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## **MARKETING AGREEMENT**

*State of Alabama*

### **BACKGROUND:**

A. This Marketing Agreement (the "Agreement") is entered into and binding upon all relevant Parties as of \_\_\_\_\_.

B. The Parties to this Agreement are the following:

Client -- \_\_\_\_\_

of

\_\_\_\_\_

Represented by \_\_\_\_\_

-AND-

Marketer -- \_\_\_\_\_

of

\_\_\_\_\_

C. WHEREAS, \_\_\_\_\_ and \_\_\_\_\_ desire to establish exclusive strategic marketing agreement whereby \_\_\_\_\_ will promote \_\_\_\_\_'s business to customers. This Agreement may be modified from time to time in the form of a written instrument signed by both Parties (an "Amendment"). The terms of any Amendment executed during this Agreement will be subject to the terms of this Agreement unless otherwise stipulated in the Amendment.

*In consideration of the mutual covenants set forth herein, and intending to be legally bound thereby, the Parties agree as follows:*

## **I. DEFINITIONS.**

1. The following definitions govern the meanings of the capitalized terms used in this Marketing Agreement:

(a). "Certificate" shall mean a document created by the Client and issued to the Marketer that indicates that Marketer works to advertised Client's business.

(b). "Customer" shall mean (i) an entity with its headquarters in the Territory (defined below), and persons with their residence in the Territory and (ii) with Client's prior written permission, an entity that is a subsidiary of a Customer, where the sales decisions regarding the Client's business are made for the entity by the Customer.

(c). "Documentation" shall mean any user manuals or instructional materials, if any, and specifications, if any, related to the goods or services provided by the Client's business.

(d). "Effective Date" is the date the Parties enter into and agree to be bound by the terms of this Agreement.

(e). "Marketer" is an entity that acquires goods or services from the Client for the purpose of marketing.

(f). "Order" or "Orders" shall mean a Client-created contract for the purchase of goods or services by the Customer(s).

(g). "Personal data" shall mean information relating to persons.

(h). "Purchase" shall mean the purchase of goods or services for sale in the Territory.

(i). "Quarter" shall mean each three-month calendar period commencing with the Effective Date of this Agreement, except for the first Quarter will be from the Effective date to the date that is the last day of the first two calendar months after the Effective Date.

(j). "Quarterly" shall refer to a "Quarter."

(k). "Sale" shall mean when each of these occurs: Customer executes an order, Client receives the order from the Marketer, and Client accepts the order.

(l). "Territory" is the geographical boundaries within which the Marketer may market the Client's goods and services.

## **II. SCOPE OF ACTIVITIES.**

2. The Marketer shall be responsible for undertaking the following activities under this Agreement, the completion of which shall serve as good and valuable consideration for this Agreement:

(a). Invest the necessary resources and engage in best efforts to advertise, market, promote, demonstrate, offer to sell, and sell the Client's goods and/or services to Customers in the Territory, via Marketer's business contacts, using only marketing, advertising, and promotional material provided by or previously approved by the Client in writing.

(b). Promptly notify the Client of any unauthorized use of the goods and/or services of which it becomes aware and assist Client in enforcement of its rights in the goods and/or services.

(c). Protect the Client's confidential and proprietary information and intellectual property, including but not limited to its trade secrets, copyrights, trade names, service marks, and trademarks with the same level of protection it employs for its own confidential and proprietary information and intellectual property, and notify the Client if it becomes aware of any unauthorized use of any of the above mentioned.

(d). If it receives orders from Customers, promptly transmit all orders executed by Customer and full payment from Customer pursuant to the orders to Client as Client so directs.

(e). Communicate with and receive communications from and send materials to and receive materials from the Client as necessary to perform this Agreement.

(f). During the Term and for a period of one year thereafter, the Marketer will maintain books and records related to the customer transactions contemplated under this Agreement. Upon reasonable notice, the Marketer will provide such books and records to the Client for review to ensure the requested Party's compliance with the terms of this Agreement.

(g). Refrain from presenting itself as an employee, agent, representative, or member of a joint venture with the Client and shall not make or promise to make any representations on behalf of the Client, including any warranties, refunds, and/or credits.

(h). Comply with all laws, rules, regulations, and executive directives in the performance of this Agreement and in accordance with all of the Client's policies and procedures.

(i). Engage in the following additional responsibilities:

\_\_\_\_\_

(j). Do whatever else is reasonably expected in order to perform their obligations under this Agreement.

3. The Client shall be responsible for undertaking the following activities under this Agreement, the completion of which shall serve as good and valuable consideration for this Agreement:

(a). Protect the Marketer's confidential and proprietary information and intellectual property, including but not limited to its trade secrets, copyrights, trade names, service marks, and trademarks with the same level of protection it employs for its own confidential and proprietary information and intellectual property, and notify Marketer if it becomes aware of any unauthorized use of any of the above mentioned.

(b). Make future enhancements, if any, or upgrades, if any, to the goods and/or services that the Client solely sees fit. Any such enhancements and upgrades shall at all times be considered the "Products."

(c). Prepare and distribute to Marketer product marketing, advertising, and/or promotional material, contracts and other documents in an accessible digital format; and at its discretion, additional of such material in a physical medium.

(d). Provide to Marketer initial training regarding all of Client's procedures, prices, fees, policies, and contracts.

(e). Have sole discretion to issue refunds to any Customer and credit any Customer account.

(f). Comply with all laws, rules, regulations, and executive directives in the

performance of this Agreement.

(g). Engage in the following additional responsibilities:

\_\_\_\_\_

### **III. REPORTING.**

4. Marketer shall provide Client with (or provide access to) a report of data that will let the Client determine the value (traffic, completed sales, revenue generated, etc.) derived from the Marketer's activities described in this Agreement with the following frequency: \_\_\_\_\_.

### **IV. USER TRACKING.**

5. Marketer will use and implement reasonable tracking mechanisms in order to permit Client to accurately track orders linking from the Marketer to the Client and purchasing Client's goods and/or services.

### **V. LICENSES.**

6. Client grants to Marketer a non-exclusive, non-transferable, royalty-free license to use Client's trade names, trademarks, logos, and services marks (collectively Marks) in connection with the performance of this Agreement.

7. Marketer shall not use any of Client's Marks for any purpose without first obtaining the prior written consent of Client.

8. Client will not alter or permit alteration, removal, or modification of any of Client's, or other identifying marks placed by Client or its agents on the products or associated documentation or literature, without Client's prior written approval.

9. Except as specifically provided in this Agreement, nothing in this Agreement shall confer upon Marketer any right, title, or interest in any of the Marks or goodwill of Client. Marketer acknowledges that Client's Marks and any related goodwill are the sole and exclusive property of Client, and Marketer agrees not to use any confusingly similar marks, works, or symbols.

10. At no time during or after the term of this Agreement shall Marketer challenge or

assist others to challenge Client's Marks or the registration thereof or attempt to register any trademarks, marks, or trade names that are in any way confusingly similar to Client's Marks.

11. Client acknowledges that it retains ownership of all its Marks and other intellectual property rights that are licensed to it. Marketer acknowledges that its utilization of Client's Marks will not create in it, nor will it represent it has, any right, title, or interest in or to Client's Marks other than the express and limited right to use Client's Marks on Marketer's website granted under this Agreement.

12. Marketer agrees that it shall cease using Client's Marks immediately upon request, and in no event shall this license survive the term of this Agreement.

## ***VI. PUBLICITY.***

13. The Parties will cooperate to create appropriate public and promotional announcements or press releases relating to the relationship set forth in this Agreement.

14. All public announcements by one Party which mention the other Party, but specifically excluding announcements which simply mention one Party as a customer or strategic marketer of the other Party, shall be subject to prior review and approval, which shall not be unreasonably withheld or delayed.

## ***VII. TERM AND TERMINATION.***

15. The term of this Agreement shall commence on the Effective date and shall continue in full force and effect as described by this Agreement.

16. This Agreement shall remain in effect for the following length of time: \_\_\_\_\_, unless terminated earlier pursuant to the provisions of this Agreement. Thereafter, the term will automatically renew for successive terms of the following length without notice unless either Party terminates the Agreement in writing: \_\_\_\_\_.

17. If either Party materially defaults in the performance of any provision of this Agreement, and such default is not cured within 30 days after the non-defaulting Party gives the defaulting Party written notice of such default, then the non-defaulting Party shall be entitled to terminate the Agreement immediately upon written notice of termination of the defaulting Party.

18. Termination shall not relieve either Party of any obligations incurred prior to the termination. Upon termination, Marketer agrees to (i). cease all promotions of Client's goods and/or services; (ii). cease all use of Client's technology and marks; and (iii). cease making Client's services available in or through a website or otherwise, and upon request, to promptly destroy or return all copies (electronic or written) of the content, technology, and any other confidential or proprietary information in Marketer's possession or control. Without limiting the foregoing in any way, the Parties agree that following termination, each Party may continue to make their products/services available directly to users subscribing to the product/service prior to termination, without any liability or obligation to the other Party.

#### ***VIII. EXCLUSIVITY.***

19. For the term of this Agreement, Marketer shall have the exclusive right to market the Client's goods and/or services to Customers.

#### ***IX. FEES AND PAYMENT.***

20. Marketer's fee shall be calculated as 100% of the net value of the goods and/or services bought by Customers driven by traffic from the Marketer to the Client. The net value shall exclude value added tax, postage, packaging, insurance, refunds, and payments not honored by a financial institution.

21. Upon determination of Marketer's fees due, the Marketer shall issue an invoice to the Client and payment shall be due within thirty (30) days of the date of the invoice.

22. Acceptable forms of payment include the following:

\_\_\_\_\_

#### ***X. LATE PAYMENTS.***

23. For any fee payment that is not paid within thirty days of its due date, Client shall pay a late fee of \$2 (two US dollars).

#### ***XI. WARRANTIES.***

24. Each Party represents and warrants to the other the following:

- (a). It has the full corporate right and authority to enter into this Agreement and to perform the acts required of it hereunder.
- (b). The execution of this Agreement by such Party and the performance by such Party of its obligations and duties hereunder do not and shall not violate any other Agreement to which such Party is a Party or by which it is otherwise bound.
- (c). When executed and delivered by such Party, this Agreement shall constitute the legal, valid, and binding obligation of such Party, enforceable against such Party according to its terms.
- (d). Such Party acknowledges that the other Party makes no representations, warranties, or Agreements related to the subject matter hereof that are not expressly specified in this Agreement.

## ***XII. INDEMNIFICATION.***

25. Marketer will indemnify, defend, and hold Client and its directors, officers, employees, and agents harmless from any and all costs, expenses (including reasonable attorney's fees), losses, damages, or liabilities incurred insofar as such costs, expenses, losses, damages, or liabilities are based on a claim that the Marketer's technology or marks infringe upon any intellectual property rights of a third party.

26. Client will indemnify, defend, and hold Marketer and its directors, officers, employees, and agents harmless from any and all costs, expenses (including reasonable attorney's fees), losses, damages, or liabilities incurred insofar as such costs, expenses, losses, damages, or liabilities are based on a claim that the Client's technology or marks infringe upon any intellectual property rights of a third party.

27. The indemnified Party shall provide the indemnifying Party with prompt written notice of any such claim. The indemnifying Party shall have sole control and authority with respect to the defense and settlement of any such claims. The indemnified Party shall cooperate fully with the indemnifying Party, at the indemnifying Party's sole cost and expenses, in the defense of any such claim. The indemnifying Party shall not agree to any such claim that does not include a complete release of the indemnified Party from all liability with respect thereto or



that imposes any liability, obligation, or restriction on the indemnified Party without the prior written consent of the indemnified Party. The indemnified Party may participate in the defense of any claim through its own counsel and at its own expense.

### ***XIII. CONFIDENTIALITY.***

28. The term "Confidential Information" shall include any proprietary information, in whatever form, that:

- (a). is provided by Client to Marketer, including information regarding Client's businesses, finances, prospects, operations, products, employees, technologies, contact lists, and financial models (including not only written information but also information transferred verbally, visually, electronically, or by any other means); or
- (b). concerns any sales that Marketer may aid and Client is fulfilling; or
- (c). consists of analysis and/or any other internal non-redacted memoranda or other documents prepared by the Marketer derived from or including material portions of the Confidential Information.

29. Confidential Information shall not include any information that:

- (a). is already known to the Marketer at the time of its disclosure;
- (b). is or becomes publicly known through no wrongful act of the Marketer;
- (c). is communicated to a third party with the express written consent of the Client; or
- (d). is lawfully required to be disclosed, provided that before making such disclosure, the Marketer shall immediately give the Client written notice and cooperate in the Client's actions to assure confidential handling of such information.

30. Each Party shall safeguard and keep confidential the Confidential Information obtained from the other Party and shall not disclose any Confidential Information to any other person or entity.

31. Each Party shall refrain from using Confidential Information for any purpose

other than those related to the activities they engage in while fulfilling their responsibilities and obligations under this Agreement.

32. All such Confidential Information and any copies obtained thereof shall be returned to the other Party promptly upon their written request and shall not be retained in any form by the other Party.

33. Each Party acknowledges and agrees that any use or disclosure of Confidential Information by the Party in a manner inconsistent with the provisions of this Agreement may cause another Party harm which will not be compensable by monetary damages alone and, accordingly, such other Party will, in addition to other available legal or equitable remedies, be entitled to seek an immediate injunction restraining the disclosing Party from committing or continuing to commit a breach. A Party may avail itself of injunctive relief in addition and without prejudice to any other remedies available to them.

34. This section shall survive the termination or expiration of this Agreement.

#### ***XIV.***

#### ***XV. ADDITIONAL PROVISIONS.***

35. Force Majeure. If performance of this Agreement or any other obligation under this Agreement is prevented, restricted, or interfered with by causes beyond either Party's reasonable control, and if the Party unable to carry out their obligations gives the other Party prompt written notice of the circumstances, then the obligations of the Party invoking this provision shall be suspended to the event necessary by such circumstances.

(a). The term "Force Majeure" shall include, but is not limited to, acts of God, fire, explosion, vandalism, flood, storm, illness, injury, earthquake, general unavailability of essential materials, orders of military or civil authority, national emergencies, riots, strikes, lock-outs, work stoppages, or other labor disputes or supplier failures.

(b). The Party excused by such events shall use all 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.

(c). 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, subsidiaries, or affiliates.

36. Notices. All notices that either Party is required or may desire to serve upon the other Party shall be in writing and addressed to the Party to be served at the respective addresses set forth herein and shall be sent via U.S. Express Mail or private express courier service with confirmed receipt and will be effective upon receipt at the addresses listed herein (unless the Parties are notified in writing of a change of address, in which case notice will be sent to the new address).

37. Entire Agreement. This Agreement contains the entire Agreement of the parties regarding the subject matter of this Agreement, and there are no other promises or conditions in any other Agreement, whether oral or written.

38. Waiver of Contractual Rights. The failure of either Party to enforce any provision of this Agreement 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 Agreement.

39. Headings. The section and paragraph headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, govern, limit, modify, or construe the scope or extent of the provisions of this Agreement to which they may related. Such headings are not part of this Agreement and shall not be given any legal effect.

40. Amendments. This Agreement may be modified or amended if and only if the amendment is made in writing and signed by both Parties.

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

42. Assignment. This Agreement shall be binding upon and inure to the benefit of each Party's successors and assigns. Neither party may assign this Agreement, in whole or in part, without the other Party's prior written consent; provided, however, that the sale of any portion of the assets of either Party, or any of its subsidiaries, its acquisition by merger into another company, shall not be deemed an assignment of this Agreement by such Party.

(a). Provided further, that the Party to be sold or acquired in accordance with the above must provide written notice to the other Party of any such sale or acquisition within thirty (30) calendar days of the closing.

(b). Any attempt to assign this Agreement other than in accordance with this provision shall be null and void.

43. Independent Contractors. The Parties to this Agreement are independent contractors.

(a). Neither Party is an agent, representative, or partner of the other Party.

(b). Neither Party shall have any right, power, or authority to enter into any agreement for or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other Party.

(c). This Agreement shall not be interpreted or construed to create an association, joint venture, partnership, franchise, sales, representative, or employment relationship between the Parties or to impose any partnership obligation or liability upon either Party.

(d). Each Party shall bear its own costs and expenses in performing this Agreement.

44. Governing Law. This Agreement shall be governed by the laws of the State of Alabama. Both Parties consent to jurisdiction under the state and federal courts within the state of Alabama. The Parties agree that this choice of law, venue, and jurisdiction provision is not permissive, but rather mandatory in nature.

***EXECUTION:***

\_\_\_\_\_  
\_\_\_\_\_, Representative of \_\_\_\_\_, Client

\_\_\_\_\_  
Date

---

\_\_\_\_\_, Marketer

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Date