

# **2ThemartComInc\_19990826\_10-12G\_EX-10.10\_67002 88\_EX-10.10\_Co-Branding Agreement\_Agency Agreement Analysis Report**

## **Compliance Report:**

- **Compliance Score:** 45 out of 100
- **Verdict:** Moderate Compliance

## **Strengths:**

- The agreement defines key terms clearly (Sections 1).
- It outlines the development and implementation process with timelines (Section 2).
- It includes provisions for payment, reporting, and audit rights (Section 5), offering some financial protection.
- The agreement addresses intellectual property rights, including trademark usage and limitations on sublicensing (Section 6).
- It includes indemnification clauses (Section 9), providing some risk mitigation.
- The agreement specifies governing law and jurisdiction (Section 12.1).
- The contract includes clauses on termination for breach, change in company structure, and bankruptcy (Section 8), addressing potential risks.
- The inclusion of a disclaimer of warranties (Section 7) is a positive aspect, managing expectations.

## **Areas for Improvement:**

- **Dated Agreement:** The contract is dated June 21, 1999. Laws, regulations, and best practices in e-commerce and co-branding have significantly evolved since then. A complete overhaul is needed to reflect current standards.
- **Vague Service Level Agreements (SLAs):** Section 2.5 mentions "reasonable service levels" but lacks specifics. Concrete SLAs with measurable metrics (e.g., uptime, response times) are crucial for a modern agreement.
- **Missing Key Clauses:** Several essential clauses are missing, including:
  - **Confidentiality beyond Section 11:** While Section 11 addresses confidential information, it's limited and needs expansion to cover broader aspects of confidential business information exchanged during the agreement's term.
  - **Dispute Resolution:** The agreement lacks a robust dispute resolution mechanism (e.g., arbitration, mediation). This is a significant omission.
  - **Force Majeure:** While a force majeure clause exists (Section 12.4), it needs to be more precise and comprehensive, specifying the types of events covered and the procedures for handling them.

- **Liability Limitations:** The limitation of liability (Section 10) excludes liability for breach of Section 11 (Confidential Information), but should be more comprehensive, addressing potential liabilities for negligence, breach of contract, and other potential issues. It should also specify a monetary cap on liability.
- **Assignment and Transfer:** The agreement needs explicit clauses regarding the assignment or transfer of rights and obligations by either party.
- **Entire Agreement Clause:** While an entire agreement clause exists (Section 12.12), it needs to be strengthened to explicitly state that all prior agreements are superseded, except for the specifically mentioned Confidential Agreement.
- **Ambiguous Terms:** Some terms, while defined, could benefit from more precise language to avoid future disputes. For example, "commercially reasonable efforts" in Section 2.2 needs further clarification.
- **Outdated Technology References:** The agreement relies heavily on email and checks for transactions. Modern e-commerce practices should be incorporated.
- **Lack of Specific Performance Metrics:** The agreement lacks specific, measurable, achievable, relevant, and time-bound (SMART) goals and metrics for measuring the success of the co-branding initiative.

## Reasoning:

The agreement shows some effort in defining terms and outlining responsibilities. However, its age and lack of crucial modern contract clauses significantly detract from its compliance and overall effectiveness. The missing clauses and vague language introduce substantial legal and business risks. The outdated nature of the agreement makes it unsuitable for current business practices. A complete rewrite reflecting current legal standards and best practices is strongly recommended.

## Additional Information (if needed):

To provide a more comprehensive evaluation, the following information is needed:

- The current legal landscape regarding co-branding agreements and e-commerce in the relevant jurisdiction.
- Any relevant industry-specific regulations or best practices.
- The specific business objectives and risk tolerance of both parties.
- Details about the current technology used in the co-branded site and transaction processes.

A legal professional should review and update this agreement to ensure compliance with current laws and best practices.