

CO-MARKETING AGREEMENT

This CO-MARKETING AGREEMENT (“Agreement”) between _____ [full legal name], a [entity type and state] (“Company1”) and _____ [full legal name], a Delaware corporation (“Company2”) is effective on the date of the second signature below.

1. Co-Marketing Relationship

Company1 provides [insert product/description] (“Company1 Products”) to the [insert market description if applicable]. Company2 provides business consulting and systems integration services to that market. The parties desire to work cooperatively, but independently, to market and deliver certain complementary market offerings as described in Exhibit A, to current and prospective customers (“Sales Targets”). This Agreement describes the terms of a nonexclusive, cooperative marketing relationship under which each party will independently or cooperatively engage in mutually agreed activities to promote each other’s products and services to Sales Targets, throughout the Territory (as the term is hereafter defined).

2. Territory

The territory for this Agreement is the [insert] (“Territory”).

3. Co-Marketing Activities

The parties may engage in the following activities in the Territory, all subject to their mutual and ongoing agreement: ***[Edit as appropriate to add/remove intended activities.]***

- a. Interaction of Sales Representatives. The parties will inform their respective sales forces of the existence of this Agreement and will develop a joint internal communications plan regarding the positioning and joint benefits of this relationship. In addition, the parties may mutually agree to provide access to each other’s respective demonstration centers for sales calls and demonstrations.
- b. Sales Meetings. Each party may request the opportunity to give presentations regarding its products and services and its marketing activities related to this Agreement at the other party’s sales meetings and other appropriate gatherings.
- c. Co-Marketing Coordinator. Each party will assign a coordinator to act as the central point of communication with the other party with respect to this Agreement. These managers shall determine goals and identify cooperative marketing and sales opportunities through monthly meetings. They shall also track and report progress as it relates to the goals.
- d. Sales Calls. The parties will support each other on joint sales calls as agreed between the parties.
- e. Publicity. Neither party will release any publicity or marketing documents or information concerning this Agreement without the other’s consent. However, each party may identify the other in a mutually agreed general description of the nature of the “co-marketing relationship” or “teaming relationship” in its promotional materials, presentations, and proposals to current and prospective clients. In no case shall either party refer to the other as an “alliance” or “partner”. While this Agreement is in effect, either party may include the other party’s name in a list of entities with which it has entered into co-marketing agreements without such other party’s prior approval.
- f. Qualifications/References. The parties may agree to produce and publish (with prior approval of the other party) case studies when appropriate regarding a cooperative engagement and describing each party’s role in that engagement.
- g. Logos/Trademarks. The parties may provide each other with their respective logos (in mutually-

agreeable formats) for use solely in connection with activities under this Agreement.

- h. Marketing Materials. The parties may provide each other with appropriate marketing collateral and other promotional materials for distribution to their respective sales teams and Sales Targets. The parties may mutually agree to create joint promotional material in connection with their activities under this Agreement.
- i. Demonstration Products. Company1 will provide Company2 with a reasonable number of copies or units of demonstration products, at no cost to Company2, which may be used solely for demonstrations to Sales Targets or Company2 employees.
- j. Exhibitions and Conferences. The parties may agree to coordinate activities at appropriate industry exhibitions and conferences.
- k. Training. Company2 may send at least [insert] employee(s) to Company1's training program for [insert training description].

4. Contracting

- a. Contracting. Unless otherwise agreed in writing, Company1 will enter into license, support, and/or maintenance agreements for Company1 Products directly with the Sales Targets and collect all associated fees, and Company2 will enter into a separate and independent services agreement for Company2 Services directly with the customer and collect all associated fees.
- b. Other Agreements. Notwithstanding the foregoing, neither party shall be obligated to enter into any agreement with any other party, but the parties will negotiate in good faith with Sales Targets and will not act in a manner intended to interfere with the cooperative purposes of this Agreement. Company1 and Company2 will negotiate in good faith to enter into separate reseller and/or referral fee agreements.

5. Expenses

Unless otherwise agreed to by the parties, each party will be responsible for the costs and expenses incurred by it in connection with this Agreement.

6. Term and Termination

The term of this Agreement will continue unless either party terminates the agreement as provided herein. Either party may terminate this Agreement at any time (a) in the event of a material breach by the other party that has not been cured within fifteen (15) days written notice or (b) for any reason on thirty (30) days written notice.

7. Trademarks.

Each party grants to the other a nonexclusive, nontransferable, royalty-free right to display such party's respective trademarks, service marks, and logos (the "Trademarks"), subject to the terms of this Agreement and such party's standard trademark usage guidelines (a copy of which will be provided by each party). The use of all Trademarks will be subject to the approval of the other party, which approval will not be unreasonably withheld or delayed. Neither party shall acquire any rights of ownership to any copyrights, patents, trade secrets, trademarks or other intellectual property of the other party. On termination, each party will cease using any materials that bear the Trademarks of the other party.

8. Warranty Disclaimer.

NEITHER PARTY MAKES ANY REPRESENTATIONS, WARRANTIES OR GUARANTEES OF ANY KIND, EITHER EXPRESS OR IMPLIED (INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE),

WITH RESPECT TO ANY PRODUCTS OR SERVICES PROVIDED BY SUCH PARTY OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT.

10. Limitation of Liability.

IN NO EVENT WILL EITHER PARTY OR ITS EMPLOYEES, OFFICERS AND DIRECTORS BE LIABLE TO THE OTHER PARTY FOR DIRECT, CONSEQUENTIAL, SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES, COSTS, EXPENSES, OR LOSSES (INCLUDING LOST PROFITS, LOST DATA, OR OPPORTUNITY COSTS), REGARDLESS OF THE FORM OF ACTION, DAMAGE, CLAIM, LIABILITY, COST, EXPENSE, OR LOSS, WHETHER IN CONTRACT, STATUTE, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE.

11. Confidential Information.

Any confidential or proprietary information disclosed by one party to the other party in connection with this Agreement shall be governed by the Mutual Non-Disclosure Agreement entered into between the parties and attached hereto as Exhibit B.

12. Relationship of Parties.

This Agreement shall not create an agency, partnership, joint venture, or any other form of legal association, and neither party may represent itself as an agent, partner, or joint venture of the other or otherwise incur any obligation or liability on behalf of the other party. Neither party may resell, quote prices or fees, or otherwise negotiate business terms for the other party's products or services unless otherwise agreed to in a separate written agreement between the parties.

13. Assignment.

Neither party may assign its rights or delegate its duties under this Agreement, except to an affiliated Company1 or to a successor in interest in the event of a sale of the business.

14. Entire Agreement.

This Agreement contains the entire understanding of the parties with respect to the transactions and matters contemplated hereby, supersedes all previous communications, understandings and agreements (whether oral or written), and cannot be amended except by a writing signed by both parties.

15. E-mail Correspondence.

Company2 and Company1 may correspond, convey information and documentation, and transfer Confidential Information via Internet e-mail unless Company1 expressly requests otherwise. Neither party has control over the performance, reliability, availability, or security of Internet e-mail; and therefore neither party shall be liable for any loss, damage, expense, harm, or inconvenience resulting from the loss, delay, interception, corruption, or alteration of any Internet e-mail due to any reason beyond that party's reasonable control.

16. Governing Law; Dispute Resolution.

- a. Governing Law. This Agreement will be governed and construed under Delaware law without regard to its conflict of laws provisions.
- b. Mediation. If either party has a dispute or claim against the other party (a "Claim") that has not been resolved informally by the parties, that party will provide a written description of the Claim to the other party and both parties will make a good faith effort to resolve the Claim through non-binding mediation in accordance with the International Institute for Conflict Prevention and Resolution ("CPR") Mediation procedure. Each party will bear its own costs in the mediation,

and the parties will equally share the mediator's fees and expenses. The mediation proceedings and negotiations will be confidential, will not exceed three consecutive business days, and will be treated as compromise and settlement negotiations for purposes of the applicable rules of evidence. Unless otherwise agreed, the parties will select a mediator from the CPR Panels of Distinguished Neutrals.

- c. Arbitration. Any Claim arising out of or relating to this Agreement that cannot be resolved by the parties or mediation will be settled by final and binding arbitration in accordance with the CPR Rules for Non-Administered Arbitration. Unless otherwise agreed, the arbitration panel will consist of three (3) arbitrators selected by the parties from a list of candidates provided by CPR, and each arbitrator will be an attorney experienced in information technology consulting disputes. The arbitrators will have exclusive authority to resolve any and all disputes relating to procedural and substantive questions of arbitrability, including but not limited to, choice of venue and choice of law issues, and the formation, interpretation, applicability, scope, and enforceability of this agreement to arbitrate. The arbitration proceeding will occur in a mutually agreeable metropolitan area, each party will bear its own arbitration costs, and the parties will equally share the arbitrators' fees, and the arbitration and all related proceedings and discovery will take place pursuant to a protective order entered by the arbitrators that adequately protects the confidential nature of the parties' proprietary and confidential information. No arbitration award may provide a remedy beyond those permitted under this Agreement, and any award providing a remedy not permitted under this Agreement will not be valid and will be vacated. No Claim may be brought as a class action, combined or consolidated with any other proceeding, nor may any proceeding be pursued in a representative capacity or on behalf of a class. Neither party may act as a class representative or participate as a member of a class of claimants with respect to any Claim. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§1-16, and judgment upon the award rendered by the arbitrator(s) may be entered by any court of competent jurisdiction.
- d. Interim Relief. Either party may, without waiving any remedy under this Agreement, seek interim or provisional equitable relief from any court of competent jurisdiction to protect its Confidential Information, non-solicitation, and property rights, regardless of the mediation and arbitration requirements.

17. Non-Solicitation.

During the term of this Agreement and for one (1) year after termination, neither party will employ or solicit for hire as an employee, consultant or otherwise any of the other party's professional personnel who have had direct involvement with the co-marketing activities under this Agreement, without the other party's express written consent, provided, however, that neither party will be precluded from hiring any employee of the other party who responds to any public notice or advertisement of an employment opportunity or who terminated his/her employment with the other party at least six months previously, provided that the hiring party did not solicit the termination. A party shall not be in breach of this "Non-Solicitation" Section if those responsible for the solicitation, hiring or retention of the other party's personnel were not aware of these restrictions; however, personnel of either party working on any SOW under this Agreement shall be presumed to know of the restriction.

18. Notices.

All notices and other communications shall be in writing and shall be effective upon personal delivery, five (5) days after being mailed by registered or certified mail, return receipt requested, or one (1) business day after being sent by nationally recognized overnight courier. Notices shall be addressed as follows:

If to Company1

With a copy to:

[FULL NAME OF COMPANY1]
[Address]
[City, State Zip Code]
Attention: [Company1 business contact]

If to Company2

With a copy to

[FULL NAME OF COMPANY2]
[Address]
[City, State Zip Code]
Attention: [Company1 business contact]

Attention: Legal Department

19. No Waiver of Breach.

No waiver of any breach of this Agreement will be a waiver of any other breach, and no waiver will be effective unless made in writing and signed by an authorized representative of the waiving party.

20. Severability.

In the event that any term or provision of this Agreement is unenforceable, then the remainder of this Agreement will not be affected, impaired, or invalidated, and the other terms and provisions of this Agreement will be valid and enforceable to the fullest extent permitted by law.

21. Survival.

Provisions regarding warranties, limitations of liability, governing law, dispute resolution, confidentiality, non-solicitation, waiver, and severability will survive the expiration or termination of this engagement.

Each party has caused this Co-Marketing Agreement to be executed by a duly authorized representative.

[INSERT COMPANY1'S FULL LEGAL NAME]

[INSERT COMPANY2'S FULL LEGAL NAME]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

CO-MARKETING AGREEMENT

Exhibit A

COMPLEMENTARY MARKET OFFERINGS

Company1 Products:

Company2 Services:

CO-MARKETING AGREEMENT

Exhibit B

BILATERAL NON-DISCLOSURE AGREEMENT