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**<Note: All items in [brackets] are to be replaced with applicable entries. The acronyms assigned to each party, which are not in brackets, should also be changed.>**

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### ***JOINT MARKETING AGREEMENT***

**This Joint Marketing Agreement** ("Agreement") is by and between [company A], a [state/province] corporation ("[Acronym representing Company A throughout the remainder of the document]") and the undersigned company or entity ("Company B") which shall be referred to as "[Acronym representing Company B]".

#### ***BACKGROUND***

1. Company A is... [description of Company A, what it does, sells or facilitates. A Concise, yet accurate overview of services/products offered.]
2. Company A markets its... [description/overview of Company A's marketing strategies and methods.]
3. Company B... [description and marketing overview]
4. Company A and Company B desire to work together to jointly market and promote their respective products and services in such a manner that users of Company A [products/services] are able to participate in various promotions offered by Company B relating to Company B's [products/services], all on the terms and conditions set forth below.

**Now, therefore**, in consideration of the foregoing and the following rights and obligations, Company A and Company B agree as follows:

#### **1. Definitions**

1.1 "Products" means all Company A's [enter year, ie. "2005"] [products/services] without regard to the method of delivery.

1.2 "Company Promotions" means the specific promotions set forth in Schedule A to this Agreement, which is incorporated herein.

1.3 "Company Web Sites" means web sites found at specific URLs designated by Company B.

1.4 "Marks" means each party's names, trademarks, service marks, trade names and logos.

1.5 "Content" means all information contributed by Company B and included or embodied in the Company A [media properties], including but not limited to text, images, graphics, audio, objects, video and animation, and all files and electronic and other forms thereof, and all other media.

1.6 "Effective Date" is the date specified at the end of this Agreement as being the Effective date.

1.7 [Add any necessary definitions if/as required]

## **2. Licenses, Intellectual Property Ownership**

2.1 Company A owns and shall retain all right, title and interest in and to its [products/services], including but not limited to, ownership of all copyrights and patents, if any, contained or embodied therein.

2.2 Company B shall own all right, title and interest in and to any Content provided by Company B to Company A for incorporation on Company A [media properties].

2.3 Each party shall retain ownership of all of its Marks and other intellectual property rights.

2.4 Subject to the terms and conditions of this Agreement, each party grants to the other a limited, non-exclusive and non-transferable right and license to use, reproduce and display each other's Marks in connection with the performance of this Agreement. A party's use of the other's Marks shall be in accordance with the specifications provided for such use by the party whose Marks are being used. In the event such specifications are not provided, neither party shall use any of the other party's Marks for any purpose without first obtaining written permission.

2.5 To the extent that Company B contributes Content used in the Company A [media properties], Company B hereby warrants and represents that it either (a) owns sufficient proprietary interest in all such Content to permit its inclusion in the Company A [media properties]; or (b) will obtain sufficient proprietary interest in such all such Content to permit its inclusion in the Company A [media properties].

2.6 To the extent that Content incorporated or used in the Company A [media properties] is deemed a use, display or reproduction of copyrighted or proprietary material owned or licensed by Company B, Company B hereby grants to Company A and users of its [products/services] a royalty-free, worldwide right and license to use, display, copy, download, print and reproduce such material during the term of this agreement, and solely for the purposes described herein.

## **3. Promotion and Publicity**

3.1 Either party may publicize information about and/or issue press releases related to this Agreement and/or the partnership within 45 days after the Effective Date. If either party elects to issue such a press release, that party will prepare any such press release and will first submit the press release to the other party for its consent, which consent shall not be unreasonably withheld or delayed. Any other or subsequent press release or publicity related to this Agreement or the Company A [media properties] must be approved in writing by both parties prior to release.

3.2 Company A shall be entitled to provide to its customers and users information about the Company B Promotions. For this purpose, Company A shall be entitled to use Company B's marks in... [describe cross-promotional avenues].

3.3 Company B shall maintain tracking data on the number of Company A users that participate in Company B Promotions. Company B shall provide such data to Company A on a [monthly, quarterly, etc.] basis in a report setting forth such information. Company B shall pay Company A a bounty as set forth in Schedule B for every user that purchases additional Company B [products/services] through the Company A [media properties and/or product/service cross-promotional avenues].

3.4 Company A shall promote Company B on Company A's [media properties]. Company B will pay Company A a bounty for every user who signs up for services as per the definitions in Schedule A.

#### **4. Representations and Warranties; Indemnification**

4.1 Each party represents and warrants to the other that it has the right to enter into this Agreement and perform its obligations hereunder in the manner contemplated in this Agreement; that this Agreement shall not conflict with any other agreement entered into by it; and that it owns all of the rights in and to those of its Marks used in the Company A [media properties]. The foregoing representations and warranties shall also be deemed covenants of a party that such representations and warranties will remain true and correct throughout the term of this Agreement.

4.2 Each party (the "Indemnifying Party") shall indemnify and hold harmless the other party (the "Indemnified Party") and the other party's officers, directors, employees and agents from and against all liabilities, costs and expenses (including reasonable attorneys' fees) incurred by the Indemnified Party that arise out of any claim, demand, suit, action, or proceeding brought by a third party that involves, relates to or concerns a violation or other breach by the Indemnifying Party of any of the provisions of this Agreement (including, without limitation, any of the representations or warranties of the Indemnifying Party set forth in this Agreement) or the negligence or willful misconduct of the Indemnifying Party. Provided, however, that the Indemnified Party, upon receipt of a notice of a claim that could result in the Indemnifying Party indemnifying the Indemnified Party, gives prompt notice to the Indemnifying Party of the existence and specifics of such claim, and permits the Indemnified Party, if it so requests, either to conduct the defense or to participate with the Indemnifying Party in the defense thereof and any settlement negotiations relating thereto.

4.3 EXCEPT AS SPECIFIED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTY IN CONNECTION WITH THE SUBJECT MATTER OF THIS AGREEMENT AND EACH PARTY HEREBY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT.

#### **5. Term and Termination**

5.1 Unless otherwise terminated as provided in this Section 6, the term of this Agreement shall begin on the Effective Date and shall continue for a period of 12 months. This Agreement may be extended only by additional written agreement of the parties.

5.2 Either party will have the right to terminate this Agreement immediately if (a) the other party becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors; or (b) the other party becomes the subject of an involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within sixty days of filing.

5.3 Either party shall have the right but not the obligation to terminate this Agreement upon the closing of a Change of Control of the other party by giving written notice to the other party of the intent to terminate. A "Change of Control" means (a) any sale or transfer of all or substantially all of the party's assets or (b) any acquisition of a controlling interest in the party's voting stock; or (c) any acquisition by another party of any the intellectual property of that is made part of this Agreement.

5.4 Company's failure to pay the fees due Company A pursuant to section 2.9 shall be a material breach of this Agreement and shall result in immediate termination hereof. Except

as provided in the foregoing sentence, if either party shall materially breach any provision contained in this Agreement, and such breach is not cured within 20 days after receiving notice of such breach from the other party, the party giving notice may then deliver a second notice to the breaching party, terminating this Agreement, in which event this Agreement, and the licenses granted hereunder shall terminate on the date specified in the second notice, except as provided herein.

5.5 Subsequent to the six-month period immediately following the Effective date, Company A or Company B may in its sole discretion and for any reason terminate this Agreement 30 days after providing notice of intent to terminate. Such termination notice shall provide the date of termination. In the event Company A or Company B shall terminate this Agreement, the licenses granted hereunder shall terminate on the date specified in the Notice, except as provided herein. In the event of termination for any reason, Company A shall have the right but not the obligation to disable on the termination date any and all [(cross)-promotional links or connections] to Company B.

5.6 Except as otherwise provided herein, upon the expiration or termination of this Agreement for any reason, each party shall discontinue all uses of the other's Marks in connection with this Agreement.

5.7 All relevant provisions of this Agreement involving actions that may be necessary to complete obligations by either party after termination shall survive such termination, including but not limited to relevant provisions of: Section 2, Section 4, Section 5, Section 6, Section 7, and Section 8, as well as corresponding relevant provisions if any in Schedule A.

## **6. Confidential Information, User Data, Privacy, Confidentiality**

6.1 The parties agree and acknowledge that in the performance of this Agreement each party may have access to private or confidential information of the other party, including but not limited to trade secrets, marketing and business plans and technical information, and financial data, which is designated by the disclosing party in writing, whether by the use of a proprietary stamp or legend or other means ("Confidential Information"). Such information disclosed orally shall also constitute Confidential Information if the individual disclosing it declares it to be confidential.

6.2 Each party agrees that: (a) all Confidential Information shall remain the exclusive property of the owner; (b) it shall maintain, and shall use prudent methods to cause its employees and agents to maintain, the confidentiality and secrecy of the Confidential Information; and (c) it shall not copy, publish, disclose to others or use (other than as provided pursuant to the performance of this Agreement) the Confidential Information.

6.3 Notwithstanding the foregoing, Confidential Information shall not include any information to the extent it (a) is or becomes a part of the public domain through no act or omission on the part of the receiving party; (b) is disclosed to third parties by the disclosing party without restriction on such third parties; (c) is in the receiving party's possession at or prior to the time of disclosure under this Agreement; (d) is disclosed to the receiving party by a third party having no obligation of confidentiality with respect thereto; (e) is independently developed by the receiving party without reference to the disclosing party's Confidential Information or (f) is released from confidential treatment by the written consent of the disclosing party.

6.4 Except as provided herein, the parties agree that they shall not collect any data, whether personal or otherwise, from users [linking to Company B from Company A's media properties], without the prior written permission of the other party. Any such data that one party approves of collection shall nonetheless not be sold or leased to any third party for any purpose.

The foregoing restrictions shall not apply to any collection of data or information after a user has indicated a desire to purchase or license a product or service through the Company Web Sites.

6.5 Company B shall implement and display on the all Company B Web Sites [if applicable] that are directly linked from Company A an online privacy policy that explains the party's use of data collected from users visiting the Company B Web Sites.

6.6 Neither party shall disclose the specific terms and conditions of this Agreement to any third party; provided, however, either party may disclose such terms and conditions to any bona fide prospective or existing lender, investor, or acquirer provided such lender, investor or acquirer has executed a non-disclosure agreement containing customary disclosure restrictions, including restricting use of the information solely for the purpose of evaluating such loan, investment or purchase. Notwithstanding the foregoing, the parties may disclose the general nature of this Agreement to any third party, subject to the limitations concerning press releases as set forth in Section 4.

## **7. Liability**

7.1 IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, WHETHER OR NOT THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

## **8. Miscellaneous Provisions**

8.1 All notices, requests and other communications hereunder shall be made in writing and delivered by personal delivery, express courier, confirmed facsimile, confirmed email or certified or registered mail, return receipt requested, and will be deemed given upon personal delivery, one (1) day after deposit with express courier, upon confirmation of receipt of facsimile or email or five (5) days after deposit in the mail. Notices will be sent to a party at its address set forth below or such other address as that party may specify in writing pursuant to this Section.

8.2 This Agreement may not be amended except in writing executed by authorized representatives of the parties

8.3 Except in connection with a Change in Control as defined in Section 6.3, neither party may assign this Agreement, in whole or in part, without the other party's written consent, which will not be unreasonably withheld. Any attempt to assign this Agreement other than as permitted above will be null and void. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

8.4 This Agreement contains the entire and final agreement of the parties on the subject matter herein and supercedes all previous and contemporaneous verbal or written negotiations or agreements on the subject matter herein.

8.5 The failure of either party at any time to require performance by the other party of any provision hereof shall not affect the full right to require such performance at any time thereafter, nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself.

8.6 If any provision of this Agreement or its application under a particular circumstance is held to be invalid or unenforceable to any extent, the remainder of the Agreement shall not be affected thereby, and each such provision shall be enforced to the fullest extent permitted by the law.

8.7 This Agreement shall be governed by, and shall be construed in accordance with, the laws of the [state/province, Country], applicable to contracts wholly made and performed in [state/province], and without regard to its conflicts of laws provisions.

8.8 In the event of disputes between the parties arising from or concerning in any manner the subject matter of this Agreement or the relationship between the parties created by this Agreement, the parties will first attempt to resolve the dispute through good faith negotiation. In the event that the dispute cannot be resolved through good faith negotiation, the parties will refer the dispute to a mutually acceptable mediator in the [state/province]. In addition to other qualifications, the mediator selected by the parties shall have specific expertise in Internet and electronic commerce and contracts relating thereto [or whatever the nature of this partnership involves]. In the event that disputes between the parties arising from or concerning in any manner the subject matter of this Agreement cannot be resolved through good faith negotiation and mediation, the parties will refer the dispute to the [applicable legal association entity, eg. American Arbitration Association] for resolution through binding arbitration by a single arbitrator pursuant to the [applicable legal association entity, eg. American Arbitration Association]'s rules applicable to commercial disputes. The arbitration will take place in the [state/province] and the arbitrator shall have specific expertise in Internet and electronic commerce and contracts relating thereto [or whatever the nature of this partnership involves].

8.9 The parties are independent contractors and will have no power or authority to assume or create any obligation or responsibility on behalf of each other. This Agreement will not be construed to create or imply any partnership, agency or joint venture.

8.10 This Agreement is intended for the sole and exclusive benefit of the signatories and is not intended to benefit any third party. Only the parties to this Agreement may enforce it.

8.11 This Agreement may be executed in counterparts, each of shall constitute an original, and all of which shall constitute one agreement.

8.12 The headings in this Agreement are for convenience of reference only and have no legal effect.

In Witness Whereof, the undersigned authorized representatives have executed this Agreement as of <enter agreed effective date> (the "Effective Date"):

**Company A**

**Company B**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Address for notices:

Company A

Company B

<address>

<address>

Phone: <phone>

Phone: <phone>

Fax: <fax>

Fax: <fax>

Email: <enter email address>

Email: <enter email address>

## Schedule A

1. Company B Promotions. The following is a detailed description of each promotional item and/or marketing feature that will be a part of this Agreement:

[enter detailed written description of each promotion; include logos and the like that are to be used, terms of the promotion, and all other pertinent information]

## Schedule B

1. Bounty for every Company A customer or client that purchases Company B [products/services] because of Company A promotion. The following is a detailed description of the payment that will be made by Company B to Company B

[enter detailed description of bounty]

<end of joint-marketing agreement template>

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