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A Perfect Match? Keys to Developing Successful Strategic Alliances

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"Strategic Alliances." Evidence of these collaborations are often found on company websites that include links to "Our Partners" or "Partner Programs." In all likelihood, you already participate in one or more of these alliances.

What **are** "strategic alliances?" How can these arrangements help you expand your business? What are the risks involved in entering into such relationships?

The term "strategic alliance" covers a wide variety of collaborative business relationships, ranging from the relatively simple, including referral or marketing agreements or licensing and distribution arrangements, to the more complex value added reseller (VAR) or original equipment manufacturer (OEM) arrangement, to the "joint venture" partnership that establishes a separate entity for the joint development of a new product or service. Regardless of the specific form, magnitude or complexity of the alliance, the purpose is always the same – to combine your product or service with a complementary skill, resource, product or service of another business. Structured properly, a strategic alliance may provide a company with better access to funding, manufacturing, distribution and/or marketing capabilities than it would have alone.

Strategic alliances are especially attractive for entrepreneurs under pressure to create revenues and enhance profitability. Unfortunately, this pressure sometimes leads companies to enter into alliances without adequate investigation, understanding or protection.

As you consider incorporating strategic alliances into your business plan, and as you have the opportunity to consider specific alliances with potential partners, here are a few keys to developing successful strategic alliances:

Know your partner. Prior to entering into a strategic alliance, each party should perform an adequate "due diligence" review of its potential partner to investigate whether it will be able to fulfill its end of the alliance. Because this will require you to share sensitive information about your business with the potential partner, you should enter into a mutual nondisclosure agreement to protect any proprietary information that you disclose during this process.

Know your objectives & your partner's objectives. One of the fundamental causes of an unsuccessful alliance is the failure of the parties to clearly articulate and understand what each partner wants to accomplish through the relationship. Each party should be able to clearly identify the benefit it seeks to achieve as a result of the relationship. Identifying your own and the other party's

objectives before proceeding to negotiate a detailed agreement will help prevent subsequent misunderstandings, potentially saving significant time, money and energy.

Determine how much, if any, control will be given to the partner. Each party may want the right to approve or disapprove of certain actions by the other party in order to ensure that its objectives are being met. How will conflicts or disagreements about these approvals be handled? Will there be any limitations on either party's ability to engage in similar arrangements or offer similar products? Issues of control become more complex when the parties establish a separate entity for their strategic alliance.

Clearly identify who will own and/or control any technology. A strategic alliance often involves the sharing or exchange of certain proprietary technology or other intellectual property. Although it is necessary to grant your partner sufficient rights in your technology to achieve your shared objectives, it is imperative that you maintain ultimate control and ownership of your proprietary technology. This issue becomes particularly important if the alliance involves any modifications to your technology by your partner, as is the case with a VAR or OEM. Who will own the rights to the modification? Under copyright law, your partner generally may claim ownership rights to the modification itself, referred to in legal jargon as a "derivative work," while you would continue to maintain a valid copyright in the underlying pre-existing product. However, depending on the context of the relationship, and other deal considerations, you may want to obtain ownership rights in the derivative work or at least a license of any modifications.

Develop an exit strategy. Because of the high level of inter-dependence typically created by a strategic alliance, it is crucial that you agree with your partner in advance as to how the alliance will terminate. You should consider not only the events which trigger termination, but also the effects of termination on the parties as well as the effects on others, such as customers and suppliers. For example, an agreement that provides your partner with the opportunity to terminate the relationship upon 30 days notice may not provide you with sufficient time to take necessary steps to mitigate the effects of termination on your customers.

Formalize the alliance with well-drafted documentation. Unlike business transactions where the parties' rights and duties are generally complete upon the closing of the transaction or the delivery of a product, a strategic alliance is not a "once and done" deal. Rather, it represents an on-going commitment where the substance of the transaction develops over an extended time period. Thus, the parties need an agreement they can rely upon to govern their relationship through the twists and turns of time. While the success of any alliance cannot be guaranteed, a carefully and thoroughly negotiated agreement can enhance the potential for success.