

Form: E-Commerce Agreement

Description: This is a sample agreement whereby various products of a strategic partner are to be marketed on an unaffiliated company's Web site. The form tends to be pro-company oriented.

E-COMMERCE AGREEMENT

This E-Commerce Agreement (the "Agreement") is entered into between _____, a _____ corporation (the "Company") and _____, a _____ corporation (the "Strategic Partner").

RECITALS

4. The Company has a Web site that is focused on:

_____ (the "Site").

5. Strategic Partner is interested in working with the Company in marketing and e-commerce arrangements.

5. Certain initially capitalized terms are defined in Exhibit 1.

Therefore, the parties agree as follows:

1. Promotion of Strategic Partner's Products.

(a) Strategic Partner grants to the Company a non-exclusive right to promote Strategic Partner's Products during the term of this Agreement.

(b) The Company shall promote the Products in the manner determined appropriate by the Company, which may include links to Strategic Partner's web sites, framing over various pages of Strategic Partner's web sites, or through mutual development of co-branded web pages. All sales of Products will be effected through Strategic Partner's billing, server and computer systems, unless otherwise provided for in Exhibit 1. At some future point, billing may be done through the Company in an arrangement to be mutually agreed upon by the Company and the Strategic Partner.

(c) Strategic Partner agrees to provide all customer service and support for the Products with reasonable responsiveness and turn-around times.

(d) Strategic Partner will reasonably cooperate with the Company to effect the items contemplated above.

2. Term.

The initial term of this Agreement shall be one (1) year from the date hereof. Thereafter this Agreement will renew automatically for additional terms of one (1)

year unless either party shall give written notice at least 30 days prior to any such renewal that the Agreement shall not so renew.

3. Compensation.

(a) Strategic Partner will pay the Company a commission on Products sold to Company Customers, in the amount set forth in Exhibit 2.

(b) Payments for the commission owed for all Products sold to Company Customers shall be made within 30 days after the close of the month in which purchases are made. If the payment due hereunder is less than \$100, the payment shall be held until aggregate amounts owed exceed \$100 and then the full payment shall be made to the Company.

(c) Any late payments of commissions shall accrue interest at the rate of 1% per month, or the maximum permitted by law, whichever is less.

(d) Strategic Partner shall provide to the Company a written commission report within 30 days after the close of each month setting forth (1) the names, addresses, phone numbers and email addresses (when provided) of Company Customers; (2) the Products purchased by Company Customers with sales prices, (3) the commission owed to the Company, and (4) such additional information as may be reasonably requested by Company.

5. Strategic Partner Content.

(a) Strategic Partner shall provide to the Company articles, advice, tips, or FAQ's useful for the Company in connection with promoting the Products (the "Strategic Partner Content") and as set forth in Exhibit 2. The Strategic Partner Content shall be provided in formats and electronic files as reasonably requested by the Company.

(b) Strategic Partner shall assist the Company in connection with any revisions to the Strategic Partner Content for posting on the Site.

(c) Strategic Partner represents that it has all the rights to the Strategic Partner Content, that it does not infringe or violate any third party's rights, that it is accurate, complete and up-to-date, and that it does not violate any law or regulation.

- (d) Strategic Partner grants to the Company during the term of this Agreement a worldwide, non-exclusive, royalty free license to produce, publicly publish and distribute, in both print and electronic form, the Strategic Partner Content. Company may also create derivative works or modifications to the Strategic Partner Content for editorial or stylistic reasons. Strategic Partner grants the Company the right to permit viewers or customers to copy, print and use the Strategic Partner Content for their personal or internal purposes.

5. Intellectual Property Rights.

Neither party will acquire any ownership interest in each other's intellectual property. All names and other information concerning a Company Customer shall be deemed jointly owned by the Company and Strategic Partner with each side free to use such names and information as they see fit in compliance with applicable law. With the approval of the Strategic Partner (which approval shall not be unreasonably withheld or delayed), Company shall have the right to place the Strategic Partner's logo, tradename and trademark on the Site as a means to identify the Strategic Partner and to otherwise use such items in connection with the purposes of this Agreement. The Company shall follow all reasonable directions from the Strategic Partner concerning the protection under applicable laws of such logo, tradename and trademark.

6. Confidential Information.

- (a) Each party acknowledges and agrees that any Confidential Information received from the other party will be the sole and exclusive property of the other party and may not be used or disclosed except as necessary to perform the obligations required under this Agreement.
- (b) Upon termination of this Agreement, each party shall promptly return all information, documents, manuals and other materials belonging to the other party except as otherwise provided in this Agreement.

7. Promotional Materials/Press Releases.

Each party shall submit to the other for approval (which approval shall not be unreasonably withheld or delayed), marketing, advertising, press releases, and other promotional materials related to this Agreement, provided, however, that each party shall be permitted to disclose the existence of this Agreement and the nature of the relationship without the consent of the other.

8. Limitation of Liability.

- (a) UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES (EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), ARISING FROM THE PRODUCTS OR ANY OTHER PROVISION OF THIS AGREEMENT, SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUE OR ANTICIPATED PROFITS OR LOST BUSINESS, COSTS OF DELAY, OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE.
- (b) The Strategic Partner shall bear (i) all collection risk (including, without limitation, credit card fraud and any other type of credit fraud) with respect to sales of the Products and (ii) all responsibility and liability for the proper payment of all taxes which may be levied or assessed (including, without limitation, sales taxes) which may be levied in respect of sales of the Products.
- (c) Company has no obligation to attempt to monitor or regulate the quality, suitability or content of the Products and Strategic Partner agrees to hold the Company harmless in the event of any claims by customers with respect to problems with the Products. The Strategic Partner hereby represents and warrants to the Company that the Products will not infringe on or violate the Intellectual Property Rights or other rights of any third party and will not contain any content which violates any applicable law, regulation or third party right.

9. Relationship of Parties.

The parties shall perform all of their duties under this Agreement as independent contractors. Nothing in this Agreement shall be construed to give either party the power to direct or control the daily activities of the other party, or to constitute the parties as principal and agent, employer and employee, franchisor and franchisee, partners, joint venturers, co-owners, or otherwise as participants in a joint undertaking.

10. Miscellaneous.

- (a) This agreement constitutes and contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior or contemporaneous oral or written agreements. Each party acknowledges and agrees that the other has not

made any representations, warranties or agreements of any kind, except as expressly set forth herein.

- (b) This Agreement may not be modified or amended, except by an instrument in writing signed by duly authorized officers of both of the parties hereto.
- (c) This Agreement may be executed in counterparts each of which shall be deemed an original and all such counterparts shall constitute one and the same agreement.
- (d) This Agreement will be deemed entered into in California and will be governed by and interpreted in accordance with the laws of the State of California, excluding that body of law known as conflicts of law. The parties agree that any dispute arising under this Agreement will be resolved solely in the state or federal courts in San Francisco, California, and the parties hereby expressly consent to jurisdiction therein. In the event of any dispute, the prevailing party shall be entitled to recover its reasonable attorneys' costs from the non-prevailing party.
- (e) The provisions of this Agreement relating to payment of any fees or other amounts owed, payment of any interest on unpaid fees, confidentiality and warranties and intellectual property shall survive any termination or expiration of this Agreement.
- (f) The language in this Agreement shall be construed as to its fair meaning and not strictly for or against either party.

11. Additional Terms.

Exhibit 1 contains certain additional terms.

IN WITNESS WHEREOF, the parties have executed this Agreement as of ____ of _____, _____.

[COMPANY]

 Phone: () _____
 Fax: () _____
 By: _____
 Title: _____

STRATEGIC PARTNER

 Phone: () _____
 Fax: () _____
 By: _____
 Title: _____

EXHIBIT 1

Certain Definitions.

The following definitions shall apply to this Agreement.

“Site” is defined in Recital A of the Agreement.

“Company Customers” means persons who purchase any Products from Strategic Partner and who are referred to Strategic Partner or its Web site(s) by the Company, or customers who originated from the Site and were transported to Strategic Partner’s Web site through a hyperlink from the Site.

“Confidential Information” means any data or information, oral or written, treated as confidential that relates to either party’s (or, if either party is bound to protect the confidentiality of any third party’s information, such third party’s) past, present, or future research, development or business activities, including any unannounced product(s) and service(s), any information relating to services, developments inventions, processes, plans, financial information, forecasts, and projections and the financial terms of this Agreement. Notwithstanding the foregoing, Confidential Information shall not be deemed to include information if: (i) it was already known to the receiving party prior to the date of this Agreement as established by documentary evidence; (ii) it is in or has entered the public domain through no breach of this Agreement or other wrongful act of the receiving party; (iii) it has been rightfully received by the receiving party from a third party and without breach of any obligation of confidentiality of such third party to the owner of the Confidential Information; or (iv) it is required to be disclosed pursuant to final binding order of a governmental agency or court of competent jurisdiction, provided that the owner of the Confidential Information has been given reasonable notice of the pendency of such an order.

“Products” means those products and/or services of the Strategic Partners which are promoted or sold as a result of the Company’s efforts. The initial products and/or services contemplated hereunder are set forth in Exhibit 2.

“Strategic Partner Content” is defined in Section 4(a) of the Agreement.

EXHIBIT 2

1. Products or Services of Strategic Partner:

2. Strategic Partner Content to be Provided:

In addition to the items set forth in Section 2(a) of the Agreement, the Strategic Partner Content shall include

3. Commission:

(a) ___% of the gross sales price of the Products sold, excluding taxes and any shipping charges, increasing to ___% once at least \$_____ of Products have been sold as a result of the relationship between the Company and Strategic Partner.

(b) The parties will discuss sharing of ad revenues generated from customer traffic on Strategic Partner's web sites as a result of the promotional efforts of the Company.

4. Any Additional Terms:
