



PARTNER PROGRAM

GENERAL TERMS AND CONDITIONS (v2008.1)

1. DEFINITIONS

The following defined terms are used in these General Terms and Conditions and/or in related Program Documents:

1.1. "Agreement" means the Program Document(s) (as defined below) executed by the parties and these General Terms and Conditions.

1.2. "Application Services" means the provision by Convio of an integrated approach to engaging non-profit organization constituents through the Internet, including without limitation applications for fundraising, advocacy, event fundraising, ecommerce, and tribute/memorial sites, communication tools for web content management and email marketing, and an online marketing database. all as made available by Convio from time to time as a 'Software as a Service' delivery mode at Convio's designated web site or IP address, including associated documentation made available in written form or online.

1.3. "Confidential Information" means: (a) the terms and conditions of this Agreement; and (b) any business or technical information of Convio and Partner, including but not limited to any information relating to Convio's or Partner's products, product plans, designs, costs, product prices, finances, marketing plans, business opportunities, personnel, research, development or know-how that is marked or otherwise identified as confidential or proprietary at the time of disclosure.

1.4. "End User" means an end user enterprise or other end user organization that enters into an agreement with Convio or an authorized Convio reseller to use the Application Services.

1.5. "Intellectual Property Rights" means any patents, copyrights, moral rights, author's rights, rights of publicity, mask work rights, trademarks, service marks, trade names, trade secrets, know-how, contract rights, licensing rights or other proprietary or intellectual property rights under the laws of any jurisdiction, whether now existing or hereafter arising.

1.6. "Marks" means the trademarks, service marks, trade names, logos or other identifying indicia of a

party which are specifically listed in a Program Document and are permitted to be used in accordance with such Program Document.

1.7. "Materials" means marketing, training and promotional layouts, designs, copy, information and materials (regardless of form or medium) relating to the business, products and/or services of a party and provided by or on behalf of such party (including its employees, contractors or representatives) for use in connection with and as described in a Program Document.

1.8. "Program" means the specific marketing, training, referral or other cooperative programs entered into by the parties under this Agreement using one or more Program Documents.

1.9. "Program Document" means a document cover page executed by the parties to which these Terms and Conditions are attached which sets forth the specific Program being entered into by the parties.

1.10. "Territory" means a geographic territory or region specified in the applicable Program Document, if any.

2. MARKETING AND OTHER COOPERATION

2.1. "Marketing Programs." Each party authorizes the other party to undertake cooperative promotion and marketing efforts for the other party's products or services, conduct joint pre-sales efforts, and to perform and conduct other mutually beneficial marketing efforts, to the extent and as set forth in a Program Document in which these General Terms and Conditions are referenced.

2.2. "Acknowledgement." The parties acknowledge and agree that this Agreement does not authorize any marketing activities except as may be set forth in a Program Document specifically referencing these General Terms and Conditions. Neither party will have any rights, duties or obligations with respect to any marketing activities unless and until the relevant Program Document has been executed in writing by duly authorized representatives of each party.

2.3. "General Responsibilities." Each party agrees (a) to conduct its business in a manner that reflects favorably at all times on the other party and its good

name, goodwill and reputation; (b) not to engage in any deceptive, misleading or unethical practice; (c) not to make false or misleading representations regarding the other party or its products and services; (d) not to publish or employ or cooperate in the publication or employment of any misleading or deceptive advertising material (although a party is not responsible for any misleading or deceptive material within the marketing literature or other materials provided to such party by the other party); and (e) not to make any representations, warranties or guarantees to customers, potential customers or the trade generally with respect to the other party which are inconsistent with those contained in the marketing literature provided by the other party. This provision will survive the expiration of this Agreement for a period of one (1) year.

2.4. Expenses. Unless otherwise expressly set forth in a Program Document, each party will bear its own costs and expenses incurred in connection with its activities under this Agreement.

2.5. Feedback. Partner shall communicate promptly to Convio any modifications or improvements to the Application Services suggested by any End User, Partner employee, or other party. Partner agrees that Convio shall have any and all right, title and interest in and to any such suggested modifications or improvements of the Application Services, without the payment of any additional consideration hereunder to Partner or any such party, and that Partner will reasonably cooperate with Convio in effecting such ownership rights.

2.6. Non-Exclusivity. Convio reserves the right to appoint additional partners of any type for any services or products developed, sold, licensed or distributed by Convio, and Convio reserves the right to sell any of such items directly in each case without thereby incurring any commission or other obligation to Partner unless expressly set forth to the contrary in a Program Document.

3. PROGRAM ADMINISTRATION AND CHANGES.

3.1. Program Administration. Convio will administer the applicable Program through its Program website. This site will include a program guide, tools to track Partner's program membership and tools to allow Partner to take advantage of Program benefits.

3.2. Program Changes. Convio has the right to change or discontinue a Program or any aspect of it. Convio will give Partner 30 days email or written notice of any substantive program change (which can include a discontinuation of a part of the Program). Convio will give Partner 60 days email or written notice if Convio

intends to discontinue the Program. If Partner disagrees with any change Convio makes, Partner has the right to immediately terminate this Agreement. For all other changes, Partner is responsible for checking the Program website regularly. When the Program website changes, Partner will be bound by the changes on a going-forward basis as of the date the changes are posted.

4. OWNERSHIP

Convio and its licensors presently own and will continue to own all right, title, and interest in and to the Convio Materials and the Application Services and all worldwide intellectual property rights therein. Partner will not delete or in any manner alter or obscure the copyright, trademark, and other proprietary rights notices of Convio and its licensors appearing on the Materials as delivered to Training Partner. Partner and its licensors presently own and will continue to own all right, title, and interest in and to the Partner Materials and all worldwide intellectual property rights therein. Convio will not delete or in any manner alter or obscure the copyright, trademark, and other proprietary rights notices of Partner and its licensors appearing on the Materials as delivered to Convio.

5. FEES

Unless otherwise agreed to in writing by the parties, each party will pay the other party any amounts due under a Program Document in U.S. currency. All amounts payable under this Agreement are exclusive of all sales, use, value-added, withholding, and other taxes and duties. The party owing fees will pay all taxes and duties assessed in connection with the applicable payments by any authority, except for taxes payable on the other party's net income. The party owing fees will promptly reimburse the other party for any and all taxes or duties that the other party may be required to pay in connection with applicable service or item under the Program Document.

6. PROGRAM AUDIT

Partner must keep all usual and proper books and records relating to Partner's performance of this Agreement and any records pertaining to all transactions between Partner and Convio and Partner and End Users. This standard takes into account the accounting rules, regulations, authoritative pronouncements, principles and practices accepted in Partner's jurisdiction. Partner must keep these documents during the term, and for 3 years after this Agreement ends. During this same period, Convio's audit team may conduct audits of Partner's applicable books, records, operations, processes and facilities during any selected period to verify Partner's compliance with the terms of this Agreement including the applicable Program

Document. Convio will give Partner not less than 48 hours' notice of the audit. Partner will promptly correct any errors and omissions disclosed by the audits. We reserve the right to validate all customer references supplied by Partner in accordance with the applicable Program requirements. Any audit will be conducted during Partner's normal business hours and in a manner that does not interfere unreasonably with Partner's normal business activities. Partner will provide Convio with access to all applicable books, records, operations, processes and facilities that Convio may need to review to complete a proper and thorough audit. If an audit is conducted with notice, Partner will have all applicable books, records and operations available to Convio at the beginning of the audit. Partner will pay Convio the costs for the audit if an audit uncovers a terminable breach of this Agreement or a discrepancy of 2% or more in any fees due by Partner under a Program Document. If the audit team makes any commercially reasonable recommendations to Partner on record keeping, Partner will implement the recommendations within a mutually agreeable timeframe.

7. CONFIDENTIAL INFORMATION

7.1. Exclusions. Confidential Information does not include information that: (a) is or becomes generally known to the public through no fault or breach of this Agreement by the receiving party; (b) is properly known to the receiving party at the time of disclosure without an obligation of confidentiality; (c) is independently developed by employees or consultants of the receiving party without reference to or use of the disclosing party's Confidential Information; (d) the receiving party rightfully obtains from a third party without restriction on use or disclosure; or (e) is disclosed with the prior written approval of the disclosing party.

7.2. Use and Disclosure Restrictions During the term of this Agreement, and for a period of five (5) years after any termination of this Agreement, neither party will use the other party's Confidential Information except as permitted herein, and will not disclose such Confidential Information to any third party except to employees and consultants as is reasonably required in connection with the exercise of its rights and obligations under this Agreement (and only subject to binding use and disclosure restrictions at least as protective as those set forth herein executed in writing by such employees and consultants). Consultants may not be competitors of the disclosing party. However, each party may disclose Confidential Information of the other party pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided that, if permitted by law, the disclosing party gives reasonable notice to the other party to contest such order or requirement. Either

party may provide a copy of this Agreement in connection with any financing transaction or due diligence inquiry, but only if the recipient agrees to keep this Agreement confidential, and only if the recipient is not a competitor of the other party.

8. LIMITED TRADEMARK LICENSES

8.1. Convio Marks License. Subject to the terms and conditions of this Agreement and the applicable Program Document, Convio grants to Partner a limited, non-exclusive, non-transferable, non-sublicensable and royalty-free right and license to use, reproduce, display and distribute the Convio Marks and Convio Materials solely in connection with activities conducted pursuant to a Program Document. Partner will comply with Convio's then-current branding guidelines with respect to any use, reproduction, display or distribution of the Convio Marks. Partner acknowledges and agrees that (a) all right, title and interest in and to the Convio Marks and the Convio Materials (including, without limitation, any improvements, modifications or derivatives of any of the foregoing) are, and will remain, the exclusive property of Convio and (b) to the extent that Partner has or is deemed to have acquired any right, title or interest in or to any of the foregoing property, Partner hereby assigns and transfers all of its right, title and interest in and to such property to Convio. Partner further agrees to execute and deliver such documents as Convio may reasonably request from time to time to confirm and further implement the intent of the preceding sentence.

8.2. Partner Marks License. Subject to the terms and conditions of this Agreement and the applicable Program Document, Partner hereby grants to Convio a limited, non-exclusive, non-transferable, non-sublicensable and royalty-free right and license to use, reproduce, display and distribute the Partner Marks and the Partner Materials solely in connection with activities conducted pursuant to such Program Document. Convio will comply with Partner's then-current branding guidelines with respect to any use, reproduction, display or distribution of the Partner Marks. Convio acknowledges and agrees that (a) all right, title and interest in and to the Partner Marks and the Partner Materials (including any improvements, modifications or derivatives of any of the foregoing) are, and will remain, the exclusive property of Partner and (b) to the extent that Convio has or is deemed to have acquired any right, title or interest in or to any of the foregoing property, Convio hereby assigns and transfers all of its right, title and interest in and to such property to Partner. Convio further agrees to execute and deliver such documents as Partner may reasonably request from time to time to confirm and further implement the intent of the preceding sentence.

8.3. Approvals. Prior to a party's use of the other party's Marks and/or Materials in connection with activities under a Program Schedule, including the release of any marketing, advertising, press releases or other promotional content and/or materials (regardless of form or medium) that reference the other party and/or its business, products and/or services, the party seeking the use of the other party's Marks and/or Materials will submit a written request for approval ("Approval Request") to the other party's designated representative, together with a copy of the promotional content and/or material to be released. Approval Requests will be submitted to the other party's designated representative not less than ten (10) days prior to the requested release date. A party may not use the other party's Marks and/or Materials unless and until the applicable Approval Request has been approved by the other party or the other party's designated representative, and then only to the extent of the approval granted, which approval shall not be unreasonably withheld, restricted or delayed.

9. REPRESENTATIONS AND WARRANTIES

9.1. Mutual Representations. Each party represents and warrants to the other party that: (a) it has full power, authority and capacity to enter into this Agreement and to perform its obligations hereunder; (b) execution and delivery of this Agreement and the performance of its obligations hereunder does not constitute a violation of its organizational documents or is restricted by, in conflict with, or contrary to any contract or agreement to which it is a party or by which it is bound (including any agreements relating to the confidential or proprietary information of a third party); (c) it will not make any commitment or incur any contractual obligation on behalf of the other party; (d) it will not make any statements, representations, warranties, promises or guarantees with respect to the other party's products and/or services other than those expressly authorized by the other party; (e) its Materials, marketing communications, products and services will comply with all applicable governmental laws, statutes, ordinances, orders, rules or regulations; and (f) its Materials, marketing communications, products and/or services offered in connection with a Program Document will not contain content or information (i) relating to or otherwise promoting sexually explicit subject matter, alcohol, illegal drugs, gambling or illegal activity or (ii) which may be considered misleading, fraudulent, abusive, defamatory, harassing, grossly offensive, threatening or malicious.

9.2. Application. Partner represents and warrants that all information provided on any registration or application form submitted to Convio is, in all material respects, true and correct, and warrants that the information will continue to be so during the term of this Agreement unless Convio is otherwise promptly notified by Training Partner in writing.

9.3. WARRANTY DISCLAIMER. THE PROGRAM MATERIALS ARE PROVIDED "AS IS". EXCEPT AS SET FORTH IN SECTION 9.1 AND 9.2 AND NEITHER PARTY MAKES ANY WARRANTIES TO THE OTHER PARTY WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT AND DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.

10. INDEMNIFICATION

10.1. Each party will indemnify, hold harmless and, at the request of the other party, defend, the other party and its officers, directors, officers, employees, representatives and agents from and against any and all Losses arising out of, with respect to, or incurred in connection with third party claims relating to any statements, representations, warranties, promises or guarantees with respect to the other party's products and/or services other than those expressly authorized by the other party.

10.2. Procedures. In the event of any such indemnifiable claims, the party entitled to indemnification (the "Indemnified Party") will notify the party responsible for indemnification (the "Indemnifying Party") of any matter with respect to which the Indemnified Party may seek indemnification or other relief from the Indemnifying Party under this Section promptly after the Indemnified Party becomes aware of such matter; provided, however, that any failure to give prompt notice will not relieve the Indemnifying Party from any of its liabilities or obligations except to the extent that the failure adversely affects the ability of the Indemnifying Party to defend the claim. In the event that the Indemnified Party requests that the Indemnifying Party defend the Indemnified Party with respect to any Loss, the Indemnifying Party will assume the defense of such matter, and will pay any amounts in settlement and all costs and damages awarded against or incurred by the Indemnified Party or any other person indemnified hereunder, provided that the Indemnified Party will have the right to participate in the defense with counsel of its own choice and to approve any settlement, unless the settlement includes a release of the Indemnified Party and any other indemnified person from all liability, and there are no other terms and conditions as part of such settlement which could adversely affect the Indemnified Party or any other indemnified Person.

11. LIMITATION OF LIABILITY

EXCEPT WITH RESPECT TO CLAIMS BASED ON A PARTY'S FRAUD OR WILLFUL MISCONDUCT, COPYRIGHT INFRINGEMENT, OR A BREACH OF

SECTIONS 7 (CONFIDENTIALITY) OR 8 (LIMITED TRADEMARK LICENSES), NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY UNDER ANY SECTION OR SUBJECT MATTER OF THIS AGREEMENT OR UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY (A) AMOUNTS IN EXCESS, IN THE AGGREGATE, OF THE FEES PAID OR DUE (WHICHEVER IS GREATER) TO EITHER PARTY BY THE OTHER PARTY UNDER A PROGRAM DOCUMENT DURING THE TWELVE-MONTH PERIOD PRIOR TO THE DATE THE CAUSE OF ACTION AROSE, (B) INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, LOST PROFITS, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, (C) FOR COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES, OR (D) FOR LOSS OR CORRUPTION OF DATA OR INTERRUPTION OF USE.

12. TERM; RENEWAL

12.1. Term. The term of the Program which reference these General Terms and Conditions will commence on the Effective Date specified in the applicable Program Document and will continue and remain in full force and effect for the period set forth in the Program Document (the "Initial Term") unless terminated sooner under such Program Document or Sections 3.2 or 12.2.

12.2. Renewal. Unless otherwise set forth in a Program Document, upon the expiration of the Initial Term or any Renewal Term, as the case may be, this Agreement will be automatically renewed for an additional one (1) year period (each such year a "Renewal Term") without notice. Unless otherwise set forth in a Program Document, after the Initial Term, either party may terminate this Agreement without cause upon ten (10) business days' prior written notice to the other party.

12.3. Termination. Each party will have the right to terminate this Agreement if the other party breaches any material term of this Agreement and fails to cure such breach within thirty (30) days after written notice thereof. Either party may terminate this Agreement immediately if the other party (a) ceases to do business, or otherwise terminates its business operations, or (b) becomes the subject of any voluntary or involuntary petition in bankruptcy, or (c) is acquired by a competitor of the terminating party.

12.4. Bankruptcy. This Agreement will terminate automatically if Partner: (a) becomes the subject of any voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership,

liquidation, or composition for the benefit of creditors; (b) becomes the subject of an involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within sixty (60) days of filing; (c) in the event Partner becomes insolvent (i.e. becomes unable to pay its debts in the ordinary course of business as they become due); (d) makes an assignment for the benefit of creditors; or (e) ceases to conduct business in the ordinary course.

12.5. Non-Exclusive Remedy. Termination of this Agreement by either party will be a nonexclusive remedy for breach and will be without prejudice to any other right or remedy of such party.

12.6. Injunctive Relief. Each party acknowledges that its breach of Section 4, 7 or 8 may cause irreparable harm to the other party, the extent of which would be difficult to ascertain. Accordingly, each party agrees that, in addition to any other remedies to which such other party may be legally entitled, each party will have the right to seek immediate injunctive relief in the event of a breach or threatened breach of such sections.

12.7. Survival. The rights and obligations of the parties contained in Sections 2.3, 4, 5, 6, 7, 9.3, 10, 11, 12 and any rights to payment that have accrued at time of termination will survive the termination of this Agreement for the time period set forth therein or indefinitely if no time period is specified.

12.8. Effect of Termination. Upon termination of this Agreement for any reason, (i) each party will cease use of the other party's Marks and Materials and will return to the other party or destroy, as requested by the disclosing party, the original and all copies of any Confidential Information (and any Marks and Materials) of the disclosing party and any summaries, analyses, studies or notes thereon and, at the disclosing party's request, have one of the officers of the receiving party certify in writing that it has complied with these obligations and (ii) each party shall pay the other party all amounts accrued and/or due and outstanding as of the date of termination or expiration and remit such payment within thirty (30) days of the termination date.

12.9. No Termination Liability. Each party understands that the rights of termination hereunder are absolute. Neither party shall incur any liability or compensation obligation whatsoever for any damage (including, without limitation, damage to or loss of goodwill or investment), loss or expenses of any kind suffered or incurred by the other (or for any compensation to the other) arising from or incident to any termination of this Agreement by such party that complies with the terms

of the Agreement whether or not such party is aware of any such damage, loss or expenses.

13. MISCELLANEOUS PROVISIONS

13.1. Assignment. Neither party will directly or indirectly transfer or assign or otherwise dispose of this Agreement without the prior written consent of the other party, which consent will not be unreasonably withheld or delayed. Notwithstanding the foregoing, Convio may assign this Agreement (in whole, but not in part) without such consent in conjunction with a Change of Control or a public offering or reincorporation or to an Affiliate. "Change of Control" means a transaction or series of related transactions to: (a) sell, convey or otherwise dispose of all or substantially all of the property or business of the corporation; (b) merge or consolidate with any other corporation (other than a wholly-owned subsidiary corporation); or (c) transfer any voting securities of the corporation, unless the stockholders of the corporation who own more than 50% of the voting power of the corporation immediately prior to such transaction will own more than 50% of the voting power of the surviving corporation following the transaction or transactions. "Affiliates" means any person, corporation or entity which, directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, another person, corporation or entity. "Control" means ownership of more than fifty percent (50%) of the shares or securities or other ownership interest

13.2. Governmental Approvals and Compliance. Partner will, at its own expense, obtain and arrange for the maintenance in full force and effect of all government approvals, consents, licenses, authorization, declarations, filings and registrations as may be necessary or advisable for the performance of all of the terms and conditions of the Agreement including, but not limited to, foreign exchange approvals, import and offer agent licenses, fair trade approvals and all approvals which may be required to realize the purposes of the Agreement. Partner hereby agrees that it, will not, without the prior written consent, if required, of the office of Export Administration of the U.S. Department of Commerce, export or re-export, directly or indirectly, the Materials in violation of any applicable foreign or domestic statutes, laws, regulations, or tariffs or to any other country to which such transmission is restricted by such regulation or applicable statutes.

13.3. Waiver and Amendment. No modification, amendment or waiver of any provision of this Agreement will be effective unless in writing and signed by the parties duly authorized representatives. The failure by either party to enforce any provision of this Agreement

will not constitute a waiver of future enforcement of that or any other provision.

13.4. Governing Law; Forum. This Agreement will be governed by the laws of Texas and the United States, without reference to conflict of laws principles and without reference to UCITA (the Uniform Computer Information Transactions Act) as it may be enacted in the applicable jurisdiction. The parties specifically disclaim the UN Convention on Contracts for the International Sale of Goods. The sole jurisdiction and venue for actions related to the subject matter of this Agreement will be the state and federal courts located in Travis County, Texas. Both parties consent to the jurisdiction of such courts with respect to any such actions.

13.5. Export Regulations. Partner hereby agrees it will comply with all applicable United States and foreign export laws and regulations.

13.6. Notices. All notices, demands or consents required or permitted under this Agreement will be in writing. Notice will be considered effective on the earlier of actual receipt or: (a) the day following transmission if sent by facsimile followed by written confirmation; (b) one (1) day (two (2) days for international addresses) after posting when sent via an express commercial courier; or (c) five (5) days after posting when sent via certified United States mail. Notice will be sent to the address for each party set forth on the first page of this Agreement, or at such other address as will be given by either party to the other in writing. Notices to Convio will be addressed to the attention of: Chief Financial Officer.

13.7. Independent Contractors. The parties to this Agreement are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise, or agency between the parties. Neither party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.

13.8. Severability. If for any reason a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect.

13.9. Entire Agreement, Counterparts. This Agreement, including all Schedules and referenced documents, contains the complete understanding and agreement of the parties and supersedes all prior or contemporaneous agreements or understandings, oral or written, relating to the subject matter herein. This Agreement may be executed in counterparts, each of which will be deemed an original but all of which

together will constitute one and the same instrument. At the parties option, this Agreement may be executed by facsimile.

13.10. Force Majeure. Except for payment obligations under a Program Document, neither party shall be liable to the other party for any failure or delay in performance due to causes beyond its reasonable control, including but not limited to, labor disputes, strikes, lockouts, shortages of or inability to obtain labor, energy, raw materials or supplies, war, riot, act of God or governmental action.

13.11. Attorneys' Fees. In the event any action is brought to enforce any provision of this Agreement or to declare a breach of this Agreement, the prevailing party shall be entitled to recover, in addition to any other amounts awarded, reasonable legal and other related costs and expenses, including attorney's fees, incurred thereby. For purposes of this section only, "prevailing party" shall

mean the party that prevails on a majority of causes of action in such dispute.

13.12. Precedence. In the event of a conflict between the terms of different parts of this Agreement, the following order of priority shall apply: first, the Program Document; second, these General Terms and Conditions; and third, the applicable Program Guide.

13.13. Basis of Bargain. Each party recognizes and agrees that the warranty disclaimers and liability and remedy limitations in this Agreement are material bargained for bases of this Agreement and that they have been taken into account and reflected in determining the consideration to be given by each party under this Agreement and in the decision by each party to enter into this Agreement.