Appendix 3B

REFERRAL PARTNER AGREEMENT

REFERRAL PARTNER AGREEMENT

This Referral Partner Agreement (this “Agreement”) is entered into as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_ by and between Vendor, Inc., a Delaware corporation with its principal place of business at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Ann Arbor, MI 48104 (“Vendor”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a[n] [INDIVIDUAL/STATE AND TYPE OF ENTITY] with a place of business located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Referral Partner”). Vendor and Referral Partner are referred to individually as a “Party” and collectively as the “Parties.”

1. Referral Partner Relationship

(a) Nature of Relationship. Referral Partner will have the right to submit referrals in accordance with this Agreement. Referral Partner is an independent contractor and not a joint venturer, franchisee, agent, or employee of Vendor. Referral Partner shall not represent its relationship with Vendor as anything other than a referral partner. As well, Vendor shall not refer to Referral Partner as anything other than a referral partner. Referral Partner has no license to the Vendor products and Referral Partner’s sole involvement as it pertains to this Agreement is to refer potential customers to Vendor.

(b) No Exclusivity. This Agreement will not be construed as granting any exclusive rights to either Party or as precluding either Party from entering into any relationship of any kind with any third party, including a third party that is a customer of the other Party.

2. Referral Partner Program

(a) Referral Process. Referral Partner shall submit to Vendor, in writing in accordance with Exhibit A (the “Referral Form”), any sales opportunities that are interested in utilizing Vendor’s products or services (“Referrals”). Vendor will review the Referral Form, and if it determines that the Referral is redundant with its existing customer list or internal prospective customer list, Vendor shall notify Referral Partner in writing of the existence of the redundancy within five (5) business days after submission of the Referral. Each Referral not so rejected within five (5) business days of submission will become a “Documented Referral.”

(b) Referral Fees. For each Documented Referral that purchases products or services from Vendor within six (6) months after the Submission Date on the Referral Form (a “New Customer”), Vendor shall pay Referral Partner in accordance with the following (the “Referral Fees”):

|  |  |
| --- | --- |
| Type of Referral | Fee |
| Introduction Only | $ \_\_\_\_\_\_\_ (one-time fee) |
| Co-Selling | 10% of the collected first year fees (only) |

“Introduction Only” means that the Referral Partner only provides Vendor the contact information for the Referral and assumes no active role in the sales process.

“Co-Selling” means that the Referral Partner has been actively engaged and working to drive the sale forward, as determined in the good faith judgment of Vendor.

For clarity, Referral Partner will receive no compensation related to: (i) any installation, support, or other services fees; or (ii) any renewals, upgrades or additional products or services purchased after the 6-month window described above.

3. Financial Terms

(a) Payment Terms. Vendor shall pay the Referral Fees to Referral Partner by check or electronic transfer within thirty (30) days after Vendor’s receipt of payment from the New Customer.

(b) Revenue and Referral Fee Calculations; Reimbursement for Bad Debts. All revenue and Referral Fee calculations in this Agreement will be based on revenue actually recognized by Vendor for the applicable measurement period in accordance with its standard accounting procedures. No Referral Fees will be paid by Vendor on any taxes or other third-party fees. For any Referral Fees paid to Referral Partner for which the corresponding revenue amounts are refunded or otherwise not collected, and which are classified by Vendor as bad debts pursuant to the application of its standard accounting practices, the amount of the Referral Fees will be deducted from any future payments by Vendor to Referral Partner until Vendor has been reimbursed in full.

4. Term and Termination

(a) Term and Termination. This Agreement is effective when signed by both Parties and will remain in effect until either Party provides at least thirty (30) days’ written notice to the other Party that it desires to terminate this Agreement. The effective date of the termination will be as stated in the notice.

(b) Effect of Termination. Upon termination: [(i)] Referral Partner’s right to submit Referrals under Section 2 will immediately cease[; and (ii) Documented Referrals that have not executed a license agreement with Vendor prior to one (1) month after the date of termination will cease to be effective, notwithstanding the provisions of Section 2, and Referral Partner will not be entitled to the payment of any Referral Fees for those Documented Referrals]. Vendor will remain obligated after termination to pay any other Referral Fees not yet paid. [Sections 4, 5, 6, 8, and 9] will remain in effect following termination of this Agreement.

5. Confidential Information

(a) Definitions.

(i) For the purposes of this Agreement, “Confidential Information” means any non-public information disclosed by the Discloser or its Representatives to the Recipient or its Representatives, including but not limited to any information that is a trade secret of the Discloser. A Party’s granting of access to information (including by the granting of access to its premises) constitutes disclosing that information for purposes of this section. Confidential Information includes, but is not limited to, the following types of information and other information of a similar nature: marketing and development plans, business plans, financial information, customer lists, supplier lists, designs, drawings, models, prototypes, pilots, inventions, patents and patent applications, software (including source code, object code, and executable code), documentation, diagrams, flow charts, technical concepts and specifications, production methods, know-how, processes and procedures, correspondence, written or verbal representations, memoranda, and reports and records, as well as information or notes derived by the Recipient from this information.

(ii) The “Discloser” of specific Confidential Information is the Party who discloses that Confidential Information, and the “Recipient” of specific Confidential Information is the Party to whom that Confidential Information is disclosed. “Representatives” means a Party’s directors, officers, employees, advisors (including financial advisors, counsel, and accountants), agents, or controlling persons.

(b) Nondisclosure; Limited Use. The Recipient shall use the Confidential Information only for the purpose of this Agreement, and not in any manner detrimental to the Discloser (the “Purpose”). Nothing in this Agreement requires either Party to disclose any Confidential Information. The Recipient shall not disclose the Confidential Information to any other person or entity. The Recipient shall take all reasonable precautions to protect the confidentiality of the Confidential Information and shall use no less than the degree of care it uses in protecting its own Confidential Information of a similar nature.

(c) Exceptions. Except for personal information governed by applicable privacy law, the Recipient has no obligations under Section 5(b) with respect to any Confidential Information if it: (i) is generally known, or readily ascertainable by proper means, by the public other than through a breach of this Agreement by the Recipient or its Representatives; (ii) is known by the Recipient before it is disclosed to the Recipient by the Discloser as evidenced by Recipient’s written records; (iii) is developed independently by the Recipient in a manner that does not rely on Confidential Information of the Discloser; or (iv) is disclosed to the Recipient or its Representatives by a third party not subject to any nondisclosure obligations with respect to the Confidential Information.

(d) Representatives. The Recipient shall restrict circulation of Confidential Information to its Representatives who need Confidential Information in order to carry out the Purpose and who are bound to hold in confidence all Confidential Information made available to them and to use the Confidential Information only for authorized purposes. The acts and omissions of a Party’s Representatives are deemed the acts and omissions of that Party under this Agreement.

(e) Compelled Disclosure. If the Recipient receives a request to disclose all or any part of the Confidential Information under the terms of a subpoena or order issued by a court or other governmental agency, the Recipient shall: (i) immediately notify the Discloser of the existence, terms, and circumstances surrounding the request; (ii) consult with the Discloser on the advisability of taking legally available steps to resist or narrow the request; and (iii) if disclosure is required, cooperate with the Discloser at the Discloser’s expense in obtaining an order or other reliable assurance that confidential treatment will be accorded to the portion of the information as the Discloser may designate.

(f) Additional Restrictions. The Recipient shall not cause or permit the reverse-engineering, decompilation, disassembly, or other translation of the Confidential Information. The Recipient shall not alter or remove from the Confidential Information any identification, including copyright and trademark notices, and shall place these markings on any copies.

(g) Return of Information; Backup Copies. At the Discloser’s request, the Recipient shall return to the Discloser all documents and other materials containing Confidential Information, including all copies made by the Recipient or its Representatives (except that the Recipient may destroy notes or other documents generated by the Recipient that contain non-public information other than Confidential Information). At the Discloser’s option, the Recipient shall instead destroy all documents and other materials containing Confidential Information and all copies (including written information or notes derived from the Confidential Information), and the Recipient shall certify the destruction in writing within five (5) days after the Discloser’s request. The Recipient may retain a limited number of electronic backup copies of Confidential Information that are automatically created and retained by the Recipient’s standard backup processes and systems. The Recipient shall comply with its nondisclosure obligations under this Agreement with regard to these copies and shall destroy them in accordance with Recipient’s normal destruction processes.

(h) Injunctive Relief and Specific Performance. The Parties acknowledge that a breach of this Section 5 would cause irreparable injury, and that the damages resulting from a breach would be difficult to calculate. Therefore, in addition to any other remedy to which it may be entitled in law or in equity, the injured Party will be entitled to injunctive relief preventing or ending the breach, and to an order of specific performance of the covenants contained in this Section 5.

6. Intellectual Property Rights

(a) Technology Ownership. Vendor alone (and its licensors, where applicable) own all right, title, and interest, including all related intellectual property rights, in and to all Vendor software and other technology. Referral Partner, from time to time, may submit ideas, suggestions or recommendations relating to the Vendor technology (“Feedback”), and these discussions will not constitute joint development. Vendor is free to use and incorporate the Feedback without any payment or other consideration to Referral Partner, and Referral Partner hereby assigns to Vendor all right, title, and interest in any intellectual property rights it may have or obtain in the Feedback.

(b) Use of Vendor Branding. Except as provided in Section 8, Vendor does not grant Referral Partner a right or license to use its trademarks, including the Vendor name, the Vendor logo, and the product names associated with the products and services.

7. Marketing and Publicity

(a) Marketing. Referral Partner may use the Vendor logos on its website and on advertisements. Vendor reserves the right to ask for changes to the Referral Partner’s use of Vendor logos if Vendor determines it is not in keeping with the overall Vendor brand.

(b) Publicity. Vendor encourages Referral Partner to communicate the existence of its relationship with Vendor and Vendor will do the same.

8. Disclaimers

ALL VENDOR SOFTWARE AND SERVICES ARE PROVIDED “AS IS,” AND VENDOR MAKES NO WARRANTIES TO REFERRAL PARTY, EXPRESS, IMPLIED, ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, OR STATUTORY, AS TO THE SOFTWARE OR SERVICES, OR ANY MATTER WHATSOEVER. THE PARTIES DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE AND NON-INFRINGEMENT.

9. Miscellaneous

(a) Assignments. Neither Party may assign or transfer, by merger, operation of law, or otherwise, this Agreement or any right or duty under this Agreement to a third party without the other Party’s prior written consent, except that Vendor may transfer this Agreement, together with all of its rights and duties under this Agreement, to a successor entity if Vendor is acquired, whether by equity or asset purchase, merger, corporate restructuring or reorganization, or the like. Any purported assignment or transfer in violation of this Section is void.

(b) Notices. Any notice required or permitted to be given under the terms of this Agreement will be deemed given when reduced to writing and delivered by certified mail, return receipt requested, or overnight national courier with a tracking system, and addressed to the other Party at the address shown in the preamble to this Agreement or as otherwise specified by the Party. In addition, all notices to Vendor must also be sent to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

(c) Governing Law; Arbitration. This Agreement is governed by and construed in accordance with the laws of the State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ without regard to its conflict-of-law rules. The Parties agree that any dispute arising out of or in relation to this Agreement or the rights and obligations hereunder must be arbitrated in the English language before [one]/[three] arbitrator[s] under the administration of the [American Arbitration Association]/[International Centre for Dispute Resolution], and according to its [Commercial Arbitration Rules]/[International Arbitration Rules]. The seat of the arbitration will be [State], and the place of hearing will be \_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_. A Party may seek interim injunctive relief under these Rules and before any court having jurisdiction, and each Party hereby submits to the personal jurisdiction of any court reasonably chosen by the initiating Party for such purposes. The initiating Party shall reimburse the other Party’s costs if the court declines jurisdiction. The arbitral panel will be empowered to grant injunctive relief upon application. Awards of the arbitral panel will be enforceable in any court having jurisdiction, and each Party hereby submits to the personal jurisdiction of any court reasonably chosen by the enforcing Party for such purposes. The enforcing Party shall reimburse the other Party’s costs if the court declines jurisdiction.

(d) Entire Agreement. This Agreement constitutes the entire agreement and understanding between the Parties concerning its subject matter, and supersedes all prior and contemporaneous written and oral agreements, understandings, proposals, promises, and representations of the Parties concerning its subject matter and its terms.

(e) Modification. This Agreement may not be modified or amended except in a writing signed by a duly authorized representative of each Party that expressly states the sections of this Agreement to be modified; no other act, usage, or custom will be deemed to amend or modify this Agreement. Each Party hereby waives any right it may have to claim that this Agreement was subsequently modified other than in accordance with this Section.

(f) Construction of this Agreement. The word “including” is not intended to be exclusive and means “including, but not limited to.” The word “or” is not intended to be exclusive unless the context clearly requires otherwise. Each of the Parties and their counsel have carefully reviewed this Agreement, and, accordingly, no rule of construction to the effect that any ambiguities in this Agreement are to be construed against the drafting Party will apply in the interpretation of this Agreement.

(g) Counterparts; Electronic Copies. This Agreement may be signed in one or more counterparts, each of which is an original, and all of which together constitute only one agreement between the Parties. Delivery of an executed counterpart by facsimile, electronic mail in portable document format (.pdf), or any other electronic means intended to preserve the original graphic and pictorial appearance of a document has the same effect as delivery of an executed original of this Agreement.

|  |  |
| --- | --- |
| [REFERRAL PARTNER] | VENDOR, INC. |
| By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

Exhibit A

Referral Form

This document serves as the official referral form for all prospective leads from Referral Partners participating in the Vendor Referral Partner Program. All Referral Partners must complete this form and submit to Vendor to properly document and qualify new opportunities.

PROSPECT SUMMARY

a. Referral Form Submission Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

b. Prospect Company Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

c. Prospect Street Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

d. Prospect City, State, Zip Code: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

e. Prospect Country: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

f. Prospect Primary Contact: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

* Title or Position: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
* Phone Number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
* Email Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

g. Interested in the following Vendor products or services:

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☐

☐

☐

h. Does Prospect have an approved budget to purchase products or services consistent with Vendor pricing schedule? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

i. Does Prospect have the authority to purchase Vendor products or services? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

j. Does Prospect have a clear and identified need for Vendor products or services? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

k. Does Prospect have a defined timeline or process to purchase Vendor products or services? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

l. Other Comments About Prospect: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

REFERRAL PARTNER SUMMARY

a. Referral Partner Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

b. Referral Partner Contact: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

* Title or Position: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
* Phone Number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
* Email Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_