

Co-Marketing Agreement

This Co-Marketing Agreement ("the Agreement"), is made on _____ by and between [Insert Name], whose principal place of business is located at [Insert Street Address], [Insert City], _____ [Insert ZIP Code], (hereinafter referred to as the "[Insert Name]") and [Insert Partner Name], located at [Insert Partner Street Address], [Insert Partner City], _____, [Insert Zip Code], (hereinafter referred to as the "[Insert Partner Name]"). [Insert Name] and [Insert Partner Name] shall be collectively referred to as the Parties.

[Insert Name] is engaged in the business of [Insert Nature of Business].and [Insert Partner Name] is engaged in the business of [Insert Partner's Nature of Business]. The Parties desire to co-market their products and services Both the Parties agree to sell each other's products and services to their respective customer bases and prospects.

In consideration of their mutual promises and the covenants and conditions in this Agreement, the parties agree as follows:

Territory

[Insert Name] and [Insert Partner Name] agree to promote and market the products and services of the other party only in [Insert Territory].

Promotion

[Insert Name] and [Insert Partner Name] shall plan and undertake joint seminars, open houses, public relations events, press releases, testimonials, demonstrations, and joint participation in trade shows, conventions and conferences, when appropriate. Both parties agree to jointly review all materials prior to being sent and approve in writing via mail or email, before any customer correspondence is released to [Insert Name]'s client base. Any joint promotion will be handled by the Parties during the term of this Agreement. Upon the expiration of this Agreement the Parties will have no obligation to promote the other's products and services and must obtain the permission of the other party to continue promoting the other party's products and services .

Marketing

[Insert Name] and [Insert Partner Name] shall work cooperatively within the Territory as agreed mutually to assess viable market segments, applications, and potential customers including planning to meet future market needs.

Training

As part of the sales and marketing effort established in this Agreement, both [Insert Name] and [Insert Partner Name] shall provide training and information to each party's assigned work force to provide an understanding of its products and services, applications, organization, and procedures that are relevant. The Management of each party shall each have the sole discretion to determine the numbers, levels and skills of its personnel assigned to the Co-Marketing program described in this Agreement, and the types of support resources it shall make available. Expenses for this program shall be borne by the party incurring the expense unless otherwise agreed.

Referrals and Presentations

[Insert Name] and [Insert Partner Name] shall engage in the exchange of customer leads, joint demonstrations and joint customer visits, presentations, and proposals, when appropriate.

Other Agreements

Nothing in this Agreement shall be construed to preclude [Insert Name] or [Insert Partner Name] from selling or otherwise marketing any of their or another party's products or services directly or indirectly to any other customer, or through other distribution channels, either inside or outside the Territory.

Partners' Authority

Except as otherwise provided in this Agreement, no Party acting alone shall have any authority to act for or assume any obligations or responsibilities on behalf of, the other Party. Each Party will indemnify the other Party against any claim, loss or damage.

No Warranties

The Parties hereby acknowledge that they have not entered into this Agreement in reliance upon any warranty or representation by any person or entity.

Products

Each Party shall sell or rent the products and services to customers engaged through this Co-Marketing Agreement pursuant to orders placed with either party in accordance with the respective company's standard documentation applicable to such a transaction, or any special contracts agreed to by the Parties in advance.

Costs

Each Party will share responsibility for costs, tracking and managing any campaigns. Each Party shall contribute the use of its staff to directly market via a series of campaigns, to their customer database, and track all sales for the purpose of payment of terms under this Agreement.

Information

Each Party shall provide reasonable information and backup as agreed to between the Parties in support of the customer proposals, trials, pilot programs inquiries and service requests.

Training

Each Party shall provide reasonable technical training on the products and services to the other Party's employees as necessary to effectively market the products and services.

Additional Responsibilities

The Parties agree to promote the other parties' products and services to its customer database via, personal solicitation, email and/or direct mail. The Parties shall each train, deploy and otherwise maintain a team of employees knowledgeable in the others products in order to effectively promote the other parties' products and services give demonstrations, and answer customer questions.

Payment

The Parties agree each will be entitled to a percentage of the total sales made in the other party's products and services. On the _____ of each month [Insert Name] and [Insert Partner Name] will submit to the other an itemized accounting of all sales of the other party's products and services which can be directly attributed to this Co-Marketing Agreement. In addition, on the _____ of each month each party will submit to the other an itemized accounting of all sales made directly with the respective company that are attributed to the referral of the other party or the marketing, promotions or efforts made through this Co-Marketing Agreement. [Insert Name] will be entitled to retain 0 percent of the total sales of [Insert Partner Name]'s products and services which are made in connection with this Co-Marketing Agreement. [Insert Partner Name] will be entitled to retain 0 percent of the total sales of [Insert Name]'s products and services which are made in connection with this Co-Marketing Agreement. At the time the accountings are exchanged each party will also remit payment of any sales percentage the other party is owed as per this Payment agreement. Failure to provide an accounting or make timely payment to the other party as necessary will be deemed a material default of this Agreement.

Term and Termination

The term of this Agreement shall commence on the Effective Date stated above and shall terminate on _____.

Confidentiality

With respect to such information, the party to whom the information is disclosed and its employees, consultants and other agents shall:

- a. hold the information in confidence and protect it in accordance with the security measures with which it protects its own proprietary or confidential information, which it does not wish to disclose;
- b. restricts disclosure of the information solely to those employees, consultants and other agents with a need to know, and not disclose such information to any other person;
- c. advise its employees, consultants and other agents with access to the information of their obligations with respect to the information; and
- d. use the information only in connection with the terms of this Agreement, except as may otherwise be agreed to by the parties in writing.

Trademarks and Trade Names

Neither party shall use the name of the other party in any news release, public announcement, advertisement or other form of publicity without the prior written consent of the other party. Each Party is hereby granted permission to use the other Parties' name in its promotional materials for the sole purpose of identifying the Party as a customer and location to find additional information on their products and services. Each Party is granted permission to the other parties trademarks and trade names only as necessary to the performance of the obligations under this Agreement.

The Parties recognize the other parties' exclusive ownership of such marks and names and that these marks and names are renowned both worldwide and specifically in the Territory. Each Party agrees not to take any action inconsistent with such ownership and further agrees to take any action, including without limitation the conduct of legal proceedings at the other parties' expense, which the other party reasonably deems necessary to establish and preserve the other parties' exclusive rights in and to its trademarks and trade names. Reproductions of any trademarks, logos, symbols, etc., shall be true photographic reproductions.

No Rights

No rights to manufacture are granted by any Party to this Agreement in the products of the other Party. Moreover, no licenses are granted or implied by this Agreement under any patents owned or controlled by [Insert Name] or [Insert Partner Name] or under which [Insert Name] or [Insert Partner Name] has rights, except the right to co-market the products and services covered by this Agreement during the term and as contemplated herein.

Indemnification

[Insert Name] and [Insert Partner Name] agree to indemnify and hold the other harmless from all claims, losses, expenses, fees including attorney's fees, costs, and judgments that may be asserted against either party that result from the acts or omissions of the other party and/or the other party's employees, agents, or representatives.

Default

The occurrence of any of the following shall constitute a material default under this Agreement:

- a. The failure to make a required payment when due.
- b. The insolvency or bankruptcy of either party.
- c. The subjection of any of either party's property to any levy, seizure, general assignment for the benefit of creditors, application or sale for or by any creditor or government agency.
- d. The failure to provide the marketing assistance as required in the time and manner provided for in this Agreement.

Remedies

In addition to any and all other rights a party may have available according to law, if a party defaults by failing to substantially perform any provision, term or condition of this Contract (including without limitation the failure to make a monetary payment when due), the other party may terminate the Contract by providing written notice to the defaulting party. This notice shall describe with sufficient detail the nature of the default. The party receiving such notice shall have [Enter number of days] days from the effective date of such notice to cure the default(s). Unless waived by a party providing notice, the failure to cure the default(s) within such time period shall result in the automatic termination of this Contract.

Force Majeure

If performance of this Contract or any obligation under this Contract is prevented, restricted, or interfered with by causes beyond either party's reasonable control ("Force Majeure"), and if the party unable to carry out its obligations gives the other party prompt written notice of such event, then the obligations of the party invoking this provision shall be suspended to the extent necessary by such event. The term Force Majeure shall include, without limitation, acts of God, fire, explosion, vandalism, storm or other similar occurrence, orders or acts of military or civil authority, or by national emergencies, insurrections, riots, or wars, or strikes, lock-outs, work stoppages. The excused party shall use reasonable efforts under the circumstances to avoid or remove such causes of non-performance and shall proceed to perform with reasonable dispatch whenever such causes are removed or ceased. An act or omission shall be deemed within the reasonable control of a party if committed, omitted, or caused by such party, or its employees, officers, agents, or affiliates.

Arbitration

Any controversies or disputes arising out of or relating to this Contract shall be resolved by binding arbitration in accordance with the then-current Commercial Arbitration Rules of the American Arbitration Association. The parties shall select a mutually acceptable arbitrator knowledgeable about issues relating to the subject matter of this Contract. In the event the parties are unable to agree to such a selection, each party will select an arbitrator and the two arbitrators in turn shall select a third arbitrator, all three of whom shall preside jointly over the matter. The arbitration shall take place at a location that is reasonably centrally located between the parties, or otherwise mutually agreed upon by the parties. All documents, materials, and information in the possession of each party that are in any way relevant to the dispute shall be made available to the other party for review and copying no later than 30 days after the notice of arbitration is served. The arbitrator(s) shall not have the authority to modify any provision of this Contract or to award punitive damages. The arbitrator(s) shall have the power to issue mandatory orders and restraint orders in connection with the arbitration. The decision rendered by the arbitrator(s) shall be final and binding on the parties, and judgment may be entered in conformity with the decision in any court having jurisdiction. The agreement to arbitration shall be specifically enforceable under the prevailing arbitration law. During the continuance of any arbitration proceeding, the parties shall continue to perform their respective obligations under this Contract.

Entire Agreement

This Contract contains the entire agreement of the parties, and there are no other promises or conditions in any other agreement whether oral or written concerning the subject matter of this Contract. This Contract supersedes any prior written or oral agreements between the parties.

Severability

If any provision of this Contract will be held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court finds that any provision of this Contract is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.

Amendment

This Contract may be modified or amended in writing, if the writing is signed by the party obligated under the amendment.

Governing Law

This Contract shall be construed in accordance with the laws of the State of _____.

Notice

Any notice or communication required or permitted under this Contract shall be sufficiently given if delivered in person or by certified mail, return receipt requested, to the address set forth in the opening paragraph or to such other address as one party may have furnished to the other in writing.

Waiver of Contractual Right

The failure of either party to enforce any provision of this Contract shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Contract.

Headings

All headings contained in this Agreement are for reference purposes only and shall not in any way effect the meaning or interpretation of any provision or provisions of this Agreement.

Signatures

This Agreement shall be signed by [Insert Signer Name], [Insert Signer Title] on behalf of [Insert Name] and by [Insert Partner Signed Name], [Insert Partner Signed Title] on behalf of [Insert Partner Name].

PARTNER

By: _____ Date: _____
[Insert Name]
By [Insert Signer Name], its [Insert Signer Title]

PARTNER

By: _____ Date: _____
[Insert Partner Name]
By [Insert Partner Signed Name], its [Insert Partner Signed Title]