AGREEMENT TO CREATE A CO-BRANDED SITE

This Agreement to Create a Co-branded Site (the "Agreement") is made and effective the [DATE]

**BETWEEN: [YOUR COMPANY NAME]** (the "Online Business"), a company organised and existing under the laws of the [STATE/PROVINCE] of [COUNTRY], with its head office located at:

[YOUR COMPLETE ADDRESS]

**AND: [STRATEGIC PARTNER NAME]** (the "Strategic Partner "), a company organised and existing under the laws of the [STATE/PROVINCE] of [COUNTRY], with its head office located at:

[COMPLETE ADDRESS]

In consideration of the terms and covenants of this agreement, and other valuable consideration, the parties agree as follows:

**RECITALS**

1. The Online Business is in the business of offering products and services as described in Appendix “A” through its online site on the World Wide Web which is located at [INSERT ADDRESS] (the "Business Services").
2. The Strategic Partner is in the business of offering products and services to the general public and does not currently have a presence on the World Wide Web that enables customers to purchase its products and services online.

1. The parties wish to enter into a mutually beneficial business relationship whereby the Strategic Partner’s customers can have access to the online Business Services provided by the Online Business through the creation of a co-branded Internet Site (the “Co-Branded Site”) to be located on the server currently utilised by the Online Business in connection with its current Website.
2. The parties would like a unique Internet domain name to be registered for the location of the Co-Branded Site.

NOW, THEREFORE, for good and valuable consideration, including the mutual promises and agreement set forth herein, the parties hereby agree as follows:

1. **CREATION OF CO-BRANDED SITE**
   1. Online Business will be responsible for the development of a version of the Online Business’ current Website which is co-branded and contains a reference to both the Online Business and the Strategic Partner. The Co-Branded Site will prominently display the identification of affiliation with the Strategic Partner including the prominent display of the logo and trademark of the Strategic Partner. The Co-Branded Site will be functionally equivalent to the Online Business’ current Website except it will contain the co-branding aspects and features identified in this Agreement.
   2. The Strategic Partner will fully cooperate with the Online Business in the creation of the Co-Branded Site and will promptly deliver to the Online Business graphical images and text files on Zip disc which will include the Strategic Partner’s logo in GIF or JPG format and any textual content essential for the creation of the co-branding aspects of the Co-Branded Site.
   3. The Online Business will aim to create the Co-Branded Site and have it fully functional online within [NUMBER] days following the effective date hereof.
   4. The parties agree that they will register the domain name [INSERT ADDRESS] for use in connection with the Co-Branded Site. Online Business will be responsible for registering such a domain name. The parties acknowledge that they have both checked for availability of such domain name as of the effective date hereof and that such domain name is available.
2. **PROMOTION OF CO-BRANDED SITE**
   1. The parties will issue a joint press release announcing the affiliation created by this Agreement and the launching of the Co-Branded Site. The form and services or agencies used to release the press release will be mutually agreed upon by the parties. The cost of the press release will be equally shared by the parties.
   2. The Strategic Partner represents, warrants, and agrees that it is mutually beneficial for the Strategic Partner to use all efforts necessary to market and channel business through the Co-Branded Site. To that end, the Strategic Partner will use all reasonable commercial efforts to maximise the total number of Internet users who gain access to the Co-Branded Site. The Strategic Partner will assure that the Co-Branded site is listed in all available search engines and appears in the appropriate categories and will make all reasonable efforts to maximise search engine result placement. The Strategic Partner will establish linking arrangements and banner advertising arrangements to promote the Co-Branded Site. The Strategic Partner will place prominent links to the Co-Branded Site in any other internet sites that the Strategic Partner creates promoting its business and services.
   3. The Strategic Partner agrees to promote the Co-Branded Site in connection with its offline promotions and part of its normal advertising activities. The Strategic Partner will promote the Co-Branded Site in all of its printed promotional materials, and television advertising it may place, at trade shows and conventions, and through print and broadcast new media. The Strategic Partner further agrees to promote the Co-Branded Site through its existing customer base through an Email newsletter and through direct mail promotions.
   4. The Strategic Partner agrees to develop and maintain an Internet site promoting its general services and to promote the Co-Branded Site on that site.

1. **TECHNICAL SUPPORT AND CONSULTATION BY ONLINE BUSINESS**
   1. The Online Business will serve as Internet contact for users of the Co-Branded Site and will provide technical assistance to users who direct Email technical questions relative to the Co-Branded Site. The Online Business will use reasonable efforts to promptly respond to all such *bona fide* and reasonable user questions regarding the Co-Branded Site. Technical support need only be provided during Online Businesses normal “offline” business hours.
   2. The Online Business representatives will be reasonably available via email to provide consultation to the Strategic Partner relative to the Co-Branded Site.
2. **PROPRIETARY RIGHTS**
   1. The Online Business will retain all right, title and interest in and to all of its trademarks, service marks, copyrights, patents, trade secrets and confidential information. The Strategic Partner will not gain any rights to such except as specifically provided in this Agreement and subject to all of the terms and conditions contained in this Agreement.
   2. The Strategic Partner will have a non-exclusive, worldwide licence to use only such trademarks as are provided by the Online Business for use in connection with the promotion of the Co-Branding Site. Such licence will only be for the period of this Agreement. Such materials will only be used by the Strategic Partner in connection with the promotion of the Co-Branded Site and will only be used in the form that is delivered to the Strategic Partner by the Online Business. Any promotion material that uses the Online Business’ trademarks must first be approved by the Online Business.
   3. The Strategic Partner will retain all right, title and interest in and to all of its trademarks, service marks, copyrights, patents, trade secrets and confidential information. The Online Business will not gain any rights in and to the same by virtue of this Agreement or otherwise except as specifically provided in this Agreement and subject to all of the terms and conditions contained in this Agreement.
   4. The Online Business will have a non-exclusive, worldwide licence to use only such trademarks as are provided by the Strategic Partner for use in connection with the promotion of the Co-Branding Site. Such licence will only be for the period of this Agreement. Such materials will only be used by the Online Business in connection with the promotion of the Co-Branded Site and will only be used in the form that is delivered to the Online Business by the Strategic Partner. All advertising and promotional materials that integrate the trademarks of the Strategic Partner will first be presented to the Strategic Partner for review and approval in its discretion.
   5. The Online Business will own all Proprietary Rights in and to the Co-Branded Site except for the right to use the trademarks of the Strategic Partner. Proprietary Rights will mean and include the right in and to the internet domain name selected for use by the parties in connection with the Co-Branded Site, all patents, copyrights, service marks, trademarks, trade dress, trade secrets and other intangible rights used or developed in connection with the Co-Branded Site.
3. **RESTRICTIVE COVENANT**
   1. The Strategic Partner agrees that during the term of this Agreement and for a period of [NUMBER] months thereafter, the Strategic Partner will not enter into any Co-Branding or other similar relationship with any other party that competes, directly or indirectly, with the products or services of the Online Business the business conducted by or through the Co-Branded Site.
   2. The parties acknowledge and agree that any and all information provided to the other by the other party which is deemed to be Confidential Information (as defined below) by the disclosing party will be held in the strictest of confidence by the receiving party and such receiving party will not disclose or use any such Confidential Information for its own purposes or for the purposes of any other party, except as specifically permitted pursuant to the terms of this Agreement.
   3. As defined herein, Confidential Information will include, but will not be limited to this Agreement and any terms contained herein, any other information identified in writing or orally as being confidential and proprietary, any and all business plans, customer lists, software, data, usage statistics, marketing plans, business structure, financial plans or other financial information, earnings, or any other information deemed by the delivering party to be confidential and proprietary.
   4. Each party will help to ensure that no Confidential Information of the other party is disclosed and or released.
   5. Despite the above, neither party will have any obligation with respect to information which
      1. was rightfully in possession of or known to the receiving party without any obligation of confidentiality before receiving it from the disclosing party;
      2. is, or subsequently becomes, legally and publicly available without breach of this Agreement;
      3. is rightfully obtained by the receiving party from a source other than the disclosing party without any obligation of confidentiality;
      4. is disclosed by the receiving party under a valid order created by a court or government agency, provided that the receiving party provides prior written notice to the disclosing party of such obligation and the opportunity to oppose such disclosure. Upon written demand of the disclosing party, the receiving party will return the Confidential Information and all copies, notes or extracts thereof to the disclosing party within [NUMBER] days of receipt of the notice.
   6. Each party acknowledges and agrees that a breach by the other party of any of the restrictive covenants contained herein will cause the non-breaching party irreparable damage, and that party will be entitled to temporary and permanent injunctions and other equitable remedies in the event of any breach hereof.
4. **MUTUAL HOLD HARMLESS**

Each of the parties hereby indemnifies, protects and holds harmless the other party from and against any and all claims, suits, threats, demands. Actions, causes of action, liabilities, damages and all costs, expenses and attorney fees related to

6.1 any representation and warranty made by the other party pursuant to this Agreement,

6.2 any claim arising out of the proprietary rights of any third party related to items that are the responsibility of the indemnifying party pursuant to the terms of this Agreement,

6.3 any claim arising from the use of the trademarks and logos of the indemnifying party,

6.4 arising out of the responsibilities of or involvement of the other party with respect to the Co-Branded Site.

1. **COMPENSATION**
   1. The Strategic Partner will be paid an amount equal to [AMOUNT] for its services in creating the Co-Branded Site. Such amount shall be paid as follows:

An amount equal to [AMOUNT] on or before the Effective Date of this Agreement

An amount equal to [AMOUNT] on or before [DATE].

An amount equal to [AMOUNT] on or before the date that the Co-Branded Site is launched.

* 1. The Online Business will pay to the Strategic Partner, on a quarterly basis, an amount calculated based upon a percentage of the total advertising revenues received by the Online Business for advertising on the Online Business’ Website. The percentage of advertising revenues will be based upon a fraction, the numerator of which shall be the total number of Impressions on the Online Business’ Web relative to internet users who arrive at the Online Business’ Web through the Co-Branded Site or the Strategic Partner’s Website. The resulting percentage for the relevant calendar quarter will be multiplied by the total advertising revenues received by the Online Business for advertising on the Online Business’ Website during the applicable calendar quarter to arrive at the amount of the quarterly payment to be made to the Strategic Partner.
  2. The Strategic Partner will pay to the Online Business, on a quarterly basis, an amount calculated in the same way as above except information is from the Strategic Partner’s website as opposed to the Online Business’ Website.
  3. Total advertising revenues for each of the above calculations will be reduced by commissions payable on such advertising revenues.
  4. Each party will be obligated to pay all taxes relative to the advertising revenues that it receives for advertising on its Website.
  5. Each party will be responsible for tracking Impressions on its site that result from users accessing their respective Websites from the Co-Branded Site and the Website of the other party. Each party will be responsible for keeping accurate records regarding the total advertising revenues that they receive from their respective sites and any deductions for commissions to be paid with respect to such advertising revenues. Each of the parties will provide the other party with a detailed report regarding the calculations of the amounts payable by the other for the preceding calendar quarter, within [NUMBER[ days after the end of each calendar quarter. Such a report will be delivered to the other party together with an invoice for the amount due to such party as a result of such calculation. The amounts shown as due on such invoice will be due and payable within [NUMBER] days after receipt of such invoice.
  6. In the event that there is any dispute with regard to the calculation of the amount due by or to either of the parties, the disputing party will notify the other in writing within [NUMBER] days after receipt of the invoice and report and the calculations will be resolved by an independent accountant that is agreed to by the parties and who has not represented either of the parties. If the parties are not able to agree on the identity of the independent accountant to perform such review, the parties will each select an accountant of their own who will select the independent accountant to perform such review. The recommendations of the reviewing accountant shall be final and binding on the parties.

1. **REPRESENTATIONS AND WARRANTIES OF THE PARTIES**

Each of the parties makes the following representations and warranties to the other party hereto:

* 1. The representing party has the full power and unrestricted authority to enter into this Agreement. Entering this Agreement and performing the obligations hereunder does not conflict with and is not prohibited under the terms of any other agreement, document, law, rule, regulation or court order to which the representing party is subject.
  2. Each of the parties has the full power and unrestricted authority to grant the licences that are granted herein. The granting of such licences does not interfere with the rights of any third party. Each party has the full rights in and to all of its Proprietary Rights, and such Proprietary Rights do not infringe upon the rights of any other party.
  3. THE SERVICES OF THE ONLINE BUSINESS IN CREATING THE CO-BRANDED SITE AND IN PERFORMING ANY AND ALL OTHER SERVICES HEREUNDER ARE ON AN “AS IS” BASIS, AND THE ONLINE BUSINESS HEREBY DISCLAIMS ANY AND ALL WARRANTIES WITH RESPECT TO SUCH ITEMS, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE ONLINE BUSINESS DOES NOT REPRESENT OR WARRANT THAT ANY COMPONENT OF THE CO-BRANDED SITE AND OTHER DELIVERABLES WILL BE FREE FROM ERROR OR WILL MEET ANY PARTICULAR NEEDS OR DESIRES OF USERS WHO ACCESS THE CO-BRANDING SITE. FURTHERMORE, THE ONLINE BUSINESS SHALL NOT BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY KIND.

1. **TERM AND TERMINATION**
   1. The initial term will be for a period of [NUMBER] years. Thereafter, this Agreement shall will automatically renew for successive periods of [NUMBER] year each unless it is sooner terminated pursuant to the terms hereof or unless either party gives written notice that it does not wish to renew the term of this Agreement at least [NUMBER] days and no more than [NUMBER] days prior to the expiration of the then existing term or renewal term.
   2. Despite the above, either party may terminate this Agreement, with or without cause, upon delivering [NUMBER] days advanced written notice of its intention to terminate this Agreement. Thereafter, this Agreement will terminate [NUMBER] days from the date of such written notice.
   3. Either party may immediately terminate this Agreement upon written notice to the other party upon the occurrence of any of the following events:
      1. the other party files a petition for bankruptcy, voluntary or involuntary,
      2. the other party has a receiver appointed or makes an assignment for the benefit of its creditors,
      3. either party dissolves or ceases to actively engage in business,
      4. either party defaults under or substantially breaches any obligation hereunder and the same is not substantially cured within [NUMBER] days after written notice from the other party.
   4. Upon the termination of this Agreement as provided above, the parties will be released from further obligations hereunder except for accounting and payment of any fees or compensation accrued as of the date of termination of this Agreement, the provisions relative to confidentiality, any restrictive covenant contained herein, and any damage or liability resulting from the breach of any representation and warranty made herein. Within [NUMBER] days from the termination date, each party will deliver to the other any and all items designated as Confidential Information of the other party and all materials containing any Proprietary Information of the other. The Co-Branded Site shall be taken off-line effective on the date of termination hereof.
2. **ENTIRE AGREEMENT**

This Agreement contains the entire understanding and agreement between the parties with respect to the subject matter hereof. Any previous written or oral statements, representations, communications or agreements of every nature will be merged into the terms of this Agreement. This Agreement may be modified or amended only in a written amendment, duly executed by authorised representatives of both parties.

1. **GOVERNING LAW**

This Agreement will be interpreted under the laws of the [STATE/PROVINCE] of [COUNTRY]. Any legal actions relative hereto shall be in the courts of [STATE/PROVINCE].

1. **MISCELLANEOUS CLAUSES**
   1. Neither party will be liable for delays or failures in performance resulting from causes beyond the reasonable control of that party, including, but not limited to, labour disputes or disturbances, material shortages or rationing, riots, acts of war, or power outages.
   2. The parties agree that their relationship does not extend beyond that of independent contractors. Each party will be responsible for their own income taxes and any withholding thereof. Neither party will have the authority, express or implied, to act on behalf of the other or to bind the other to any contract, obligation, debt, responsibility or obligation of any nature or kind.
   3. Neither party may assign the benefits or obligations under this Agreement, and any attempt to do so will be void and of no legal effect. Each of the parties recognises and agrees that the other party is relying upon the identity of the other party and the owner and principals of the other party in entering into this Agreement. Neither party will be permitted to subcontract any obligations contained herein to another party without the advanced written notice from the other party. The parties specifically agree that there will be no third-party beneficiaries to this Agreement.
   4. In any legal action between the parties relating to the subject matter hereof, the prevailing party will be entitled to an award of all costs and reasonable attorney fees related to such action.
   5. All notice, except for notices of termination, will be transmitted via Email to the relevant party at the Email address indicated below or at such other Email address provided by the other party in writing. Notices of termination will be in writing and will be personally delivered or sent by a reputable overnight mail service (e.g., FedEx), or by first class mail (certified or registered), or by facsimile confirmed by first class mail (registered or certified), to the party at the address indicated above. Notices will be deemed effective
      1. upon transmission, provided such transmission is not returned as undeliverable, when such notice may be given via Email,
      2. [NUMBER] working days after deposit, postage prepaid, if mailed,
      3. the next day if sent by overnight mail, or
      4. the same day if sent by facsimile and confirmed as set forth above.
   6. Any waiver, amendment or other modification of any provision of this Agreement will be effective only if in writing and signed by the parties.
   7. If for any reason a court of competent jurisdiction finds any provision of this Agreement to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to affect the intent of the parties, and the remainder of this Agreement will continue in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

ONLINE BUSINESS STRATEGIC PARTNER

Authorised Signature Authorised Signature

Print Name and Title Print Name and Title