**PARTNER REFERRAL Agreement**

This Partner Referral Agreement (**“Agreement”**) is dated \_\_\_\_\_\_\_\_ (**“Effective Date”**), by and between \_\_\_\_\_\_\_, LLC, a \_\_\_\_\_\_\_ limited liability company, with its principal place of business at [ADDRESS} (**“Company”**) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Inc., a \_\_\_\_\_\_\_\_ corporation, with its principal place of business at {ADDRESS} (**“Partner”**). Company and Partner may be referred to individually as a **“Party”** or collectively as **“Parties”**.

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**BACKGROUND**

1. A. Company provides software and related technology services to its staffing industry customers, and Partner provides certain products and services to its customers, as set forth on Schedule A to this Agreement (collectively, “**Products and Services”**).
2. B. Company wishes to refer customers to Partner so that such customers will have access to Products and Services. Partner has agreed to provide Products and Services directly to Company’s customers through a [PRODUCT, SERVICE OR INTEGRATION].
3. NOW, THEREFORE, subject to and in consideration of the mutual promises, conditions, and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**1. Company Obligations.** During the Term, as defined below, Company covenants and agrees that it will use commercially reasonable, good faith efforts to refer Company’s current and prospective customers to Partner for Products and Services Company(collectively, **“Referrals”**). Further, Company agrees to facilitate Partner’s performance of its obligations as follows:

1. Company agrees to maintain the integration between its software application and the software application owned by Partner’s SaaS, which enables Partner to furnish Products and Services to Clients, as that term is defined in Schedule B, attached hereto (hereinafter, the “Integration”). If the existing integration does not meet the requirements of Partner, Company is not obligated to make any changes to the integration.
2. Company grants to Partner the authority to access and use select parts of Company’s computer system for the limited purpose of responding to inquiries from Referrals regarding the Products and Services (hereinafter, “Partner Community”). Company may terminate Partner’s access and use of the Partner Community at any time, without notice, in the event that Company determines in its sole discretion that Partner’s use of the Partner Community is inconsistent with this section. Termination of access to the Partner Community shall vest Partner with the option to terminate this Agreement in its entirety.
3. Company will reasonably cooperate with and assist Partner in Partner’s sale and delivery of the Products and Services directly to Referrals.

**2. Partner Obligations.** During the Term, Partner covenants and agrees that it will provide the Products and Services to Referrals that contract with it in the manner and on the financial terms set forth on Schedule B to this Agreement. Partner agrees that its access to Company’s Partner Community will be strictly limited to the purposes set out in this Agreement. Further, Partner agrees to indemnify and hold Company harmless from and against any and all costs, claims, losses or damages incurred by Company that are caused by, arise from, or relate to Partner’s negligent use or access to the Partner Community, including but not limited to security breaches, the introduction of malware, malicious activity or fraudulent activity. Lastly, Partner agrees to use its best efforts to notify Company 90 days before the implementation of any upgrades or changes to its product or services which could substantially and adversely impact the Integration between Partner’s and Company’s products or services.  Failure to provide at least 90 days’ notice before such change will negate any warranty or indemnification being provided by Company to Partner and/or Partner’s end user client.  Further, if such change results in the failure of the Integration between Partner’s and Company’s products and/or services, Company reserves the right to terminate this Agreement immediately.

 **3. Relationship Manager and Costs**. Each Party shall appoint a relationship manager to manage and coordinate the respective Party’s duties under this Agreement. Partner will be responsible for initial setup cost to be billed hourly at \_\_\_\_ provided that in no event shall Partner be obligated to pay more than \_\_\_\_\_\_\_ for the setup cost. Any enhancements requested by Partner that requires labor/costs to Company, Partner will incur said cost provided that each party accepts the enhancement.

**4. Intellectual Property.** Except as otherwise provided in any schedule, Partner exclusively retains all right, title and interest in and to the intellectual property embodied in the Products and Services offered by Partner. For its part, Company retains exclusive ownership of all copyrights, trademarks and intellectual property embodied in its software products. Notwithstanding the preceding terms, Company may use the other Party’s trademarks and trade names in sales, marketing, web and press materials to indicate to Referrals that the Parties have integrated some aspects of their businesses and the availability of the Products and Services.

1. **5. Warranty.** Each Party represents and warrants that (i) it has the power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby; (ii) this Agreement is valid and binding upon and fully enforceable against such Party in accordance with its terms; and (iii) neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will violate any statute, regulation, rule, injunction, judgment, order, or other restriction of any government, governmental agency, or court to which such Party is subject, or otherwise conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any Party the right to accelerate, terminate, modify, or cancel, or require any notice under any agreement, contract, lease, license, instrument, or other arrangement to which such Party is a party or by which it is bound or to which any of its assets are subject.
2. Partner warrants to Company and will warrant to the end-user that the Products and Services shall be provided and/or performed in a professional manner and in accordance with generally accepted industry standards. In case of breach of this warranty, Partner must cure the deficiency of Products and Services so that the Products and Services comply with this warranty. If Partner is unable to cure the warranty breach within 15 days, Company may terminate this Agreement for cause and without further obligation of Company to Partner. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, EACH PARTY EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT WITH RESPECT TO SUCH PARTY’S MARKS, CONFIDENTIAL INFORMATION, OR PRODUCTS AND SERVICES.
	1. **6. Confidential Information**
	2. 6.1 Definition of Confidential Information. **“Confidential Information”** means (i) the terms of this Agreement and any schedules; (ii) documents, files, and data of either Party that the other Party has access to in providing and/or performing the Products and Services, including, but not limited to, information relating to Referrals, employees of Referrals, and Referrals’ contact information; and (iii) any other information that the disclosing Party (**“Discloser”**) desires to protect against unrestricted disclosure by the receiving Party (**“Recipient”**) and that (a) if disclosed in tangible or electronic form, is marked in writing as “confidential” or (b) if disclosed orally or visually, is designated at the time of disclosure as “confidential.”
	3. 6.2 Exclusions. Confidential Information does not include any information that is (i) already in possession of Recipient without obligation of confidence; (ii) independently developed by Recipient; (iii) becomes publicly available without breach of this Agreement; (iv) rightfully received by the Recipient from a third party without obligation of confidence; (v) released for disclosure by the Discloser with its written consent; or (vi) required to be disclosed pursuant to court or government agency order or rule; provided, however, that before disclosing any otherwise Confidential Information, Recipient shall provide reasonable notice of such order or rule giving Discloser opportunity to object to or limit such disclosure.
	4. 6.3 Restrictions. Each Party agrees (i) that it will not use any Confidential Information of the other Party for any purpose other than to exercise its rights and perform its obligations under this Agreement; (ii) that it will not disclose to any third party any Confidential Information of the other Party except as expressly permitted in this Agreement; provided, however, that the Discloser may (a) disclose the Confidential Information of the Recipient to Discloser’s employees and contractors who need to know such information and who are bound in writing by restrictions regarding disclosure and use of such Confidential Information comparable to those set forth herein; and (b) use or disclose such Confidential Information to the extent Recipient is legally compelled to disclose such Confidential Information; provided, however, that prior to any such compelled disclosure, Recipient will give Discloser reasonable advance notice of any disclosure and will cooperate with Discloser in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of such disclosure and/or use of the Confidential Information, and (iii) that it will take all reasonable measures to maintain the confidentiality of all Confidential Information of the other Party in its possession or control, which will in no event be less than the measures it uses to maintain the confidentiality of its own confidential or proprietary information of a similar nature.

**7. Remedies**

7.1 Limitations on Liability Relief. NOTWITH­­STANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, NEITHER PARTY WILL BE RESPONSIBLE FOR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR OTHER SIMILAR DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS) THAT THE OTHER PARTY MAY INCUR OR EXPERIENCE IN CONNECTION WITH THIS AGREEMENT, HOWEVER CAUSED AND UNDER WHATEVER THEORY OF LIABILITY, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7.2 Limitation of Action. Intentionally omitted.

7.3 Indemnification. Each Party (**“Indemnifying Party”**) agrees to indemnify, defend, and hold the other Party (**“Indemnified Party”**) harmless from and against any and all damages, loss, liability, claim, cost, or expense, including without limitation, reasonable attorney’s fees, incurred in connection with or as a result of any third party claim: (i) alleging that the Indemnifying Party’s products, services, software and/or other materials infringe any patent, copyright, trademark, trade secret, or proprietary right of any third party; (ii) arising from the gross negligence or intentional misconduct of the Indemnifying Party; (iii) arising from the legal compliance, performance, or functionality of the Indemnifying Party’s products or services Company; or (iv) arising out of the misuse, disclosure, or unauthorized access of the Confidential Information of the Indemnified Party by the Indemnifying Party.

1. **8. Term and Termination**
	1. 8.1 Term. This Agreement is effective as of the Effective Date and will remain in full force and effect for a term of three years (**“Initial Term”**). This Agreement will be automatically renewed for subsequent one-year terms after the Initial Term, unless a Party gives written notice to the other Party of its desire to not renew the Agreement at least 60 days prior to the end of the then-current term (**“Term”**).
	2. 8.2 Termination for Cause. Either Party may terminate this Agreement upon written notice to the other Party of a substantial breach by the other Party of any material term, if such breach is not cured within 30 days following receipt of written notice of breach from the non-breaching Party. A non-breaching Party’s right to termination shall be in addition to any other remedies that may be available to the non-breaching Party.
	3. 8.3 Termination for Convenience. After the Initial Term, either Party may terminate this Agreement for any reason by providing 90 days’ prior notice to the other Party.
	4. 8.4 Consequences of Expiration and/or Termination.

8.4.1 Effect of Termination. Unless otherwise agreed to in writing, upon the termination of this Agreement, any arrangement for sale of Products and Services then in effect will immediately terminate and the Parties will immediately destroy any Confidential Information of the other Party in its possession or under its control.

8.4.2 Termination Payment. In the event of the termination of this Agreement, all amounts due and owing from one Party to the other pursuant to Schedule B shall be paid according to the payment terms set forth therein.

* 1. **9. General Provisions**
		1. 9.1 Integration of Schedules. Each schedule adopted by Company and Partner is hereby integrated with and incorporated by reference into this Agreement. The terms and conditions of this Agreement apply to each schedule. If any schedule contains provisions inconsistent with this Agreement, the schedule provisions shall prevail with respect to such schedule.
		2. 9.2 Notices. Notices under this Agreement will be in writing and will be deemed given when delivered personally, by facsimile (with confirmation of receipt), or conventional mail (registered or certified and postage prepaid with return receipt requested). Notices will be addressed to the Parties at the addresses appearing in the introductory paragraph of this Agreement; provided, however, that each Party may change its address for purposes of this notice provision by providing written notice of such change in address to the other Party in accordance with this section.
	2. 9.3 Force Majeure. If either Party shall be prevented from performing any portion of this Agreement by causes beyond its control, including labor disputes, civil commotion, war, governmental regulations or controls, casualty, inability to obtain materials or services or acts of God, such defaulting Party shall be excused from performance for the period of the delay and for a reasonable time thereafter.
	3. 9.4 Independent Partner; No Exclusivity. Nothing in this Agreement, and no course of dealing between the Parties, shall be construed to create agency relationship or a partnership between a Party and the other. Nothing in this Agreement will be deemed to limit or restrict either Party from entering into similar agreements with any third party, from recommending products or services similar to the Products and Services to third parties, or from developing and marketing competing products or services. This Agreement does not create an exclusive partnership or other relationship between the Parties. Neither party shall hold itself out as having authority to bind the other.
	4. 9.5 Attorney’s Fees. In the event of legal proceedings to enforce the terms of this Agreement, the prevailing Party shall be entitled to recover its reasonable attorney’s fees and costs from the non-prevailing Party.
	5. 9.6 Waiver. No waiver of any right contained herein shall be effective unless in writing and signed by an authorized representative of the waiving party. No waiver of a right arising from any breach or failure to perform shall be deemed a waiver of any future right.

9.7 Binding Effect/Assignment. This Agreement is binding upon the Parties’ respective representatives, successors, and assignees. Neither Party shall transfer or assign this Agreement without the prior written consent of the other Party, provided however, such consent shall not be unreasonably withheld.

9.8 Non-Solicitation.

9.8.1 Non-Solicitation of Party Employees. During the Term and for one year thereafter (the **“Restricted Period”**), each Party agrees not to directly solicit or induce any person to leave the employ of, the other Party. Contact with such persons resulting from general advertising or from unsolicited contact does not violate this restriction. If a Party’s breach of this provision results in an employee accepting employment with such Party, the breaching Party agrees to pay the other Party as liquidated damages an amount equal to the employee’s annual base salary as of the date of the employee’s termination. Such amount shall be to offset the other Party’s recruiting and training costs of a replacement employee.

9.8.2 Non-Solicitation of Company’s Referrals. Intentionally omitted.

9.9 Survival of Provisions. The terms and conditions of Sections 4, 5, 6, 7, 9 and Schedule B of this Agreement shall survive and continue following expiration or termination of this Agreement.

9.10 Governing Law and Exclusive Venue. The validity, interpretation, construction, performance, enforcement, and remedies of or relating to this Agreement, and the rights and obligations of the parties to this Agreement, shall be governed and construed in all respects by the substantive laws of the State of Minnesota (without regard to the conflict of laws rules or statutes of Minnesota or any other jurisdiction that might result in the application of other law). All disputes arising under or related to this Agreement shall be brought solely in the federal and state courts situated in the State of \_\_\_\_\_\_\_\_\_.

9.11 Counterparts. 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.

9.12 Entire Agreement. This Agreement, including schedules, is the entire agreement between the Parties with respect to the subject matter contained herein and supersedes any prior agreement or communications between the Parties relative thereto, whether written or oral. This Agreement and/or any schedule may be modified only by a written addendum or amendment signed by authorized signatories of both Parties.

The undersigned have executed this Agreement as of the Effective Date first written above:

**COMPANY PARTNER**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Its: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Its: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SCHEDULE A**

**PARTNER PRODUCTS AND SERVICES**

**SCHEDULE B**

**MANNER OF DELIVERY AND FINANCIAL TERMS**

**(DIRECT DELIVERY AND REVENUE SHARE)**

1. **Definitions.** The following definitions shall apply to this Schedule:

**“Mutual Clients”** shall mean (i) any customers that are both customers of Company and the Partner prior to the Effective Date and which utilize the Integration to receive Products and Services from Partner, or (ii) any customers of Partner that later become customers of Company and which utilize the Integration to receive Products and Services.

 **“New Clients”** shall mean customers that are Company customers but not customers of Partner as of the Effective Date, but later become customers of Partner and which utilize the Integration to receive Products and Services.

Collectively, Mutual Clients and New Clients are **“Clients”**.

 **“Partner Revenue”** shall mean Net Revenue collected by the Partner for Products and Services provided to Clients through the Integration. “Net Revenue” means gross revenue less taxes and third party fees (including third party verification service fees, and local, state, or federal government or agency fees).

 All other capitalized terms not otherwise defined herein shall have the meaning set forth in the Agreement.

1. **Manner of Delivery.**

Partner shall be directly responsible for delivery or provision of the Products and Services to Referrals that become Clients. As such, Partner may, but shall not be obligated, to enter into a contract, purchase order, or other written agreement with any Client for such Client’s purchase of Products and Services from Partner (the **“Direct Delivery Model”**). Under the Direct Delivery Model, the Parties intend that Partner shall be the primary contact for Clients as to purchase and implementation of Products and Services. Notwithstanding the preceding sentence, Company shall provide support to Partner, as reasonably requested, in support of Partner’s delivery and provision of the Products and Services to the end-user Clients.

* + 1. **C. Financial Terms.**

1. Incentive Payment. Partner shall pay to Company a monthly incentive payment (the **“Incentive Payment”**) for all New Clients and Mutual Clients. Notwithstanding termination of the Agreement, the monthly Incentive Payment will continue so long as an Integration for any of the Product and Services is available or for a period of twelve (12) months from the termination, whichever occurs first. The Incentive Payment will commence for Mutual Clients upon completion and successful implementation of Integration between Company and Partner for Product and Services. Access to this Integration is free of charge once a Mutual Client has signed a contract with Partner.

* 1. The Incentive Payment shall be a percentage of Partner Revenue, as follows:
		1. Mutual Clients \_\_%
		2. New Clients \_\_%
		3. 2. Accounting. During the Term, by the 15th day of the month to be accounted for, Partner will calculate and submit to Company an accounting of its gross collections for the preceding month for sales of Products and Services through the Integration, along with a calculation of Partner Revenue based on collections for that month and a calculation of the Incentive Payment (**“Accounting”**).
		4. 3.Delivery of Incentive Payment. With its delivery of the Accounting, Partner shall deliver the Incentive Payment to Company in U.S. dollars. Notwithstanding termination of the Agreement or the Term, Partner shall continue to provide an Accounting and payment of the Incentive Payment for the shorter of 12 months following such termination or until integration for Product and Services is no longer supported by Company and used by Clients. This provision shall survive the termination of the Agreement.