

# PARTNERING AGREEMENT FOR MARKETING AND SELLING SOFTWARE

THIS AGREEMENT made effective as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**BETWEEN:**

[NAME OF SOFTWARE DEVELOPER]  
[address]  
(the "Owner")

- and -

[NAME OF PARTNER]  
[address]  
(the "Partner")

**BACKGROUND:**

- A. Owner owns, develops and supports software products for use in the \_\_\_\_\_ market.
- B. Partner is a provider of Information Technology consulting services and has a number of clients in the \_\_\_\_\_ market.
- C. Owner has requested that Partner assist it in selling and marketing the Products to Clients in the Territory (as hereinafter defined).
- D. Owner and Partner agree to work together to sell and market the Products to Clients in the Territory on the terms set out in this Agreement.

## **1. DEFINITIONS**

1.1 The following definitions apply in this Agreement:

**"Activities"** means the marketing of the Products by the parties (either individually or collectively) to Clients, with a view to securing Licences of the Products from Clients, within the Territory.

**"Agreement"** means this Partnering Agreement.

**"Clients"** means current and potential clients of either Party.

**"Commission"** means the fee payable by Owner to Partner in respect of each Licence, calculated as \_\_\_\_% of the software licence fee paid by any Clients introduced as part of this Agreement.

**"Confidential Information"** of a Party means any and all technical and non-technical information, including patent, copyright, trademark, trade secret and proprietary information, techniques, sketches, drawings, models, inventions, know-how, processes, apparatus, equipment, algorithms, software programs, source code, object code, formulas and documentation related to the current, future and proposed products and services of such Party, and includes without limitation such Party's information concerning its respective research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, purchasing, manufacturing, customer lists, advertiser lists, business forecasts, sales, merchandising, marketing plans and other business information. "Confidential Information" also includes proprietary or confidential information of any third party that may disclose such information to a Party in the course of such Party's business.

**“Customer”** means any of the following who enter into a Licence during the term, or within 6 months after the termination or expiration of the Agreement:

- (a) any Client introduced by Partner, including without limitation new or potential and existing Clients of Partner;
- (b) any new or potential Client introduced by the collective efforts of Partner and Owner; and
- (c) any existing Client of Owner from whom new business is procured as a consequence of the collective efforts of Partner and Owner, or the individual efforts of Partner.

**“Documentation”** means operating manuals and other printed materials relating to the Products.

**“Effective Date”** means the date of this Agreement.

**“Intellectual Property Rights”** means rights relating to trademarks, registered designs, patents, applications for any of the foregoing, copyright, design rights, know-how, trade and business names, moral rights, publication rights, performance rights, trade get-up, goodwill and any other similar protected rights in any country.

**“Licence”** means a licence, procured by either Party as a result of the Activities, which is entered into between Owner and a Customer for the use of the Products in the form set out in Schedule “A”.

**“Party”** means the Partner or Owner as the context requires. **“Parties”** refers to both of the parties hereto.

**“Products”** means the Software described in Schedule “B” and any enhancements, modifications and upgrades thereto.

**“Territory”** means \_\_\_\_\_.

1.2 The headings to the clauses of this Agreement are for reference only and shall not affect the interpretation or construction of this Agreement.

## 2. TERM and TERMINATION

2.1 This Agreement is effective from the Effective Date and shall expire \_\_\_\_ months from the Effective Date (the “Initial Term”).

2.2 Unless terminated by either Party by 30 days notice prior to the expiry of the Initial Term, this Agreement shall be extended by a further \_\_\_\_-month term.

## 3. RELATIONSHIP

3.1 The Parties agree to work together in a co-operative manner to perform the Activities.

3.2 Nothing in this Agreement shall be deemed to constitute, create, give effect to or otherwise recognise a joint venture, partnership, or formal business entity of any kind, and the rights and obligations of the Parties shall be limited to those expressly provided in this Agreement.

3.3 Neither Party has power by virtue of this Agreement to make, vary or release contractual obligations on behalf of the other Party or to represent that a partnership has been constituted, or that it has any such power.

## 4. LICENCE TERMS

4.1 The Products will be licensed to Customers on the terms of the attached Licence Agreement.

4.2 Neither Party shall supply the Products to a Customer if that Customer has not entered into a Licence.

4.3 Owner grants Partner a licence to use, modify or copy the Products, for the duration of the term, to the extent necessary to perform the Activities.

## **5. MUTUAL OBLIGATIONS**

5.1 Each Party shall:

- (a) use all reasonable efforts to perform the Activities;
- (b) continue to exert all reasonable efforts throughout any negotiations concerning any contracts or Licences with Clients that may result from the Activities;
- (c) maintain records in accordance with Clause 9.5 and keep the other Party informed of all inquiries and potential opportunities to secure Licences or contracts from Clients arising from the Activities;
- (d) refer to the other Party any information that may affect or assist in the sale, licensing or marketing of the Product, including without limitation Client information;
- (e) not enter into an agreement, contract or Licence with a Client in relation to the sale or licence of the Products or any product similar to the products within the Territory during the Term without the written consent of the other Party; and
- (f) at all times, act in good faith towards one another and provide such co-operation and assistance in relation to the Activities as the other Party reasonably requires.

## **6. OWNER'S OBLIGATIONS**

6.1 Owner shall:

- (a) pay the Commission to Partner in accordance with Clause 9;
- (b) promptly comply with its obligations to Customers, including the supply and maintenance of the Products to Customers in accordance with the Licence;
- (c) maintain registration of all relevant Intellectual Property Rights and of all names relating in any way to the Products;
- (d) provide Partner and its relevant sales personnel with such training in the use and installation of the Products as Partner reasonably requires in order to facilitate the performance by Partner of the Activities, such training to be provided at times and locations as agreed between the Parties;
- (e) provide Partner with up to date, accurate and complete:
  - (i) information regarding enhancements, upgrades or new releases of the Products;
  - (ii) information regarding existing education and training courses relating to the use of the Products;
  - (iii) Documentation; and
  - (iv) promotional documentation as available to Owner, in adequate quantities for distribution to Clients.

## **7. WARRANTIES**

7.1 Owner warrants to Partner as follows:

- (a) it has full authority to enter into this Agreement;
- (b) the Products do not infringe the Intellectual Property Rights of any person;

- (c) the Products will perform in accordance with the specifications and descriptions contained in the Documentation;
- (d) the Products as supplied to Partner or Customers incorporate all current updates, enhancement, alteration, changes or other modifications;
- (e) Owner shall promptly rectify or, if necessary, replace any Product at its sole expense if such Product is found to be defective or in breach of any of these warranties or any additional warranties contained in the Licence, and any such rectified or replaced Products shall comply with these warranties and any additional warranties contained in the Licence.

**THIS IS A 13-PAGE DOCUMENT.**