

Building successful brand partnerships

See that tall girl in the center on the back row? That's sixth grade Kiff.

As an adult, I'm just shy of six-feet tall. And for most of my life, I've been nearly the tallest person in the room.

The one instance when I'm "average" height is when I'm hanging out with my family. You see five of the six people in my family are 5 foot 10 or taller. And my youngest sister is the short one, at 5'7".

Height is relative. If someone is short or tall it's usually based on your own height.

And because height is relative, my definition of short and tall is very different than yours.

Because in my definition, someone has to be taller than my dad and brother who are 6'6" in order to be tall. And anyone shorter than my sister at five feet seven inches is short. (Even though she likes to remind us on a regular basis that she is taller than the average American woman.)

And when we work with others our expectations are relative to our own way of working.

Where we run into trouble is when these expectations don't line up.

For example, unless it's explicitly spelled out at the start of a brand partnership, a brand and an influencer might have very different ideas about how the process will work.

A brand might be thinking,

She'll generate \$5,000 in sales for us from her two emails and six pieces of Instagram content.

While the influencer is thinking,

Oh, this is easy. At this price, it's two Instagram posts and a story mention.

And unless you make your expectations clear, you run the risk of being disappointed by the other person. Because she doesn't meet your unspoken expectations. (Or just as likely you end up disappointing her because you don't live up to her expectations.)

One of my good friends Lisa Anderson Shaffer who runs the brand [Zelma Rose](#) was a psychologist before she started creating jewelry. And she shared with me the following:

Boundaries are courtesy that we extend to each other.

What this quote reminds us is that boundaries are actually a kindness that you extend to the other person. Boundaries build trust because they give the other person an understanding of what is and isn't okay.

Of course, in life, there are constantly people who will push your boundaries. And with these people, it's important to understand how to enforce your boundaries.

Luckily getting on the same page by literally putting everything on the same page not only helps lay out your boundaries but gives you something to point to when you need to enforce your boundaries.

Contracts create the picture of your relationship

How you put your contract together creates the picture of the kind of relationship you want to have.

This photograph is not of a painting, but of a Jacquard tapestry. The name of this piece is [Lorna and it was created by Chuck Close](#).

It's in the SF MOMA collection and every time I see it I'm astounded.

When you look at it from a few feet back, you see this gorgeous portrait of a woman. However, as you get closer, you realize it's just a jumble of colored threads.

The piece is really strands of multi-colored thread woven together to form an image.

A contract does the exact same thing. A contract creates a picture of your relationship.

When you look up close, your contract is just a jumble of words strung together.

But when you stand back, you see the kind of relationship that's being created.

Sometimes this relationship is one-sided. And everything in the contract favors the person who created it.

Sometimes this relationship attempts to strike a fair balance. And gives each side some things they want (but not everything).

I hope, your goal is to create a contract that's the latter. Because these contracts are what create a beautiful picture and a strong relationship.

Contracts exist to get everyone on the same page

Contracts get a bad rap. But the gift of a contract really is the kindest thing you can do for those you work with.

The purpose of a contract:

- isn't to be the bad guy
- isn't to make sure you don't get screwed over
- isn't to make sure you get paid
- isn't to put those you work with under your thumb

The purpose of a contract:

- IS to make sure you don't unintentionally disappoint those you work with
- IS to make sure everyone is on the same page
- IS to make sure your expectations are met

Contracts are there to make sure you both are on the same page by LITERALLY getting on the same page.

How a contract helps *both* of you

A short version is a contract helps both of you because you'll go into it with the same expectations and thoughts about how you are going to work together. (Again, you've gotten on the same page, by literally getting on the same page.)

The longer version is a contract helps both of you because:

- you'll waste less time going back and forth with questions
- you'll set the tone of the relationship
- the person you are working with will understand what you need from them
- you'll build trust and transparency

You'll waste less time

Because you'll have a contract, you are going to have less back and forth.

You'll both have a document you can easily reference to find:

- what the timeline looks like
- when I need feedback from you
- when I'm going to deliver different deliverables

For example, if you are creating an Instagram campaign for a brand you won't keep getting emails from them asking you when you are going to post the first piece of content if it's in your contract.

Your contract might say something like:

- You have two weeks from the date of signing this contract to deliver the products included in the campaign to me.
- I need two weeks from delivery of the product to shoot and edit the content.
- I'll provide three Instagram feed posts and two Instagram Stories over the course of the two-week campaign.

Two-week campaign window is estimated to be from [DATE] to [DATE]. However, any delay in providing product will push back the campaign window. This window will be pushed back an equal number of business days as the number of business days the products arrived late.

So the brand doesn't keep having to ask you, "Hey, when are you going to start posting?" Because they know exactly when you'll begin posting.

AND...you'll be able to focus on creating awesome content, not replying to their emails.

You'll set the tone of the relationship

Another benefit of a contract is it sets the tone of a relationship.

People are coming to work with you because you are a professional and have expertise. (And you are, even if you have the imposter complex monster on your back from time to time.)

And using a contract carries through that tone.

You are saying,

I'm giving you a fair contract because I respect those I work with and want to meet their expectations of me as a professional. And in my experience, the process I've outlined here is the easiest way for you to get what you need.

Your client will understand what you need from them

A contract also helps the client understand what's expected from them.

In our example above, for some campaigns, you'll need the product in hand to create the content.

And you can't shoot the content until you either:

- go out and buy the product
- the client ships the product to you

And not only do you need the product, but you need the clothes, accessories, or other props that will go into that lifestyle shot. And often, you won't want to buy those until you have the product in hand.

So like I did above, your contract can spell out, “This is what I need from you. And these things are contingencies on me doing any other work.”

And so a contract will help the client understand what not only is expected of them. But then where they can cause delays in the process by not getting materials to you.

You’ll build trust and transparency

And finally, a contract increases trust and transparency.

As I said, Lisa’s psychology background really emphasizes what I think all of us intuitively know. That making things really transparent and understanding what's expected of us is the easiest way to have a smooth relationship.

Now there's always going to be that bad nut out there. Someone that these kinds of things are not going to establish a good relationship between the two of you. But we're not going to focus on the one percent that this it isn't going to help.

We're going to focus on creating great relationships with the 99 percent of people who a contract is really going to be a benefit to your business and not a detriment.

What’s required for a valid contract

Part of the reason contracts get a bad rap is because most contracts are frankly, terrible.

They are 20-pages long and stuffed with dense legal jargon.

Honestly, they are contracts that my lawyer brain loves (because they are just a big puzzle to figure out). But that no one else in their right mind would read.

Good news for you, contracts don’t have to look like that to be valid. And even better, they don’t need an ounce of legal jargon.

In fact, a contract only needs three things to be valid:

- offer
- agreement to the exact offer
- promise to exchange of things of value

All you need to say is something like:

I will promote your journal on my Instagram account. To promote it, over the course of one week, I’ll include it in three feed images and create a three-part Instagram story. I’ll tag your account @journal in each of these and include a link to your shop for my followers to purchase it. And you will provide me with one journal and \$500.

(This functions as your offer.)

Then you've got an agreement to your exact offer when the brand says,

Yes, that sounds great. I'll pay you \$500 and give you a journal for three Instagram feed images and a three-part Instagram story.

And then you start executing on your promise to exchange things of value (you start creating the content and the brand will ship the journal and pay you).

That's all that's required.

Legal jargon is not a requirement.

When a contract MUST be in writing

There are six times that a contract MUST be in writing to be enforceable. (Meaning you can't do anything about it if the other side doesn't hold up her end of the deal.)

These are contracts related to:

- marriage
- those lasting a year or more
- land
- the executor of an estate
- goods for \$500 or more
- surety

(The law school mnemonic for this is MY LEGS!)

However, only one of these might come up when you are partnering with brands.

Contracts for a year or more

If a contract will last more than a year, then it must be in writing.

So if something will last for 13 months or two years, then it must be in writing to be enforceable.

However, contracts that are for an unknown amount of time don't have to be in writing to be enforceable. (e.g. We'll work together until we decide we don't want to work together anymore.)

And that's because they could only last a few months or they could last several years.

Common written contract types

If your contract must be in writing, that doesn't mean you have to have a formal written contract like this one (or the one you are picturing in your head).

You can create a "written" contract in many different ways because remember you only need those three things: offer, acceptance, and a promise to exchange things of value.

Which means you can form a contract over email.

Say, for example, you meet with a brand over Zoom. And you follow up your call with a bulleted list of what you discussed and what you'll be providing for them and what they'll be giving you.

If the brand emails back and says, "Yep! That sounds great!" Then you've got a written contract because all the elements are met.

Why you want a written contract no matter what

I'm a firm believer that you should have your contract in writing, no...matter...what.

Why?

Because the whole point of having a contract with those you work with is to make sure you are both on the same page. And the easiest way to get on the same page is by literally getting on the same page.

And this contract you create doesn't have to be stuffed with legal jargon. (In fact, that's exactly what I DON'T want you to create.)

Contracts can be TOO short...

Before we get into the nitty-gritty of what you *might* want to include in your contract, I want to share with you a story of when a contract was *too* short.

About a year ago a tile company approached me. They had been working with Instagram influencers on and off but had disappointing results.

When they initially launched the program, they created a one-page contract. This contract did many things right. In it, it spelled out:

- what discount the influencer was getting on the product
- how to order the product
- the retail value of the product
- who was responsible for the cost of shipping the product
- how long it would take for the product to arrive

- the number of images containing the product that they were required to post

But it missed some critical details. And these details were the reason their program was struggling.

For example, they explained to me that a major design blogger did a bathroom remodel and used both their tiles and a competitor's tiles. Which needless to say, they weren't happy about. And while she tagged them both in the photos, she put both tags in the center of the photo, not directly on top of their tiles.

Another problem was that since most of their influencers were doing remodels, they knew that they had to be somewhat flexible with their timeline. However, in one instance the blogger refused to post the photos because other rooms weren't done. And it was more than a year before she posted them (at which time they were no longer offering that product).

Finally, they were targeting several micro-influencers, who didn't have the ability to do a swipe up for Instagram stories. And they were struggling with the fact that when these influencers posted stories, they weren't getting a link to their shop.

So we worked together to create a new contract. And the contract I created for them was still short but had many of the details that were missing and causing them headaches. (And it still fit on two pages.)

Your contract is like the three little bears

In the three little bears, the porridge was too hot, too cold, and just right.

And your contract is the same thing, it can be too long, too short, and just right.

Because if you miss details then three things happen might happen:

- you'll spend a bunch of time going back and forth
- you'll get frustrated
- you have a harder time holding them to the things you later agree on because they aren't part of your written contract

Again, your goal is to create a beautiful picture of the kind of relationship you want to create and that's hard to do when you don't include enough details. Because these details are what create that portrait. And if you are missing something important, your portrait may be missing an eye.

What to include in your contract

First off, when I create a contract I start with a daydream session. (This is the secret most people don't know about my job as a lawyer, it's really about spending half your time daydreaming.)

During this session, you'll come up with two things:

- core topics that you want to cover
- common problems that might arise and easy ways to fix them

For example, if we go back to my tile client and their issues with their influencer program. They had a couple of issues they wanted to resolve:

- they wanted to make sure that no other tile products appeared in the photo with their tiles
- they wanted to make sure that for a period of a few weeks, no other tile products appeared in her feed
- when dealing with micro-influencers, they wanted a link in bio that took people right to their product pages (to circumvent the swipe up issue)
- they needed a reasonable timeline in place and if that timeline wasn't followed the influencer needed to reimburse them for the product discount she received

Once you've completed your brainstorm session, you'll start creating your contract.

The format of your contract

First off, that format you are picturing in your head isn't legally required.

You don't have to start off with those WHEREAS sections, it doesn't have to be long, it doesn't have to contain legal jargon. (Remember, the one I created for the tile company was only two pages, including signatures.)

The format of a contract is not one of our three things required for a valid contract.

For most contracts, I suggest a specific format. This format has you create a cover page. And on this cover page, you include those things that:

- change regularly
- clients needed to be aware of
- would make the process run smoothly

And then after this cover page, you use the rest of the contract to explain the legal nitty-gritty that doesn't change from project to project.

But, I don't use this format when contracts are two pages or less. And it's RARE that I've created a brand partnership contract that's more than two pages.

(In fact, the only one that comes to mind was a collaboration between a brand and artists. But in that case, the contract was 90% a licensing agreement and 10% talking about how they'd promote the joint product. And the brand promotion portion was only a single page.)

So this is one of the rare instances, where I doubt you'll use this format. (But if you are creating a longer agreement, then you can [learn more about this format here](#).)

Section headings

Even with short contracts like this, I like to help make the contract easier to read (and find what you need) by giving all sections a 1-2 word heading that describes what is going on in that section.

Information about who the contract is between

The information in this section is pretty simple. All you need to do is explain who is involved in the contract and their contact information.

If you are an LLC or corporation, then your information should be for your LLC/corporation, not you personally. ([Watch this to learn exactly what your signature block should look like](#).)

And if the brand/person you are working with is an LLC or corporation, then you should fill in this information, not the information of your contact person.

How long the contract will last

This section of the contract determines how long this contract will last. (The legalese name is the contract term.)

Most brand partnerships are for a single short campaign. You'll promote a specific product over a certain time period.

And so for these one-time partnerships, you'll likely not divide this out into its own section. It can easily be included in the timeline.

But occasionally, you might enter into an on-going relationship. When this happens, you will promote the brand from time to time for an indefinite period of time. (For example, if you become a brand ambassador for an art supply company, your contract might be for a year, with the option to renew for additional years.)

In these instances, you will want to break this out into its own section and explain how long the initial term of the contract will be and if it can be renewed.

When it comes to the initial term, it might be:

- one year
- through a specific date
- without an end date (or in legalese, perpetual)

If the initial term can be renewed, you'll need to explain how it happens and for how long. For example,

- automatically renewed for a period equal to the initial period
- automatically renewed the first time for a year and then upon agreement by both parties
- renewed only if both parties agree

What content will you create and what must be included with that content?

This is probably the most important section of the entire contract.

In it, you'll spell out with as much detail as possible:

- what content will be created
- where it will be posted
- what accounts must be tagged
- where the tags should be
- what hashtags should be used
- what links should be provided
- what other products can appear within the content

Is there exclusivity?

More and more brands are requiring that influencers don't promote a similar product or service for a specific period of time after their brand content is posted.

So if you want this, you should include a section outlining how long they need to wait. (And in turn, if this section isn't there, you don't have exclusivity and can promote a similar product as soon as you want!)

Who owns the intellectual property

Since the influencer creates photographs (and text) to promote the brand's products, this section of the contract should outline who owns that content.

But more importantly, it should explain what the person who doesn't own it can do with it.

Luckily, this is one of those situations where there is an industry standard.

And that's that the influencer owns the copyrights in the content she creates. And the brand is granted a non-exclusive license to use the content on their own website, social media feeds, or other advertising.

What will be promoted? And how will it be delivered?

Brands usually provide influencers free or discounted products as part of the promotion.

So in this section, you should outline:

- the name(s) products or services that will be promoted
- the quantity of those products that will be provided
- the retail value of the product
- the URL of the product page
- if the product must be ordered by the influencer and how that should be done
- how shipping will be handled
- how long it will take for the product to arrive

How payment will happen

Many influencers not only get products for free but are paid for promoting products.

And if they will be paid, this section should define what that payment process looks like.

- Is the influencer paid 50% upfront with the remaining 50% before the content is posted?
- Is the influencer required to submit an invoice before payment is due?
- How many days does the brand have to pay after the invoice is submitted?
- Is the brand required to pay for any expenses that the influencer incurs while creating the content?
- Is the influencer paid more like an affiliate (i.e. a percentage of each sale tied to her)?
- If so, how often will the brand pay and what information will be provided along with the payment?

Side note: If the value of the product and/or payment made to the influencer is more than \$650, the brand will issue the influencer a 1099-MISC at the end of the year. And the influencer will be required to provide the brand a W-9 so they can prepare it.

Will the brand be providing collateral?

Occasionally, a brand will have text, images, or other collateral that they want the influencer to work into the content. If this is the case, then what this collateral is and how it should be used should be included in this section.

Will the brand have any approval over content before it is posted?

Generally, brands don't have approval rights over the content that an influencer creates.

But if a brand wants these rights, then it should be outlined in this section how that happens.

If you are dealing with a brand that wants these rights, then I'd suggest you fight for a clause that says that if they don't provide edits within a week, you can assume it's approved.

What is the timeline?

For most brand partnerships, the timeline can be handled as a simple bulleted list.

What's important to include is each step of the process and the approximate date of when it'll happen.

For example:

- Brand will provide Product to Blogger no later than July 1, 2019.
- Blogger will begin posting Instagram images containing Product on July 15, 2019.
- All Instagram promotional images will be posted by Blogger no later than July 31, 2019.
- Blogger will provide Brand the agreed upon post-campaign metrics no later than August 3, 2019.

What happens if the timeline isn't followed?

Now that the timeline has been laid out, you need to spell out if there will be any repercussions for failing to follow the timeline.

If you are the one creating content, you'll want to build in a buffer, so if the brand is late on getting you what you need, you still have the same number of days to create the content. Like the example earlier, you can deal with this by saying your schedule will be pushed back an equal number of days for every day they are late in getting you what you need.

If you are the brand, you might want to hold off on doing the final payment until all content is posted. That way, you'll be able to use that as leverage to get the influencer to finish up her end of the deal.

Does influencer need to provide post-campaign metrics?

One thing that's become more and more common in my experience is for brands to request that the influencer provide them with post-campaign metrics for things like:

- post reach
- post impressions
- post engagement
- shares
- CTR
- email open rate

As we'll talk about in a minute, some of these metrics will automatically be made available to brands when using social media branded content tools. But for email or blog content, you'll have to directly provide them with these metrics.

The reason brands want these metrics is to help them evaluate the ROI of different campaigns and to do this, they need access to this data.

What kind of legal relationship you are creating

If one (or both) parties aren't an LLC or corporation, it's best practice to include that both are independent contractors and that the contract does not result in an employment relationship. This is for both your protection and for the protection of the other side. But, this means if you are the one getting paid, you are responsible for your own taxes and insurance.

How you'll handle disagreements

For short-term projects, I usually leave this section out. But for on-going projects, I include how disagreements will be resolved.

I often use the [clauses provided by California Lawyers for the Arts](#), because their mediators and arbitrators are trained to assist creative businesses. If you are not based in California, check to see if [your state's Volunteer Lawyers for the Arts organization](#) has a mediation service and sample clauses.

How to exit gracefully

Again, this section is usually only included when you are entering into a longer-term relationship. In those cases, you want to outline how one (or both) of you can decide to walk away before the contract is done if it's not working. (In legalese, how a contract can be terminated.)

This might be:

- either side can end for any or no reason with 30 days notice
- the influencer can end if the brand stops paying
- the brand can end if the influencer doesn't continue to promote the products as promised
- either side can end if the other files for bankruptcy, becomes insolvent, sells the business

How to sign a contract

Once you've created your contract, how do you sign it?

Good news, unlike this photo, you don't have to meet in person. Nor do you have to mail them a printed copy. Or have them print, scan, and sign.

Instead, an electronic signature is totally valid.

So you can use a service like:

- [HelloSign](#)
- [17hats](#)
- [EchoSign AKA Adobe Sign](#)
- [HoneyBook](#)
- [Dubsado](#)

What you use is all about what service you (and those you are working with) will use!

Don't get an FTC fine or your social media account suspended

When brands and influencers get together to promote products or services, the content that the influencer creates is considered advertising.

And because of this, you must comply with the FTC guidelines (and any requirements of the social media platform the content is posted on).

Don't get an FTC fine

For a long time, the FTC wasn't enforcing these rules against social media influencers.

But that's changed. And they've issued hundreds of fines to influencers over the past 18 months.

Which means if you are a:

- brand, you should be educating your influencers on what they need to do
- influencer, you should not be working with brands if they don't want you to include this information

The FTC rules boil down to something really simple. That you have a PACT with your audience to disclose if you are getting something in exchange for this content.

Your PACT requires you to do four things:

- **Place:** You must disclose that it is sponsored content in an obvious place. Ideally, you'll disclose at the start of your caption. You can't "hide" by putting it in the first comment. It must be conspicuous and obvious.
- **Act:** Your audience can't be required to take extra steps to read the disclosure (For example, on Instagram it needs to be before the ...more).
- **Clear:** Your audience must be able to easily understand that you are getting compensation in exchange for the content.
- **Time:** You can't just tell your audience once; it must be included every single time.

The easiest way to comply with all four of these rules is:

- on social media: put #ad at the start of each social media caption that's part of a sponsored campaign
- in an email/blog post that includes a single link to the sponsored product/service: add the text [sponsored link] after the text or image link
- in an email/blog post that's only about a sponsored product/service: have an introduction that explains that this is sponsored content

Another example for the last one would be:

This [post/email] was made possible by a sponsorship from [BRAND NAME (with link to brand)]. But, all opinions and reviews are my own and this product/service wouldn't be featured if I didn't think it could help you.

What wouldn't cut it is text like this at the top of your post:

This post might contain sponsored/affiliate links. Click here to learn more.

Why won't this cut it? Because you:

- Aren't clear in telling me if this exact post is or isn't sponsored content
- Require me to take action by clicking through to learn the answer

Don't get your social media account suspended

Both Instagram and Facebook have rolled out tools you are required to use when posting sponsored content.

These tools are called "Branded Content". You can learn more about the [Facebook version here](#) and the [Instagram version here](#).

And failure to appropriately use these tools can not only mean your post isn't seen by your followers but can result in your account being suspended.

Building long-term partnerships

This is how I want you to feel at the end of a campaign.

That you are happy how it turned out and that you'd be open to working together in the future.

And one of the important factors in getting to that endpoint, is to get on the same page, by literally getting on the same page.

The good news is that if you are a member of the artist's Courtyard, you've got a jumping off point!

For those of you that are members of the artist's Courtyard, within the "Write a Contract" resource, I've created five templates that you can use as a starting point. And one of these is a brand sponsorship contract. [You can go here to check it out.](#)

If you aren't a member of the artist's Courtyard, then I've included a checklist with the session materials that you can use to make sure your contract isn't too short and covers all the important topics.

This is a learning process and you will make mistakes

It's important to remember that this is a learning process. You will make mistakes. You will wish you had done things differently. You will kick yourself at times.

But as my favorite Pixar quote reminds us, nothing is ever perfect. And we can't learn if we don't put something out there and get feedback.

So your brand partnership contracts will evolve over time. You'll add sections in, take sections out, and reword parts.

You'll learn how to pick good partners. And what red-flags to watch for.

But you can't start that process until you raise your hand, pick your first partner, and execute on your first brand partnership campaign.

Your next steps:

- Download the brand partnership contract checklist
- the artist's Courtyard members, [check out the Brand Sponsorship Template resource](#)
- Leave any questions about this material in the live Q&A session
- Spend 5 minutes brainstorming potential brand partnerships