

THIS REFERRAL FEE AGREEMENT is entered into on

BETWEEN

- (1) whose principal place of business is at (the "**Seller**")
- (2) whose principal place of business is at (the "**Referrer**")

WHEREAS

The Referrer may from time to time refer potential customers to the Seller for a referral fee.

It is agreed as follows:

1. Interpretation

Definitions

"Excluded Persons" means existing customers of the Seller or potential customers who have already approached the Seller to negotiate terms of sale. Excluded Persons also include their affiliates;

"Goods or Services" means to be sold by the Seller to the customer;

"Value of Goods or Service" means in relation to any Goods or Services, the fees charged by the Seller to the customer, less:

- a. any sales tax, turnover tax, value added tax or other tax payable thereon;
- b. any expenses or out-of-pockets disbursements.

whether or not such items are separately invoiced;

2. Referral Term

For a period of months after the date hereof (the "**Term**"), which shall be automatically renewed for additional periods of the same duration as the Term, unless either party requests termination at least thirty (30) days prior to the end of the then-current Term, the Seller engages the Referrer to source independent third party customers to its Goods or Services, and the Referrer accepts the Seller's engagement.

For a period of months after the date hereof (the "**Term**"), or as subsequently extended by the Seller and the Referrer in writing, the Seller engages the Referrer to source independent third party customers to its Goods or Services, and the Referrer accepts the Seller's engagement.

3. Referral Fee

3.1 The referral fee shall be a fixed fee of per customer referred (except for Excluded Persons as defined above), regardless of the value of the resulting sales of goods or services by the Seller.

3.1 The referral fee shall be calculated as per cent of the net value of goods or services sold by the Seller as a direct result of a referral (except for Excluded Persons as defined above). Net value shall exclude value added tax, postage and packaging, insurance, refunds and payments not honored by a financial institution. Subsequent sales of goods or services to the referred customer shall not be subject to a referral fee except where such subsequent purchase is the direct result of a repeat referral.

3.2 Upon reconciliation of referral fees due, the Referrer shall issue an invoice to the Seller and payment shall be effected within thirty (30) days of submission of said invoice.

3.3 Any payment of Referral Fee to Referrer shall be made by Seller within business days after the date of receipt of Invoice. For the avoidance of doubt, Seller shall have no obligation to pay Referrer in respect of any service invoiced but have not been paid by the customers.

3.4 The Referral Fee shall be reduced in proportion to any claim or liability against the Seller by customers. Referrer agrees to refund to the Seller any Referral Fee already paid to Referrer under this circumstances. For the avoidance of doubt, the Referral Fee shall not be negative and any refund by the Referrer shall not exceed the Referral Fee.

4. Responsibilities of the Parties

4.1 Referrer agrees to use its existing connections and channels to secure business for Seller. Referrer may only describe itself as the Seller's authorised for the Services.

4.2 Referrer may disclose, in general terms, information concerning the Seller to the customer and potential the customer but only so far as is necessary in good faith to promote the Services.

4.3 Referrer may use the Trademark and such of the Seller's other know how, patents, copyright, trade names, trademarks and patents (the "**Rights**") as the Seller may from time to time authorise in writing exclusively in performing its duties in this Agreement. Referrer shall not take any action which may adversely affect the Rights or the Seller's title to them and shall not gain any title to the Rights.

4.4 Seller shall have the primary responsibility of performing / selling any agreed Goods or Services for the customer. Such agreement will be entered into directly between Seller and the customer.

4.5 Seller shall comply with, and give all notices required by, any statute, any statutory instrument, rule or order or any regulation or byelaws applicable to the Goods and Services.

4.6 Placement of advertisements and referral methods for the Seller are at the sole discretion of the Referrer. However, in order to solicit sales, the Referrers shall not make promises or issue any warranty either expressed or implied pertaining to the goods or services offered by the Seller unless authorized in writing by the Seller to do so.

5. Confidentiality

5.1 Referrer shall treat as confidential all information which the Seller may make available to it pursuant to this Agreement or the negotiations in respect thereof (the "**Confidential Information**") and shall not without the prior written consent of the Seller :

(a) exploit any part of the Confidential Information save as is reasonably necessary to enable it to sell the Products; or

(b) disclose any part of the Confidential Information other than to its employees or customers (or potential customers) who need to know the Confidential Information for the purpose of this Agreement provided that:

- i. such person is made aware prior to disclosure of the proprietary and confidential nature of the Confidential Information; and
- ii. such person owes an express duty of confidence to Referrer, which Referrer shall enforce.

5.2 Referrer may disclose, in general terms, relevant parts of the Confidential Information to customers and potential customers but only so far as is necessary in good faith to promote the sale of the Products.

5.3 The Rights, the Confidential Information and all proprietary and intellectual property rights in the Products shall belong to the Seller.

5.4 Referrer shall promptly notify the Seller of any infringement of the Rights or Confidential Information in the Territory, and of any claim that the import or sale of Products into the Territory infringes any person's rights, of which it may become aware and shall at the request and expense of the Seller take such action in respect of the infringement, or claim, as the Seller may request.

5.5 The Referrer may do follow-up enquiries with its referred customers to confirm their purchase and to gather feedback about their experience with the Seller's goods or services as supplied.

5.6 The provisions of this clause 5 shall remain in force after the termination of this Agreement for any reason.

6. General

6.1 Referrer shall not mortgage, charge or assign any rights or transfer, delegate or sub contract the performance of any obligation under this Agreement without the Seller's prior written consent.

6.2 The relationship between the parties shall at all times be that of independent contractors. No employment, partnership or joint venture relationship is formed by this referral agreement and at no time may the Referrer position itself as affiliated to the Seller, except as an independent referrer. In view of this independent relationship the Referrer shall not enter into any agreements on behalf of the Seller, shall make no warranty either expressed or implied on behalf of the Seller and shall not incur any expenses on behalf of the Seller.

6.3 All notices which are required to be given hereunder shall be in writing and shall be sent to the address of the recipient set out in this Agreement. Each party shall promptly notify any change of address to the others in writing. Any notice posted shall be deemed to have been received 3 days after posting, and any notice given in any other manner shall be deemed to have been received at the time when in the ordinary course it would have been received.

6.4 No waiver of any rights arising under this Agreement shall be effective unless in writing and signed by a duly authorised signatory of the party against whom the waiver is to be enforced. No failure or delay by either party in exercising any right, power or remedy under this Agreement (except as expressly provided herein) shall operate as a waiver of any such right, power or remedy.

6.5 If any provision of this Agreement should become illegal or void for any reason, the validity of the remaining provisions shall not be affected and the parties shall enter into negotiations in good faith to find a replacement for the provision which is of similar economic effect.

6.6 No addition to or modification of any provision of this Agreement shall be binding upon the parties unless made by a written instrument signed by a duly authorised signatory of each of the parties.

6.7 This Agreement sets out the entire agreement and understanding between the parties with respect to the subject matter hereof. This Agreement supersedes all previous agreements, arrangements and understandings between the parties with respect to the subject of this Agreement, which shall cease to have any further force or effect. It is agreed that:

- a. neither party has entered into this Agreement in reliance upon any representation, warranty or undertaking of the other party which is not expressly set out or referred to in this Agreement, and all conditions, warranties or other terms implied by statute or common law are hereby excluded to the fullest extent permitted by law;
- b. no claim or remedy under this Agreement in respect of misrepresentation (whether negligent or otherwise, and whether made prior to, and/or in, this Agreement) or untrue statement made by the other party;
- c. this clause shall not exclude any liability for fraudulent misrepresentation.

6.8 This referral agreement does not grant exclusive rights to the Referrer to act as referrer on behalf of the Seller and the Referrer shall have no rights under any other agreements entered into by the Seller with other Referrers.

7. Termination

7.1 Either party shall be entitled forthwith to terminate this Agreement by written notice to the other if:

- a. that other party commits any breach of any of the provisions of this Agreement and, in the case of a breach capable of remedy, fails to remedy the same within 10 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied;
- b. an encumbrancer takes possession or a receiver is appointed over any of the property or assets of that other party;

- c. that other party makes any voluntary arrangement with its creditors or becomes subject to an administration order;
- d. that other party goes into liquidation (except for the purposes of amalgamation or reconstruction and in such manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other party under this Agreement);
- e. anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to that other party;
- f. that other party ceases, or threatens to cease, to carry on business; or
- g. one party giving the other party thirty (30) days prior written notice.

7.2 For the purposes of clause 7.1, a breach shall be considered capable of remedy if the party in breach can comply with the provision in question in all respects other than as to the time of performance (provided that time of performance is not of the essence).

7.3 Any waiver by either party of a breach of any provision of this Agreement shall not be considered as a waiver of any subsequent breach of the same or any other provision thereof.

7.4 The rights to terminate this Agreement given by this clause shall be without prejudice to any other right or remedy of either party in respect of the breach concerned (if any) or any other breach.

8. Consequences of Termination

Upon the termination of this Agreement for any reason:

- a. Referrer shall cease to promote, market, advertise or solicit customers for the goods or services;
- b. the provisions of clause 6 shall continue in force in accordance with its terms;
- c. Referrer shall have no claim against the Seller for compensation for loss of rights, loss of goodwill or any similar loss (except unpaid referral fee);
- d. All outstanding referral fees due to the Referrer at that time shall be settled in full within fourteen (14) days;
- e. subject as otherwise provided herein and to any rights or obligations which have accrued prior to termination, neither party shall have any further obligation to the other under this Agreement.

9. No Rights under Contracts for Third Parties

A person who is not a party to the Agreement shall have no right under the Contracts (Rights of Third Parties) Ordinance to enforce any of its terms.

10. Arbitration and Proper law

The parties shall use all reasonable endeavours to resolve any dispute amicably and in good faith.

11. Notices and service

11.1 Any notice so served by hand, e-mail or post shall be deemed to have been duly given:

- a. in the case of delivery by hand, when delivered;
- b. in the case of fax or electronic mail on a Business Day prior to 5.00 pm, at the time of receipt ;
- c. in the case of prepaid recorded delivery, special delivery or registered post, at 10am on the second Business Day following the date of posting

provided that in each case where delivery by hand or by e-mail occurs after 5pm on a Business Day or on a day which is not a Business Day, service shall be deemed to occur at 9am on the next following Business Day. References to time in this clause are to local time in the country of the addressee.

11.2 The addresses of the parties for the purpose of clause 11.1 are as follows:

Seller

Address:

E-mail:

For the attention of:

Referrer

Address:

E-mail:

For the attention of:

As witness this Agreement has been signed by the duly authorised representatives of the Parties the day and year first before written.