

Outblaze Co-brand Portal Services Operating Agreement

THIS AGREEMENT is made BETWEEN

- (1) OUTBLAZE LIMITED ("Outblaze"); and
- (2) the Co-branding Partner named on the signature page below ("Co-branding Partner")

BACKGROUND

The Co-branding Partner wishes to obtain certain services from Outblaze with a view to operating a Powered by Outblaze Site and Outblaze is willing to provide those services, in each case in accordance with the terms and conditions set out below.

OPERATIVE PROVISIONS

1. Interpretation

1.1 In this agreement:

"Co-branding Pack" means the co-branding pack which forms part of the Co-brand Portal Services;

"Co-brand Portal Services" means the services which Outblaze makes available to the Co-branding Partner under this agreement;

"Inappropriate Material" means language and material of a type described in Clause 5.5 below;

"Powered by Outblaze Site" means one or more Sites co-branded by the Co-branding Partner and Outblaze; and

"Site" means a website on the world wide web.

2. The Co-brand Portal Services

2.1 Outblaze agrees to provide and the Co-branding Partner agrees to accept the services comprised in the Co-branding Pack and the other services described in this agreement. The Co-branding Partner agrees to use the Co-brand Portal Services solely for the purpose of creating and operating the Powered by Outblaze Site.

2.2 The Co-branding Pack comprises design templates, instructions and help files. The Co-branding Partner may use the Co-branding Pack to add its logo to the Powered by Outblaze Site and, subject to the limits described in the Co-branding Pack, to modify the look and feel of the Powered by Outblaze Site.

2.3 The Co-branding Partner may, subject to the limits described in the Co-branding Pack, design its own templates (instead of using those in the Co-branding Pack) and multi-lingual interfaces. Alternatively, Outblaze will design templates for the Co-branding Partner at a rate of US\$150 per person hour and on the basis in Clauses 2.3.1 and 2.3.2 below.

- 2.3.1 The Co-branding Partner will provide translations, colour schemes (or direction of colour schemes) and template layouts (top frame, right frame, left frame, bottom frame navigation).
- 2.3.2 The design of templates with text only interfaces in one language will take 1 working day and in two languages will take 2 working days. The design of templates with graphical interfaces in one language will take 3 working days and in two languages will take 5 working days. A working day consists of eight person hours.
- 2.4 If Outblaze designs templates as described in Clause 2.3 above and the Co-branding Partner requires Outblaze to make changes considered by Outblaze to be substantial to the colour scheme, layout scheme or graphical scheme after Outblaze has started design work, the Co-branding Partner will pay to Outblaze 50% of the amount which would have been payable for the work if it had been completed in accordance with the original design and will pay for the changed design in accordance with the provisions of Clause 2.3 above.
- 2.5 Within a period of 6 months from the launch of the Powered by Outblaze Site, Outblaze will, if so requested by the Co-branding Partner, make changes to the design of the Co-branding Pack. The first 10 of such changes will, if they are considered by Outblaze to be minor, be free of charge. Every other change will be billed at US\$150 per person hour.
- 2.6 Outblaze reserves the right to modify its charges for work done under the foregoing provisions of this Clause 2. Outblaze will provide estimates in advance of work being performed.

3. Domain of Powered by Outblaze Site

Outblaze will, if so requested by the Co-branding Partner, be the technical contact for the domain name which is adapted to the e-mail addresses of the Co-branding Partner's users' and members' e-mail addresses. The domain name may either be the Co-branding Partner's existing domain name (eg. yoursite.com) or a new domain (eg. newdomain.com). Outblaze will serve the domain name through Outblaze's name server, but the Co-branding Partner remains the sole owner of the domain name. If the Co-branding Partner does not so request, it may manage the DNS itself or through its ISP and Outblaze will provide the necessary DNS entry in order for Outblaze to manage the e-mail service.

4. Hosting of the Powered by Outblaze Site

The Powered by Outblaze Site will be hosted on Outblaze servers in Outblaze's network operating centre and will be managed, operated and supported by Outblaze, including by providing bandwidth, hard disk, servers, redundancy systems and back-up. Any development, upgrades and new features will be undertaken solely at the discretion of Outblaze and will be managed by Outblaze. Outblaze has no obligation to undertake development, upgrades or new features.

5. E-mail, message board, chat, calendar, mailing list and greeting card

The Co-brand Portal Services include free e-mail, message board, chat, calendar, mailing list and greeting card as further described below in this Clause 5. Outblaze may, on giving such notice as it considers reasonable, add, delete or change any such services at its sole discretion and will incur no liability from doing this.

5.1.1 Web Based Free E-mail

Outblaze offers web based free e-mail which the Co-branding Partner may offer as a Powered by Outblaze Site to its users and members. The web based free e-mail allows any person with access to the world wide web to create a private free e-mail account and use it to send or receive e-mail. The Co-branding Partner may offer its users and members free e-mail at, for example, username@yoursite.com if it chooses to use a new domain name or at, for example, username@yoursite.outblaze.com if it chooses to use the Outblaze sub-domain name. The Co-branding Partner may not charge its users and members for offering the web based free e-mail Powered by Outblaze Site.

5.1.2 IMAP and Auto Forwarding

Outblaze will provide to the Co-branding Partner, as additional options, IMAP support for downloading mail and auto-forward mail. Outblaze will charge the Co-branding Partner US\$1.00 per user per year for these options. The Co-branding Partner may charge its users for these options.

5.1.3 Customising the web based free e-mail tagline

The Co-branding Partner may customise the tagline attached to the bottom of each of the e-mails sent using the web based free e-mail provided by Outblaze, but the tagline must always contain the words "Powered by Outblaze". An example of the tagline might be: "Get your free web based e-mail at yoursite.com Powered by Outblaze!" The tagline may not contain any Inappropriate Material and Outblaze reserves the right to change the tagline if it deems necessary.

5.2 Message Board

Outblaze offers a free message board service which the Co-branding Partner may offer as a Powered by Outblaze Site to its users and members. The message board allows any person with access to the world wide web to create postings on multiple message boards. The Co-branding Partner may offer to its users and members the message board service at, for example, yoursite.com if it chooses to use a new domain name or at, for example, yoursite.outblaze.com if it chooses to use the Outblaze sub-domain name. The Co-branding Partner may not charge its users or members for offering the message board Powered by Outblaze Site.

5.3 Chat

Outblaze offers a free chat service which the Co-branding Partner may offer as a Powered by Outblaze Site to its users and members. The chat service which the Co-branding Partner allows any person with

access to the world wide web to use or create a chat room where other people can join to chat. The Co-branding Partner may offer to its users and members the chat service at, for example, [yoursite.com](#) if it chooses to use a new domain name or at, for example, [yoursite.outblaze.com](#) if it chooses to use the Outblaze sub-domain name. The Co-branding Partner may not charge its users or members for offering the chat Powered by Outblaze Site.

5.4.1 Calendar, mailing list and greeting card

Outblaze offers free calendar, mailing list and greeting card services which the Co-branding Partner may offer as a Powered by Outblaze Site to its users and members. These services allow any person with access to the world wide web to create personalised calendars, mailing lists and greeting cards. The Co-branding Partner may offer to its users and members any of these services at, for example, [yoursite.com](#) if it chooses to use a new domain name or at, for example, [yoursite.outblaze.com](#) if it chooses to use the Outblaze sub-domain name. The Co-branding Partner may not charge its users or members for offering a calendar, mailing list or greeting card Powered by Outblaze Site.

5.4.2 Customising the calendar, mailing list or greeting card tagline

The Co-branding Partner may customise the tagline attached to the bottom of each calendar, mailing list or greeting card sent using the calendar provided by Outblaze, but the tagline must always contain the words "Powered by Outblaze". An example of the tagline might be: "Get your free calendar at [yoursite.com](#) Powered by Outblaze!" The tagline may not contain any Inappropriate Material and Outblaze reserves the right to change the tagline if it so deems necessary.

5.5 Inappropriate Material

The Co-branding Partner will use its best endeavours to ensure that no inappropriate language or material (including but not limited to pornography, anything infringing copyright or other intellectual property rights, anything defamatory or discriminatory, foul language, hate propaganda, anything to do with gambling and anything fraudulent or illegal) appearing on the Powered by Outblaze Site and will indemnify Outblaze against all consequences of any such appearance.

5.6 Spamming

The Co-branding Partner shall use its best endeavours to prevent the Powered by Outblaze Site from being used for spamming or spoofing or as a drop box. If, despite such endeavours, the Powered by Outblaze Site is so used, the Co-branding Partner will immediately report the incident to Outblaze, investigate it and report the results of the investigation (including, if known, the identity of the perpetrator) to Outblaze. The Co-branding Partner shall not use unsolicited e-mail to promote its site. If the Co-branding Partner breaches any of its obligations under this Clause 5.6, Outblaze may immediately suspend the provision of the Co-brand Portal Services. This right to

suspend is additional to and does not affect Outblaze's rights under Clause 14(D)(i) below.

6. Modification to the Operating Agreement

Outblaze reserves the right to modify any of the terms and conditions contained in this agreement at any time and at its sole discretion. Outblaze will notify the Co-branding Partner of modifications in accordance with Clause 17(D) below. The Co-branding Partner will have 30 days to respond to any modifications made in this agreement. If any modification is unacceptable to the Co-branding Partner, it may terminate this agreement by notice to Outblaze given before the expiry of those 30 days. The Co-branding Partner's continued use of the Co-brand Portal Services following any notification by Outblaze of a modification will constitute binding acceptance of the modification.

7. Marketing of Powered by Outblaze Sites

The Co-branding Partner may market the Powered by Outblaze Site as Powered by Outblaze. For example: The GraphicShop could market its free e-mail service as "The Graphic Shop's Free E-mail Service powered by Outblaze".

8. Advertising

- (A) Revenue sharing in respect of the Powered by Outblaze Site will not take effect until the number of pageviews to the Powered by Outblaze Site reaches 100,000 per month. At such time, both parties will share advertising revenue (including that related to the first 100,000 page views per month) generated by the Powered by Outblaze Site as stated below in this clause.
- (B) If Outblaze sells advertising on the Powered by Outblaze Site, Outblaze shall receive 30% of total revenue as a sales fee. The remaining amount will be shared on a 50/50 basis. Once advertising revenue is collected by Outblaze from the advertiser, the share owed to the Co-branding Partner shall be payable within 30 days. The Co-branding Partner may, on reasonable notice, audit the books and records of Outblaze to verify the revenue information provided by Outblaze.
- (C) If the Co-branding Partner sells advertising on the Powered by Outblaze Site, the Co-branding Partner shall receive 30% of total revenue as a sales fee. The remaining amount will be shared on a 50/50 basis. Once advertising revenue is collected by the Co-branding Partner from the advertiser, the share owed to Outblaze shall be payable within 30 days. Outblaze may, on reasonable notice, audit the books and records of the Co-branding Partner to verify the revenue information provided by the Co-branding Partner.
- (D) Subject to sub-clause (E) below, if Outblaze decides to use an advertising network or representative ("Ad Representative") such as DoubleClick or 24/7 Media to sell advertising on the Powered by Outblaze Site, Outblaze and the Co-branding Partner will share on a 50/50 basis all revenue generated by the Ad Representative from such

sales less the commission payable to the Ad Representative. Outblaze will procure that the Ad Representative pay all of the advertising sales revenue (net of its commission) to either Outblaze or the Co-branding Partner and the party to whom these amounts are paid will be required to pay 50% of the amount received to the other Party within 30 days of receiving payment. Each party may, on reasonable notice and during normal business hours, audit the books and records of the party to whom the Ad Representative makes payment as described in this sub-clause.

- (E) The Co-branding Partner has the right, by notice to Outblaze (given in accordance with Clause 17(D) below) on reasonable grounds, to approve or reject in writing from time to time an Ad Representative selected by Outblaze pursuant to sub-clause (D) above.
- (F) Where advertising inventory remains unsold by Outblaze or the Co-branding Partner, the inventory may be split between Outblaze and the Co-branding Partner on a 50/50 basis for each party to place their own promotional advertising.
- (G) Notwithstanding the foregoing provisions of this clause, Outblaze shall have the right from time to time to sell itself (or make available for sale by third parties) 50% of the advertising inventory available on the Powered by Outblaze Site. If this happens, Outblaze will retain the whole of the advertising revenue attributable to that portion of the inventory and the Co-branding Partner will retain the whole of the advertising revenue attributable to the remainder of the inventory.
- (H) Advertisements placed on the Powered by Outblaze Site may include but are not limited to banner ads, paid links, pop-up windows, sponsorships and newsletters.
- (I) Outblaze and the Co-branding Partner may reject any advertising which includes Inappropriate Material. Outblaze and the Co-branding Partner will use their best endeavours to prohibit advertising from companies that are in direct competition with the Co-branding Partner or Outblaze from appearing on the Powered by Outblaze Site.
- (J) Outblaze and the Co-branding Partner shall each maintain proper books and records relating to the sale of advertising on each Powered by Outblaze Site and the revenues generated from it. Outblaze and the Co-branding Partner each agrees to allow the other party's auditors, on reasonable notice and during normal business hours, to audit and analyse its books and records in order to verify the accuracy of the amounts paid or owed to the other party.

9. E-mail Marketing to users of Powered by Outblaze Site

- (A) Outblaze and the Co-branding Partner may send e-mails that contain marketing content to the users and members of each Powered by Outblaze Site. Neither party may send e-mails more than twice a month.
- (B) The database of users and members of the Powered by Outblaze Site will be owned jointly by Outblaze and the Co-branding Partner and

cannot be sold to any third party without the express written agreement between Outblaze and the Co-branding Partner.

- (C) The Co-branding Partner will ensure that the users and members receiving the Co-branding Partner's e-mail have the option to opt-out of the e-mails.

10. Links and Graphics

10.1 Powered By Outblaze Graphic with hyperlink

Outblaze will provide a graphic image with hyperlink to www.outblaze.com which identifies the Powered by Outblaze Site as a service "Powered by Outblaze". This graphic with hyperlink must be placed on every page of the Powered by Outblaze Site. The Co-branding Partner must also place the Powered by Outblaze graphic image with hyperlink to www.outblaze.com on the homepage of its own Site. The size of the graphic image is to be 82 by 32 pixels. The image may not be altered in any way and the Outblaze brand must be preserved.

10.2 Button with hyperlink on Powered by Outblaze Site

- (A) The Co-branding Partner and Outblaze each have the right to place one button no larger than 120 by 50 pixels on the side bar of the Powered by Outblaze Site. Where no side bar exists, Outblaze and the Co-branding Partner will agree where the button will be placed.
- (B) The button with hyperlink may promote only Sites, products or services owned by either Outblaze or the Co-branding Partner and may not be used to promote any other person, or the products or services of any other person. Neither Outblaze nor the Co-branding Partner may earn any revenue resulting from the placement of the button with hyperlink on the Powered by Outblaze Site.
- (C) Outblaze and the Co-branding Partner will each have the right to change its own button with hyperlink at any time as it determines and will also have the right to reject any placement of a button by the other on the Powered by Outblaze Site which it deems inappropriate.

11. Security and Operations

11.1 Security Measures

Outblaze employs certain security measures against hacking or unauthorised entry including TCP Wrappers, secure session ID (based on time, user specific details and password), MD5 encryption and junk mail blocking of known spammers.

11.2 Co-location Facilities

Outblaze employs multiple co-location facilities. These facilities are used in the operations of the Co-brand Portal Services and 24/7 support is provided by these facilities to Outblaze. The operations of the Co-brand Portal Services will also be handled by these facilities. Specific guarantees given by the providers of co-location facilities to Outblaze will be passed on to the Co-branding

Partner. These guarantees may change as they are changed by the co-location facilities. Outblaze does not guarantee that these co-location facilities will continue to be used in the future.

11.3 Changes

Outblaze may change its operations including the selection and use of specific co-location partners at its discretion. Outblaze may add to, delete or change co-location facilities and does not guarantee that any co-location providers will be used by Outblaze in the future. Outblaze will notify the Co-branding Partner of changes to its operations if Outblaze considers that they affect the performance of the Co-brand Portal Services.

11.4 No Warranty

Outblaze employs security measures and co-location facilities as described above in this Clause 11 in good faith but does not warrant or guarantee that the security measures or co-location facilities which it employs will work and accepts no responsibility for the consequences of them not working.

12. Ownership of Membership and Pageviews

Outblaze and the Co-branding Partner shall own jointly the Powered by Outblaze Site and the membership base and the pageviews generated from the Powered by Outblaze Site. Outblaze and the Co-branding Partner shall each have the right to include the membership and pageviews of the Powered by Outblaze Site in its overall membership and pageviews as long as this agreement is in effect.

13. No Intellectual Property

This agreement provides solely for services to be given and received. It does not constitute an assignment, transfer, license or other disposition of intellectual or other property or rights by Outblaze. The Co-branding Partner shall not obtain (and shall not assert that it obtains) any intellectual or other property or rights by virtue of the entry into and performance of this agreement. Nothing in this agreement prevents Outblaze from making available services which are the same as or similar to the Co-brand Portal Services to any other person. The Co-branding Partner may not use the Co-brand Portal Services except as expressly provided in this agreement. The Co-branding Partner may not purport to assign, transfer, licence or otherwise dispose of any intellectual or other property or rights in the Co-brand Portal Services.

14. Term and Termination

- (A) This agreement will commence upon execution by both parties and will, subject to the remainder of this clause, continue for two years and thereafter for successive periods of one year unless terminated by notice from one party to the other given not less than 60 days before the second or any subsequent anniversary of the date of this agreement.

- (B) If the Co-branding Partner terminates this agreement and wishes to continue to provide services similar to the Co-brand Portal Services by itself or with another provider, Outblaze will charge a US\$1 per user migration fee.
- (C) The Co-branding Partner will have the right to terminate this agreement upon 60 days written notice to Outblaze if Outblaze discontinues the use of the security measures referred to in Clause 11(A) above.
- (D) Each party may terminate this agreement without notice if the other party:
 - (i) is in material breach of its obligations under this agreement and does not remedy the breach within 30 days of being required to do by the non-breaching party; or
 - (ii) becomes subject to any kind of winding-up, receivership, administration or insolvency proceeding or is insolvent or unable to pay its debts as they fall due.
- (E) Termination of this agreement shall be without prejudice to any rights which may have accrued prior to termination.

15. Disclaimer

Outblaze makes no warranty with respect to the Powered by Outblaze Site or the Co-brand Portal Services or any result the Co-branding Partner may achieve using the foregoing and Outblaze hereby disclaims all implied warranties, including the warranties of non-infringement, merchantability, and fitness for a particular purpose in connection with all of the foregoing. In addition, Outblaze makes no representation that the operation of its Site will be uninterrupted or error-free, and Outblaze will not be liable for the consequences of any interruptions or errors.

16. Limitation of Liability and Warranty

Neither party shall be liable to the other party for any indirect, special, incidental or consequential damages or any loss of revenue, profits or data arising out of or in connection with this agreement, whether or not the innocent party has been advised of the possibility that any such damage may occur.

17. Miscellaneous

- (A) This agreement will be governed by the laws of Hong Kong. Any action relating to this agreement may be brought in the courts of Hong Kong and each party consents to the jurisdiction of such courts.
- (B) Neither party may assign its rights or delegate its obligations under this agreement without the other's prior written consent. This agreement will be binding on, inure to the benefit of and be enforceable against the parties and their respective successors and permitted assigns.

- (C) Neither party's failure to enforce the strict performance of any provision of this agreement will constitute a waiver of its right to subsequently enforce such provision or any other provision of this agreement.
- (D) All notices including notices relating to any breach or termination of this agreement will be given in writing in English and will be sufficiently served if delivered personally or sent by post, facsimile or electronic mail to the physical address, facsimile number or e-mail address below its signature at the foot of this agreement, marked for the attention of the person named below that signature. Each party may change its notice details by notice to the other party given as provided in this sub-clause. Any notice shall be deemed to have been received upon delivery, if delivered personally; upon confirmation of transmission, if sent by facsimile or electronic mail; or 7 days after posting.
- (E) Neither party will be liable to the other for any breach of, or failure of performance under this agreement caused by or resulting from any act of God, act of State, natural or man-made disaster or any other cause beyond its reasonable control (each "an event of Force Majeure"). If one party is affected by an event of Force Majeure it will promptly notify the other of the occurrence of that event.
- (F) This agreement contains the parties' entire understanding and supersedes all prior understandings between the parties relating to the subject matter of this agreement.
- (G) This agreement is being executed in English, in duplicate, and each party shall retain one copy and both copies will be treated as counterparts of the agreement.

The parties to this agreement have executed this agreement on the dates stated below. If each date is the same, this agreement takes effect on that date. If the dates are different, this agreement comes into effect on the later date.

OUTBLAZE LIMITED

By: _____

Date: _____

Address: 3rd Floor, Nan Dao Commercial Building
359-361 Queen's Road
Central
Hong Kong

E-mail:

Fax: 2832-7807

Telephone:

Attention:

By: _____

Date: _____

Address:

E-mail:

Fax:

Telephone:

Attention (name and/or title):

Site name:

Site URL(s):

Site Classification:

(news, sport, music etc.)

