

CO-BRANDING AGREEMENT

This Co-Branding Agreement ("Agreement") is made and entered into as of the ____ day of _____, 200__ ("Effective Date"), by and between: (a) _____, a _____ corporation, with offices at _____ ("Owner"); and (b) _____, a _____ corporation, with offices at _____ ("Provider"). Owner and Provider are collectively referred to as the "parties."

WHEREAS, Owner operates a web site on the Internet on and through which it sells products and services ("Owner Site");

WHEREAS, Provider operates a web site on the Internet on and through which it also sells products and services ("Provider Site"); and

WHEREAS, the parties desire to establish an area within the Owner Site through which persons having access to the Provider Site will be able to purchase the goods and services offered by the Owner Site.

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties, intending to be legally bound, agree as follows:

1. Co-Branding

Subject to the terms and conditions of this Agreement, Provider agrees to provide certain services to promote and facilitate the ability of persons accessing the Provider Site by means of an Internet connection ("Users") to access, inspect and purchase Owner's goods and services available on and through an area of the Owner Site ("Co-Branded Site") as set forth and described at Exhibit A ("Specifications").

2. Linking Services

a. *Owner Icon and Linking.* Provider agrees to incorporate and display the graphical image file and/or trade name or mark provided by Owner ("Owner Icon") as described and identified at Exhibit B into the HTML files located at the Provider Site. Provider shall display the Owner Icon to Users at a minimum of 640 X 480 standard VGA resolution with the entire Owner Icon displayed to Users on the _____ page without scrolling. Provider agrees to incorporate the Uniform Resource Locator ("URL") provided by Owner and identified at Exhibit B into the Owner Icon to create a hypertext reference link ("Link") from the Provider Site to the Co-Branded Site.

b. *Provider Icon and Linking.* Owner agrees to incorporate the graphical image file and/or trade name or mark provided by Provider ("Provider Icon") as described and identified at Exhibit C into the HTML files located at the Co-Branded Site. Owner shall display the Provider Icon to Users at a minimum of 640 X 480 standard VGA resolution with the entire Provider Icon shall be displayed to Users on the _____ page without requiring scrolling. Owner agrees to incorporate the URL provided by Provider and identified at Exhibit C into the Provider Icon to create a Link from the Co-Branded Site to the Provider Site.

c. *Delivery and Performance.* Within thirty (30) days of the Effective Date, Owner shall deliver the materials specified at Exhibit B to Provider, and Provider shall deliver the materials specified at Exhibit C to Owner in such file formats and on such media as set forth therein.

3. Licenses and Proprietary Rights

a. *Owner License.* Owner grants to Provider a non-transferable, non-exclusive license, for the term of this Agreement and only on and within the Provider Site: (i) to copy, use, publicly display and transmit the Owner Icon in connection with Provider's performance of this Agreement; and (ii) to establish a Link from the Provider Site to the Co-Branded Site.

b. *Provider License.* Provider grants to Owner a non-transferable, non-exclusive license, for the term of this Agreement and only on and within the Co-Branded Site: (i) to copy, use, publicly display and transmit the Provider Icon in connection with Owner's performance of this Agreement; and (ii) to establish a Link from the Co-Branded Site to the Provider Site.

c. *Marks.* Without conveying any right, title or interest, Owner and Provider hereby agree that either party may make accurate informational references to the other party's trade names, trademarks or service marks (collectively "Marks") in connection with performance of this Agreement, including without limitation, references in promotional materials, notices, and advertisements for the Owner Site, Provider Site and Co-Branded Site (collectively "Sites"), subject to the condition that Owner and Provider shall promptly cease any use of any Mark owned by the other party upon: (i) termination or expiration of this Agreement for any reason; or (ii) receipt of notice from the other party of abandonment of or dispute relating to any such Mark (except that neither party shall be required to alter any materials first published prior to the date of receipt of such notice). In the event that either party makes references to the other party's Marks that are inaccurate or otherwise incorrect, then the owner thereof may notify the other party of the necessary correction(s), and the party receiving such notice shall implement such corrections as soon as reasonably practicable.

4. Promotion and Development of Co-Branded Site

a. *Owner Obligations.* Owner agrees to: (i) develop, implement and maintain the Co-Branded Site in substantial conformance with the Specifications at Exhibit A; and (ii) conduct the Owner's promotional and marketing activities as specified and pursuant to Exhibit D.

b. *Provider Obligations.* Provider agrees to: (i) review the Co-Branded Site for conformance with the Specifications at Exhibit A; and (ii) conduct the Provider's promotional and marketing activities as specified and pursuant to Exhibit D.

c. *Mutual Promotion Obligations.* Owner and Provider shall undertake good faith, commercially reasonable efforts, to develop and implement such further promotional and marketing activities to support and stimulate the business conducted on and via the Co-Branded Site.

5. Fees and Payment

a. *Fees.* Owner shall pay Provider sales and advertising commissions in the amounts calculated pursuant to the formulae set forth at Exhibit E ("Fees"), attached hereto and incorporated by reference, due and payable within thirty (30) days following the end of each calendar quarter, and together with a detailed written statement providing the basis for such Fees ("Report").

b. *Taxes.* All sales, use, service, income or other taxes of any governmental authority, howsoever levied, based on or related to Fees received by Provider from Owner are the responsibility of and shall be paid by Provider. Each party shall be responsible for and pay all sales, use, service, income or other taxes of any governmental authority, howsoever levied, based on or related to such party's sales or licenses of goods and services to or from any third person.

c. *Invoices.* Owner agrees that thirty (30) days after the end of each calendar quarter, any unpaid Fees shall accrue interest at one and one half percent (1.5%) per month and Owner shall thereafter pay all such interest in addition to any Fees due.

6. Tracking and Auditing

a. *Records.* Owner shall maintain site logs and business and financial records that contain information sufficient to verify the completeness and accuracy of all Fees and Reports (“Records”) for a period of at least one (1) calendar year after each calendar quarter to which such Fee or Report relates.

b. *Auditing.* Throughout the term of this Agreement and for up to one (1) year thereafter, Provider shall have the right, at its own expense and on thirty (30) days advance written notice to Owner, to have its auditors examine the Records for the sole purpose of certifying the accuracy of Reports and determining the amount of Fees due, if any, to Provider. In the event such auditing of the Records indicates any underpayment of Fees paid to Provider, Owner shall pay Provider the additional amount of Fees due to Provider pursuant to the audit, plus interest thereon under Section 5(c), and if the underpayment exceeds five percent (5%) of the actual Fees due and payable to Provider for any given calendar quarter, Owner shall pay all costs and expenses of Provider associated with such audit.

7. Warranties and Disclaimer

a. *Owner Warranty.* Owner warrants to Provider that: (i) Owner has the right and authority to enter into and perform its obligations under this Agreement; (ii) Owner shall perform its obligations under this Agreement in a commercially reasonable manner; (iii) the Co-Branded Site shall conform substantially to the Specifications; (iv) the Co-Branded Site and Owner Icon do not and shall not contain any content, materials, link, advertising or services that actually or potentially violate any applicable law or regulation or infringe any proprietary, intellectual property, contract or tort right of any person; and (v) Owner owns the Co-Branded Site and Owner Icon and all intellectual property rights therein, or has the right to copy, use and display such content on and within the Co-Branded Site.

b. *Provider Warranty.* Provider represents and warrants to Owner that: (i) Provider has the power and authority to enter into and perform its obligations under this Agreement; (ii) the Provider Icon does not and shall not contain any content, materials, link or advertising that actually or potentially violates any applicable law or regulation or infringe any proprietary, intellectual property, contract or tort right of any person; and (iii) Provider owns the Provider Icon and all intellectual property rights therein, or has the right to grant the license herein.

c. *Disclaimer.* EXCEPT AS EXPRESSLY STATED AT SECTIONS 7(a) AND 7(b), THE PARTIES MAKE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE, CONCERNING THE SUBJECT MATTER OF THIS AGREEMENT.

8. Limitation of Liability

EXCLUSIVE OF LIABILITY UNDER SECTION 9 (INDEMNIFICATION), IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY OTHER PERSON FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING LOSS OF PROFIT OR GOODWILL, FOR ANY MATTER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ITS SUBJECT MATTER, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT OR OTHERWISE EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EACH OF THE PARTY’S RESPECTIVE TOTAL LIABILITY FOR DAMAGES SHALL BE LIMITED TO THE TOTAL FEES DUE HEREUNDER.

9. Indemnification

a. *By Owner.* Owner agrees to indemnify, hold harmless and defend Provider and its directors, officers, employees and agents from and against any action, claim, demand or liability, including reasonable attorney's fees, if such action is based upon: (i) any allegation that the Co-Branded Site or Owner Icon infringes a third person's copyright or trademark right, or misappropriates a third person's trade secret; (ii) any gross negligence or willful misconduct of Owner; or (iii) any sale or license of Owner's goods or services to a third person from or relating to the Co-Branded Site or Owner Icon. Owner agrees that Provider shall have the right to participate in the defense of any such claim through counsel of its own choosing.

b. *By Provider.* Provider agrees to indemnify, hold harmless and defend Owner and its directors, officers, employees and agents from and against any action, claim, demand or liability, including reasonable attorney's fees, to the extent such claim arises out of: (i) any allegation that the Provider Icon infringes a third person's copyright or trademark right, or misappropriates a third person's trade secret; (ii) any gross negligence or willful misconduct of Provider; or (iii) any sale or license of Provider's goods or services to a third person from or relating to the Co-Branded Site or Provider Icon. Provider agrees that Owner shall have the right to participate in the defense of any such claim through counsel of its own choosing.

10. Term and Termination

a. *Term.* The term of this Agreement shall commence on the Effective Date and shall continue for one (1) year, unless sooner terminated. The term of this Agreement shall automatically renew thereafter for successive and consecutive six (6) month terms unless either party provides written notice of termination to the other party at least ninety (90) days prior to the expiration of such term of its desire not to renew.

b. *Termination.* This Agreement may be terminated by either party: (i) upon thirty (30) days written notice to the other party in the event of a material breach of this Agreement by the other party that remains uncured; (ii) in the event a party makes a general assignment for the benefit of creditors, files a voluntary petition in bankruptcy or for reorganization or arrangement under the bankruptcy laws, if a petition in bankruptcy is filed against such party, or if a receiver or trustee is appointed for all or any part of the property or assets of such party; or (iii) by a written agreement executed by the parties.

11. General

a. *Independent Contractors.* The parties and their respective personnel, are and shall be independent contractors and neither party by virtue of this Agreement shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other party.

b. *Assignment.* Neither party may assign its rights, duties or obligations under this Agreement to any person or entity, in whole or in part without the prior written consent of the other party, such consent not to be unreasonably withheld.

c. *Waiver.* No waiver of any provision hereof or of any right or remedy hereunder shall be effective unless in writing and signed by the party against whom such waiver is sought to be enforced. No delay in exercising, no course of dealing with respect to, or no partial exercise of any right or remedy hereunder shall constitute a waiver of any other right or remedy, or future exercise thereof.

d. *Severability.* If any provision of this Agreement is determined to be invalid under any applicable statute or rule of law, it is to that extent to be deemed omitted, and the balance of the