement, whenever the context so requires, the masculine gender includes the feminine and/or the neuter, and the singular number includes the plural.

**19. COOPERATION.**

Each party to this Agreement agrees to do all things that may be necessary, including, without limitation, the execution of all documents which may be required, in order to implement and effectuate this Agreement.

**20. FACSIMILE SIGNATURES.**

If a party has signed any document or instrument and has represented that he or she signed such document or instrument and that he or she has transmitted the original document or instrument to the appropriate party, then, unless otherwise provided by this Agreement, the other party or parties including, without limitation, their authorized agents, employees and third persons acting on their behalf, may rely upon a facsimile of the signature of the signing party on such document or instrument as being a valid signature of that person having the legal significance of an original signature of that person on such document or instrument so long as there is a reasonable basis to believe, with reasonable care being exercised, that the facsimile is of an authentic signature of the signing person.

**21. TIME OF ESSENCE.**

Time is of the essence.

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**22. ADVISORS.**

Each party to this Agreement has had an opportunity to review this Agreement with their professional financial, tax and legal advisor(s) and enters into this Agreement after full consultation with said advisor(s) to the extent desired by each party. Accordingly, the parties intend that this Agreement be interpreted fairly, and not for or against any party.

Executed in duplicate originals this \_\_\_\_ day of \_\_\_\_\_, 2008.

**TRAINER:**

Free As A Breeze, LTD.  
a California corporation

By: \_\_\_\_\_  
HEDY HALE, President

By: \_\_\_\_\_  
ROSS HALE, Secretary

**TRAINEE:**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Street Address)

\_\_\_\_\_  
(City, State, Zip Code)

\_\_\_\_\_  
(Telephone)

\_\_\_\_\_  
(E-Mail Address)

**TRAINEE:**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Street Address)

\_\_\_\_\_  
(City, State, Zip Code)

\_\_\_\_\_  
(Telephone)

\_\_\_\_\_  
(E-Mail Address)