

CO-BRANDING AGREEMENT

(between a service provider such as an online marketplace, network services provider, etc and an application provider)

THIS AGREEMENT made effective as of the ____ day of _____, _____ by and between _____, (insert legal name of service provider) a _____ (insert type of corporation) corporation having an office at _____ (insert complete address including state & zip code) (the "Service Provider") and _____, (insert legal name of application provider) a _____ (insert type of corporation) corporation having an office at _____ (insert complete address including state & zip code) (the "Application Provider").

WHEREAS:

- A. Service Provider is a provider of _____ (describe services provided, eg ISP, network services, electronic marketplace, etc) (the "Service Provider Network") which incorporates content supplied by, and promotes the products and/or services of, third parties for the purposes of providing value to Service Provider's users and providing access to the content, products and/or services of such third parties.
- B. Application Provider owns or has the right to distribute certain content, products and/or services (the "Application Provider Content"), and maintains a related site on the Internet at _____ (insert URL of website) (the "Application Provider Site").
- C. The parties wish to distribute the Application Provider Content through the Service Provider Network, establish and maintain related co-branded pages on the Application Provider Site, establish links between the Service Provider Network and the co-branded pages on the Application Provider Site, and promote the Application Provider on the Service Provider Network.

NOW THEREFORE the parties hereby agree as follows:

1. DEFINITIONS & INTERPRETATION

1.1 Wherever used throughout this Agreement, the following terms shall have the following meanings:

- (a) "Application Provider Content" shall mean all content, information and functionality provided by Application Provider through the Co-Branded Application, including but not limited to, _____ (insert description of content, etc.)
- (b) "Co-Branded Application" shall mean an Internet application designed, hosted, and managed by Application Provider whose purpose is to _____ (insert description of application's purpose).
- (c) "Confidential Information" shall mean information about the disclosing party's (or its suppliers') business or activities that is proprietary and confidential, which shall include all business, financial, technical and other information of a party marked or designated by such party as "confidential" or "proprietary"; or information which, by the nature of the circumstances surrounding the disclosure, ought in good faith to be treated as confidential. Confidential Information will not include information that (i) is in or enters the public domain without breach of this Agreement, (ii) the receiving party lawfully receives from a third party without restriction on disclosure and without breach of a nondisclosure obligation or (iii) the receiving

party knew prior to receiving such information from the disclosing party or develops independently.

- (d) "Launch Date" shall mean the date the Co-Branded Application becomes accessible to Service Provider Users.
- (e) "Program Member" shall mean a Service Provider User who has registered as a member of Service Provider's _____ (*insert name of program*) Program and, because of such registration:
 - (i) has access to the Co-Branded Application;
 - (ii) has opted-in to allow all of his/her registration information to be shared with Application Provider and/or unspecified third parties.
- (f) "Service Provider Content" shall mean all content, information and functionality provided by Service Provider to Application Provider, including but not limited to, _____ (*insert description of content, etc.*)
- (g) "Service Provider User" shall mean an end-user customer of the Service Provider Network of web-sites and services, regardless of whether or not such customer is a Program Member.
- (h) "Transactional Data" shall mean data elements descriptive of a specific purchase or purchase intent event which is enabled by the Co-Branded Application, including but not limited to purchase amount, payment method, items purchased.
- (i) "User Data" shall mean all information regarding an individual Program Member, including but not limited to name, address, gender, date of birth, email address and any other identifying, demographic or personal information provided by such Program Member.

1.2 Article, section and paragraph headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

1.3 Words importing the singular number include the plural and vice versa and words importing the masculine gender include the feminine and neuter genders.

2. CO-BRANDED APPLICATION

2.1 Application Provider will, at its sole expense, develop, host and maintain the Co-Branded Application for Service Provider. The primary function of the Co-Branded Application will be _____. (*insert function description*)

2.2 Application Provider will design and create web pages containing the Application Content ("Application Pages"). The Application Pages will be presented in accordance with Service Provider's guidelines, which include, but are not limited to, page performance standards and header and other design/user interface standards. The Application Pages will prominently feature Service Provider branding and will be presented in a "look and feel" consistent with the "look and feel" of the Service Provider Network. Service Provider will have final approval over all Application Pages. The Application Pages shall be developed in all material respects in accordance with the requirements set out in Exhibit _____ (*insert letter or number*) attached hereto.

2.3 Application Provider will develop its category/directory structures to be similar to those found on the Service Provider Network and in accordance with the requirements set out in Exhibit _____ (*insert letter or number*) attached hereto.

2.4 Application Provider will host the Co-Branded Application on its Internet servers, but will serve the Co-Branded Application from a masked domain name (or such other domain as Service Provider may elect at its sole option) so that Service Provider can receive the reach and page view credit. Application Provider will have sole responsibility for providing and maintaining, at its expense, the Application Provider Site, the Co-Branded Application, the Application Content (excluding the provision of Service Provider Content), and any updates thereto.

2.5 Each Co-Branded Page will include one or more links to Service Provider Network, as set forth in Article 3 of this Agreement. Service Provider will supply Application Provider with the URLs for all such links.

2.6 With the exception of updates to the Application Content and to advertising displayed on the Application Pages, Application Provider will not change the Co-Branded Application without Service Provider's prior written consent, which consent will not be unreasonably withheld. Service Provider will respond to all change requests within seven (7) days of receipt, and any failure to so respond shall be deemed an approval.

2.7 Service Provider may, upon fifteen (15) days prior notice to Application Provider, request reasonable revisions to the Co-Branded Application as needed to reflect changes that will not adversely affect Application Provider, such as changes to Service Provider's name and/or brand or changes to the URLs for the links to Service Provider Network. Application Provider will use reasonable efforts to accommodate Service Provider's requested changes within the 15-day period.