

## Co-op Promotional Agreement

This Co-op Promotional Agreement ("Agreement") is made and effective this \_\_\_\_\_ (Date), by and between ("Vendor") \_\_\_\_\_ (name and address) and ("Reseller") \_\_\_\_\_ (name and address).

Vendor sells products under the trade name \_\_\_\_\_ ("Product"). Reseller resells and/or promotes the sale of many goods.

Vendor and Reseller desire to arrange for Vendor to supply the following materials and pay to Reseller for Reseller's promotion of the Product as set forth herein.

Therefore, in consideration of the foregoing, it is agreed:

### 1. Product Promotion.

Reseller agrees to provide the following special promotion or promotions of the Product ("Promotion"): \_\_\_\_\_. Reseller will take the necessary steps to insure the Promotion is timely and completely carried out by doing one or more of the following, as appropriate: delivering through messenger or other service to each of Reseller's selling locations or outlets the promotional material (s) and/or products described in this Agreement, informing local managers that Vendor's personnel will be present to provide additional training and or support, and the dates of the training and support, and/or confirming with local managers that Reseller's obligations are being timely completed. If the Promotion involves placement of Vendor's advertising in a catalog, tabloid or circular insert, Reseller shall insure that such advertisement or insertion, if any, is made exactly as specified in this Agreement.

### 2. Materials.

A. The following materials, if required, are provided by Vendor upon execution of this Agreement or will be provided shortly to enable Reseller to timely complete the Promotion: \_\_\_\_\_.

B. The following materials, if any, are in the possession of Reseller and will be used by Reseller in performing their duties in the Promotion (s): \_\_\_\_\_.

### 3. Term.

The Reseller will completely implement the Promotion not later than \_\_\_\_\_ and the promotion shall continue until \_\_\_\_\_.

### 4. Principal Contacts and Notices.

The principal contact for each party for the purpose of discussing matters related to this Agreement is as follows:

If to Reseller: \_\_\_\_\_.

If to Vendor: \_\_\_\_\_.

Any notice given pursuant to this Agreement shall be in writing to the firms identified above by a recognized overnight delivery service such as Federal Express.

5. Proof of Performance.

Reseller shall provide Vendor reasonable proof that the Promotion has been completed on a timely basis including, but not limited to the following evidence:

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6. Fees & Charges.

In consideration of the performance of the Promotion as set forth herein, Vendor shall pay Reseller \_\_\_\_\_. Vendor shall pay the fee to Reseller not later than thirty (30) days following Reseller's delivery to Vendor of proof of performance as set forth in Section 5 above together with Reseller's invoice. Reseller is entitled to deduct the amount of its fees for the Promotion from amounts to be paid to Vendor for Product purchases or any other charges. In the event of a good faith partial performance by the Reseller, Vendor shall pay Reseller a pro rata portion of the fees, but only if Reseller has substantially completed its obligations in this Agreement.

7. Use of Trademarks.

Vendor hereby grants to Reseller a limited right and license to use Vendor's name, logo, and trademarks associated with the Product to perform Reseller's obligations in this Agreement. Use of the trademarks is subject to Vendor's prior approval. Reseller's license in the Marks shall terminate upon the conclusion of the Promotion.

8. Complete Performance.

In the event the Reseller fails to supply adequate proof of performance, or if Reseller has not substantially completed the Promotion for the benefit of the Vendor as set forth in this Agreement, then Vendor shall not be obligated to pay any part of the fee to Reseller. In such event, Vendor may offer to Reseller its next available similar promotional opportunity that Reseller may accept or reject at its own discretion.

9. No Waiver.

The waiver or failure of either party to exercise in any respect any right provided in this agreement shall not be deemed a waiver of any other right or remedy to which the party may be entitled.

10. Entirety of Agreement.

The terms and conditions set forth herein constitute the entire agreement between the parties and supersede any communications or previous agreements with respect to the subject matter of this Agreement. There are no written or oral understandings directly or indirectly related to this Agreement that are not set forth herein. No change can be made to this Agreement other than in writing and signed by both parties.

11. Governing Law.

This Agreement shall be construed and enforced according to the laws of the State of \_\_\_\_\_ and any dispute under this Agreement must be brought in this venue and no other.

12. Headings in this Agreement

The headings in this Agreement are for convenience only, confirm no rights or obligations in either party, and do not alter any terms of this Agreement.

13. Severability.

If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

In Witness whereof, the parties have executed this Agreement as of the date first written above.

\_\_\_\_\_  
Vendor

\_\_\_\_\_  
Reseller

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### Review List

This review list is provided to inform you about the document in question and assist you in its preparation.

1. Co-op allowances are typically “coerced” by resellers and retailers to entice vendors to get them to buy. Percentage of Sales are less risky from a business sense than flat fees which often exceed the value of the actual transaction the vendor is seeking. In other words, vendors are often much better off to offer a “price” discount, even if a steep one, than risk that a flat fee will not be profitable from their standpoint.
2. Each party should review the terms of the Co-op Promotional Agreement. Make sure you are comfortable with all of the provisions, particularly concerning: definition of the “Promotion”; proof of performance; amounts to be paid and under what circumstances.
3. As with any Agreement, consider consulting a lawyer and print two copies of the Co-Op Promotional Agreement, so each party can have an original.
4. Finally, vendors should be aware that in entering the first of these kind of co-op agreements with a reseller or retailer, the reseller or retailer is apt to look to them for more of the same in the future. In other words, although the first such Agreement is indeed temporary from a legal point of view, most resellers consider it an ongoing “opportunity” to require the Vendor to do more of the same from a business point of view. In the most practical of terms, Simply Media rarely enters into these agreements, and when it does so, only on a percentage discount basis. Co-op funds have killed more than a few of our competitors through requiring them to “overpay” for distribution and then being trapped into more of the same in the future. Price discounts for promotional events, however, can be a win/win for both parties. At least with a price discount, you “know” your costs. With a front-end co-op Agreement, you cannot be sure you can earn out the fee.
5. From the Reseller or Retailer’s point of view, they should consider requesting a larger price discount, as opposed to a front-end fee, from their suppliers. You can often negotiate quite a good deal if you approach the vendor appropriately on the subject. Some of the best negotiations by Resellers and Retailers include doing the promotion a bit off-season which gives the Vendor added incentive to provide a good or even great deal.
6. Print two copies of the Agreement so each party may retain an original for their records.