



Marketbright, Inc  
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THIS BUSINESS REFERRAL PARTNER AGREEMENT (the "Agreement") is made on the Effective Date (as defined in Exhibit A), by and between Marketbright, Inc., a Delaware corporation ("Marketbright") and Referral Partner (as defined in below), for the purpose of allowing Referral Partner to refer and forward potential customers for certain Marketbright products and services to Marketbright under the terms and conditions set forth herein.

## 1. APPOINTMENT.

1.1 Business Referral Partner Appointment. Subject to the terms and conditions of this Agreement, Marketbright hereby appoints Referral Partner, and Referral Partner hereby accepts appointment, as a non-exclusive authorized business referral partner for the purposes of forwarding and referring to Marketbright potential customers for Marketbright Products and Services in the Territory (as those terms are defined in Exhibit A).

1.2 Authority. Referral Partner's sole authority shall be to forward and refer potential customers to Marketbright, to perform the tasks listed in Section 3.2 or such other tasks as the parties shall mutually agree upon in accordance with the terms of this Agreement.

1.3 Relationship. The parties are independent contractors and this appointment shall not establish or be interpreted to establish between the parties a partnership, joint venture, franchise, or other agency relationship beyond the functions and responsibilities set forth herein.

1.4 Authorized Representations. Any representations Referral Partner makes about the Marketbright Products and Services, including without limitation to price, terms of delivery, and performance, must be authorized in writing by Marketbright.

2. TRADEMARKS AND TRADE NAMES. During the term of this Agreement, Marketbright grants to Referral Partner the right to use the Marketbright trademarks and trade names identified on Exhibit A (the "Marks") for the sole purpose of promoting Marketbright Products and Services and referring and forwarding potential customers to Marketbright. Except for the limited right to use the Marks as set forth in this Section 2, nothing contained in the Agreement shall be construed to grant Referral Partner any right, title or interest in or to any Marks. Referral Partner understands, accepts and agrees that its usage of the Marks shall inure to the benefit of Marketbright. Referral Partner shall provide Marketbright with samples of each use of the Marks prior to such use and will refrain from all uses that Marketbright informs Referral Partner are detrimental to Referral Partner's investment in such Marks.

## 3. OBLIGATIONS OF THE PARTIES.

3.1 Marketbright Obligations. Marketbright shall supply Referral Partner from time to time upon Referral Partner's reasonable request, descriptive materials and literature, including sales brochures, to enable Referral Partner to forward and refer potential customers to Marketbright.

3.2 Referral Partner Obligations.

3.2.1 Promotion. Referral Partner shall use reasonable efforts to endorse and promote Marketbright Products and Services, and to forward potential customer referrals to Marketbright. Referral Partner further agrees to adhere to and comply with any prevailing Marketbright practices and procedures that relate to authorized business referral partners, as amended from time to time.

3.2.4 Orders and Returns. Referral Partner shall not, without Marketbright's prior written approval, enter any orders, make representations or guarantees concerning Marketbright Products or Services, accept return of or make any allowance for Marketbright Products.

3.2.6 Standard of Care. Referral Partner shall conduct its business in a professional manner that reflects the standard of care within the industry.

3.2.7 Non-Disparagement. Referral Partner shall in no way, directly or indirectly, disparage Marketbright or Marketbright's Products or Services.

#### 4. COMMISSIONS AND PAYMENT.

4.1 Referral Fees, Payment and Taxes. Marketbright shall pay the referral fees to Referral Partner in the amount set forth in Exhibit A (the "Referral Fees"), attached hereto and incorporated herein. The Referral Fees exclude all applicable sales, use and other taxes, as well as all applicable export and import fees, customs duties and similar charges, and Referral Partner will be responsible for payment of all such taxes (other than taxes based on Marketbright's income), fees, duties and charges. Referral Partner will indemnify and hold Marketbright harmless from any claim relating to the payment, non-payment or underpayment of such taxes. Referral Fees shall be paid in the calendar month following the date upon which such Referral Fee is earned. For the purpose of this Agreement, Referral Fees will be considered "earned" upon the latter of: (i) collection of the referred customer's full payment by Marketbright; or (ii) lapse of any applicable refund provisions or rights granted by Marketbright to the referred customer.

4.2 Conditions on Payment. Marketbright shall be obligated to pay a Referral Fee to Referral Partner for a potential customer referred to Marketbright ("Referred Customer") if, and only if, the Referred Customer is not a current customer to Marketbright or a potential customer that Marketbright, prior to the date of Referral Partner's referral, contacted or towards whom Marketbright initiated sales and marketing efforts. In the event that the Referred Customer was referred to Marketbright by more than one authorized Marketbright referral partner, Marketbright shall only pay the source of the initial referral.

#### 5. TERM AND TERMINATION.

5.1 Term. The term of this Agreement shall begin on the Effective Date and will continue indefinitely unless terminated pursuant to Section 5.2.

5.2 Termination. A party may terminate this Agreement if the other party breaches any material provision of this Agreement and fails to cure the breach within thirty (30) days after receiving written notice thereof. Marketbright may also terminate this Agreement, effective immediately upon written notice to Referral Partner, if Referral Partner breaches any provision in Section 2.

5.3 Effects of Termination. Upon termination of this Agreement for any reason Referral Partner must promptly discontinue all Referral Partner activities with respect to the Marketbright Products and Services.

5.4 Survival. Sections 5.3 ("Effects of Termination"), 6 ("Warranty and Disclaimer"), 7 ("Indemnity"), 8 ("Liability Limitation"), and 9 ("General Provisions") will survive termination of this Agreement for any reason.

#### 6. WARRANTY AND DISCLAIMER. MARKETBRIGHT WARRANTS THE MARKETBRIGHT PRODUCTS AND SERVICES ON AN "AS IS" BASIS AND EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, REGARDING THE MARKETBRIGHT PRODUCTS AND SERVICES, INCLUDING ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, TITLE, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. REFERRAL PARTNER ACKNOWLEDGES THAT IT HAS RELIED

ON NO WARRANTIES WITH RESPECT TO THE MARKETBRIGHT PRODUCTS AND SERVICES WHEN ENTERING INTO THIS AGREEMENT.

7. INDEMNITY.

7.1 Marketbright Indemnity. Marketbright will defend at its own expense any action against Referral Partner brought by a third party to the extent that the action is based upon any grossly negligent or wrongful act or omission of Marketbright relating to the Marketbright Products or Services, and Marketbright will pay those costs and damages finally awarded against Referral Partner in any such action that are specifically attributable to such claim or action, or those costs and damages agreed to in a monetary settlement of such action. The foregoing obligations are conditioned on Referral Partner notifying Marketbright promptly in writing of such action, Referral Partner giving Marketbright sole control of the defense thereof and any related settlement negotiations, and Referral Partner cooperating and, at Marketbright's request and expense, assisting in such defense. THIS SECTION 7.1 STATES MARKETBRIGHT'S ENTIRE LIABILITY AND LICENSEE'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM OR ACTION SUBJECT TO THIS PROVISION.

7.2 Referral Partner Indemnity. Referral Partner will defend at its own expense any action or claim against Marketbright brought by a third party to the extent that the action is based upon a claim that arises out of or is in connection with Referral Partner's marketing, promotion, or referral to potential customers of Marketbright Products or Services or any other act or omission on the part of Referral Partner, unless such claim is based solely upon a negligent or wrongful act or omission of Marketbright or is subject to indemnity coverage under Section 7.1. The foregoing obligations are conditioned on Referral Partner notifying Marketbright promptly in writing of such action, Referral Partner giving Marketbright sole control of the defense thereof and any related settlement negotiations, and Referral Partner cooperating and, at Marketbright's request and expense, assisting in such defense. THIS SECTION 7.2 STATES REFERRAL PARTNER'S ENTIRE LIABILITY AND MARKETBRIGHT'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM OR ACTION SUBJECT TO THIS PROVISION.

8. LIABILITY LIMITATION. IN NO EVENT WILL MARKETBRIGHT BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL OR INCIDENTAL DAMAGES, INCLUDING ANY LOST DATA AND LOST PROFITS, ARISING FROM OR RELATING TO THIS AGREEMENT. MARKETBRIGHT'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT AND THE MARKETBRIGHT PRODUCTS AND SERVICES, WHETHER IN CONTRACT OR TORT OR OTHERWISE, WILL NOT EXCEED THE AMOUNT OF REFERRAL FEES PAID BY MARKETBRIGHT HEREUNDER. REFERRAL PARTNER ACKNOWLEDGES THAT THE FEES REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT MARKETBRIGHT WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON ITS LIABILITY.

9. GENERAL PROVISIONS

9.1 Assignment; Binding Effect. Referral Partner may not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Marketbright. Any attempted assignment or delegation without the required consent shall be null and void. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the parties, their respective heirs, legal representatives, beneficiaries, successors, and permitted assigns.

9.2 Attorney Fees. In the event any attorney is employed by any party to this Agreement with regard to any legal action, arbitration or other proceeding brought by any party for the enforcement of this Agreement, or because of an alleged dispute, breach, default or

misrepresentation in connection with any of the provisions of this Agreement, then the party or parties prevailing in such proceeding, whether at trial or upon appeal, shall be entitled to recover reasonable attorneys' fees and other costs and expenses incurred, in addition to any other relief to which it may be entitled.

- 9.3 Authority. Each individual executing this Agreement on behalf of a corporation or other legal entity represents and warrants that (i) he or she is duly authorized to execute and deliver this Agreement on behalf of said corporation or other legal entity in accordance with and without violating the provisions of its governing documents, and (ii) this Agreement is binding upon and enforceable against said corporation or other legal entity in accordance with its terms. Any entity signing this Agreement on behalf of a corporation or other legal entity hereby represents and warrants in its own capacity that it has full authority to do so on behalf of the corporation or other legal entity.
- 9.4 Compliance with Laws. Referral Partner will comply with all applicable laws and regulations in performing its obligations under this Agreement or in its provision of Marketbright Products and Services to any third party. Referral Partner will defend, indemnify and hold harmless Marketbright from and against any violation of such laws or regulations by Referral Partner or any of its agents, officers, directors, or employees.
- 9.5 Confidentiality. Each party (the "Disclosing Party") may from time to time during the term of this Agreement disclose to the other party (the "Receiving Party") certain Confidential Information, as defined below. The Receiving Party shall not disclose the Confidential Information of the Disclosing Party using the same degree of care which the Receiving Party ordinarily uses with respect to its own Confidential Information, but in no event with less than reasonable care. The Receiving Party shall not use the Confidential Information of the Disclosing Party for any purpose not expressly permitted by this Agreement and shall limit the disclosure of the Confidential Information of the Disclosing Party to the employees or agents of the Receiving Party who have a need to know such Confidential Information for purposes of this Agreement. and who are, with respect to the Confidential Information of the Disclosing Party bound in writing by confidentiality terms no less restrictive than those contained herein. "Confidential Information" means any non-public or proprietary information of the Disclosing Party disclosed to the Receiving Party, either directly or indirectly, in writing, orally or by inspection of tangible objects, including without limitation, product information, client lists, and trade secrets. Confidential Information may also include the information of a third party disclosed to the Disclosing Party under an obligation of confidentiality. Confidential Information, however, shall not include any information which the Receiving Party can establish: (i) was in the public domain prior to the time of disclosure to the Receiving Party by the Disclosing Party; (ii) becomes publicly known after disclosure to the Receiving Party through no action or inaction of Receiving Party; (iii) is in the possession of the Receiving Party, without confidentiality restrictions, at the time of disclosure to the Receiving Party by the Disclosing Party as shown by Receiving Party's files and records immediately prior to the time of disclosure; or (iv) is disclosed pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided, however, that the Receiving Party shall provide prompt notice thereof to the Disclosing Party and shall use its reasonable best efforts to obtain a protective order or otherwise prevent public disclosure of such information.
- 9.6 Construction. The captions and titles contained in this Agreement are included for purposes of convenience only, and shall not affect the construction or interpretation of any of the provisions of this Agreement. Each party and his counsel have participated fully in the review and revision of this Agreement. Any rule of construction to the effect

that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement.

- 9.7 Counterparts. This Agreement may be executed in counterparts or by the use of separate signature pages attached hereto, and as executed shall constitute one agreement, binding upon the parties, even though all of the parties do not sign the same counterpart or same signature page. If a party signs this Agreement in counterpart or otherwise and then transmits an electronic facsimile of the signature page to the other party, the party who receives the transmission may rely upon the electronic facsimile as a signed original of this Agreement.
- 9.8 Dispute Resolution. Any action or proceeding arising from or relating to this Agreement, other than an actual or threatened breach by Referral Partner of Section 2, shall be finally settled by arbitration before American Arbitration Association (the "AAA") pursuant to its Commercial Arbitration Rules (the "Rules"). The arbitration shall be before one (1) arbitrator appointed by the AAA pursuant to the Rules. The parties agree that arbitration must be initiated within one (1) year after the claimed breach occurred and that the failure to initiate arbitration within the one-year period constitutes an absolute bar to the institution of any new proceedings. The aggrieved party may initiate arbitration by sending written notice of an intention to arbitrate by registered or certified mail, return receipt requested, to all parties and to AAA. The notice must contain a description of the dispute, the amount involved, and the remedy sought. If and when a demand for arbitration is made by either party, the parties agree to execute a submission agreement, in a form provided by AAA, setting forth the rights of the parties if the case is arbitrated and the rules and procedures to be followed at the arbitration hearing. Any arbitration instituted under this subsection shall take place in Contra Costa County, California.
- 9.9 Entire Agreement; Amendment; Waivers. This Agreement, and Exhibit A attached hereto, constitute the final, complete, and exclusive statement of the terms of the agreement between the parties as to the subject matter hereof, and supersedes all prior and contemporaneous agreements, representations and understandings of the parties. This Agreement may be altered, amended or modified in whole or in part at any time only by a writing signed by all the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.
- 9.10 Further Acts. Each party to this Agreement agrees to perform such further acts and execute and deliver such further agreements or instruments as the other party may reasonably request, to consummate, evidence or confirm the agreements contained in this Agreement.
- 9.11 Governing Law. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of California, excluding conflicts of law principles.
- 9.12 Notice. All notices, consents and approvals under this Agreement must be delivered in writing by courier, by electronic facsimile (fax), or by certified or registered mail, (postage prepaid and return receipt requested) to the other party at the address set forth beneath such party is signature, and will be effective upon receipt or three (3) business days after being deposited in the mail as required above, whichever occurs sooner. Either party, may change its address by giving notice of the new address to the other party.
- 9.13 Severability. If any provision of this Agreement is unenforceable such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect. Without limiting the generality of the foregoing, Referral Partner

agrees that Section 8 will remain in effect notwithstanding the unenforceability of any provision in Section 7.

**EXHIBIT A**

**Products**

Marketbright Emarketing Enterprise

Marketbright SMB Edition

Marketbright PRM

Marketbright ECM

**Marks**

Marketbright Logo

**Referral Fees**

1)Initial Term: 10% of total committed contract value (TCV) (TCV is the committed monthly revenue multiplied by the total months of the contract term up to one year.)

2)Renewal Term: 5% of each additional years scheduled service fees.

3)Payment Terms: Payable 30 days after customer has paid their first full invoice.

Subsequent payments will be made as monthly or quarterly customer invoices have been paid in full. Marketbright will not pay commissions in advance of receiving payment from customers. If the customer cancels the service, Marketbright will not be required to pay referral partner for remainder of original term.