

Joint Marketing Agreement

This Joint Marketing Agreement ("Agreement") is made and effective this _____ (Date) by and between _____ ("Second Party") and _____ ("First Party").

First Party and Second Party separately market products and/or services which are often used for complementary or for related purposes. The parties desire to cooperate in marketing their products for their mutual benefit.

Therefore, it is mutually agreed:

1. Products.

First Party and Second Party agree to market jointly their product lines, provided for in this Agreement. The First Party's product line is _____ and the Second Party's product line is _____ ("Product Lines").

2. General Duties.

In connection with the joint marketing of the Product Lines, the parties agree to the following mutual duties:

- A. To share information with respect to product distribution channels, methods of distribution, competitive information and any other information which can be disclosed without violating any law or breaching any obligations of confidentiality.
- B. To include, where appropriate, literature concerning the other party's product in individual direct mail or other direct marketing and with product shipments.
- C. To provide advanced information about product development, new Products or modification to existing Products jointly marketed pursuant to this Agreement.
- D. To share information with respect to sales leads.
- E. To provide a reasonable number of samples, demonstration units or other models of products to the other party, on a timely basis.
- F. To mention or include the other party's products in advertisements, brochures, and related communications.
- G. To share information with respect to trade shows, seminars and meetings, which may be beneficial to the other party.
- H. To advise the other party about ideas or recommendations for new products or enhancements to existing Products which may be appropriate for the other party's product lines.

3. Specific Duties.

In addition to the general duties set forth in Section 2 above, the parties agree to engage in the following specific marketing activities during the Initial Term of this Agreement:

Press Releases. Within 30 days of the date of this Agreement, the parties shall jointly prepare and issue a press release announcing this joint marketing program and generally promoting the Product Lines as defined above. Any later press release, which refers to the other party or its products, must be approved by the other party prior to its release.

Trade shows. The parties agree to jointly participate in the following trade show(s):
_____. The parties will register for each designated trade show in their joint names, if permitted. If joint registration is not permitted, First Party shall register on behalf of both the parties. The parties shall jointly share the cost of registration and participation in the trade show; transportation, preparation, construction and removal of a booth at the trade show; and reasonable related expenses, such as cost of refreshments and other items not specific to the Product lines. Each party shall separately pay its own cost for transportation of its samples, demo units or products to the trade show, travel, lodging and meals for representatives at the trade show and special or extra customer meetings or entertainment. The parties agree to jointly staff the trade show booth at all times, unless agreed otherwise in writing.

Training. Each party agrees to provide one individual to attend a sales meeting of the other party for the purpose of demonstrating and training sales personnel with respect to the party's product. Each party shall bear its own expenses for transportation and other out-of-pocket expenses for sending its representative to the other party's sales meeting.

Advertising. The parties shall select an advertising agency and shall jointly pay the expenses related to preparation for any ads resulting from that relationship. The parties shall share evenly the expenses related to these activities. Each party may elect to use any resulting and approved material or in the media of its choice without limitation, provided that party pays all the costs associated with media placement and specific production thereto. Additional joint advertisements may be prepared following additional agreement of the parties.

4. Confidentiality.

During this Agreement, each party may disclose to the other information that is confidential and proprietary to the disclosing party ("Confidential Information"). Confidential Information may include, but is not limited to, business plans, marketing plans, financial statements, competitive analysis, market research, Product development plans, computer programs, designs, and models, communicated orally, in writing, or by electronic media. Confidential Information disclosed orally or electronically shall be identified as such within five (5) days of disclosure. Confidential Information disclosed in writing shall be marked "Confidential". Each party agrees that it will maintain the Confidential Information of the other party in confidence and shall use such information only for the purposes of this Agreement. Confidential Information may be disclosed by a receiving party within its organization only to specific employees who have a need to know such information for the purposes of this Agreement and who have agreed in writing not to disclose it. Upon expiration or termination of this Agreement or, sooner if demanded by a party, a receiving party shall return to a disclosing party any of the disclosing party's Confidential Information including all copies thereof. The obligations of each party in this section shall continue for a period following the expiration or termination of the Agreement. The obligations of this section shall not apply to any Confidential Information that:

- A. Is or becomes public through no act of a receiving party,
- B. Is rightfully received from a third party without obligations of confidentiality; or
- C. Is independently developed by a receiving party without reference to the other party's Confidential Information.

5. Conflicts.

During this Agreement and for a period of _____ thereafter, each party agrees that it will not engage in any marketing, promotion, advertising or sales effort, individually or jointly, with respect to any product that is competitive with the other party's Product line or with respect to any entity that markets, promotes or sells a product in competition with the other party. Nothing stated here shall prevent either party from engaging in any activity that promotes any other product or entity that does not compete with the other party or its products.

6. Term and Termination.

A. The "Initial Term" of this Agreement shall start on _____ and shall end on _____. At least sixty (60) days prior to the end of the Initial Term or any renewal term as provided herein, the parties shall each notify the other as to whether they desire to renew this Agreement. If either party notifies the other that it does not desire to continue this Agreement, then the Agreement shall end upon the expiration of the Initial Term or renewal term. If, however, both parties desire to renew the Agreement, then the parties shall meet to confer and determine the following:

- (i) their specific duties for the renewal term in lieu of the specific duties set forth in Section 3 herein as applicable to the preceding Initial Term or renewal term;
- (ii) the period for the renewal term; and
- (iii) any other proposed amendments. If the parties fail to agree on all of the foregoing items before end of the Initial Term or renewal term, then this Agreement shall expire as of the end of the Initial Term or the renewal term. If the parties agree to all of the foregoing items, then the Agreement will continue with such specific duties and other amendments for the renewal term agreed upon.

B. This Agreement may be terminated at any time upon the occurrence of any of the following events:

- (i) if either of the parties shall default on any material obligation and such default is not cured within 30 days following written notice from the other party.
- (ii) if either party files a petition of bankruptcy, is insolvent, makes an assignment for benefit of creditors or if a trustee or receiver is appointed for a party, and such remaining of the foregoing remains undismissed for a period of sixty (60) days.
- (iii) if either party shall cease to do business, the First Party ceases to market First Party's Product or Second Party ceases to market Second Party's Product.

7. Notices.

Any notice required by this Agreement or given in connection with it, shall be in writing and shall be given to the appropriate party by personal delivery or a recognized over night delivery service such as FedEx.

If to the First Party: _____.

If to the Second Party: _____.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

First Party

Second Party

Date

Joint Marketing Agreement

Review List

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

1. Joint marketing agreements sound good in principle but have a high rate of failure due to the many things that can lead to dissatisfaction among the parties. One way marketing agreements tend to do better since one party is “in charge” and dealings are not subject to continual quests for agreement and approval.
2. Having said that, if you wish to pursue this high risk strategy, first be sure to investigate the reputation and credit standing of the proposed joint marketer to make sure it is a worthy marketing partner.
3. Further to the point, both companies must also be sure their product lines are truly complementary, that their marketing styles are the similar, and that each is committed to carrying out the agreed upon joint marketing tasks.
4. As we have said before, laws vary from state to state and change over time. Before using this document, which is subject to much downside if things do not work out as you anticipate, be sure to have a lawyer review it prior to signing.
5. Print two copies of the Agreement, one for each party. Both parties should sign each copy so that each can have an original copy.