



MESSAGE SYSTEMS REFERRAL PROGRAM AGREEMENT

This REFERRAL PROGRAM AGREEMENT (the “Agreement”) is made as of the date last signed below (the “Effective Date”) by and between **Message Systems, Inc.**, a Delaware corporation with a principal address at 7070 Columbia Gateway Drive, Suite 150, Columbia, MD 21046 (“Message Systems”), and the person or entity identified below (“Referral Partner”), who desires to be appointed as a non-exclusive sales referral partner by Message Systems to promote, market, and solicit orders for Message Systems’ products.

- 1 Appointment.** Subject to the terms and conditions of this Agreement, Message Systems hereby grants to Referral Partner, and Referral Partner hereby accepts from Message systems, a limited, non-exclusive, non-transferable right to promote and market to “Customers” (i.e., a person or entity who has never purchased from or manufactured products under license from Message Systems) Message Systems Momentum products (each a “Momentum Product” and, collectively “Momentum Products”) and Message Systems’ other software products (each an “Other Product” and, together with the Momentum Products, the “Message Systems Products”) and to use the “Documentation” (i.e., the materials relating to the Message Systems Products as made available by Message Systems in connection therewith) to assist in such activities.
- 2 Trademark License.** Subject to the terms and conditions of this Agreement, Message Systems hereby grants to Referral Partner a worldwide, non-exclusive, revocable, non-transferable, royalty-free license, without the right to sublicense, to use the trademarks, service marks, names, logos, insignias, trade dress and other proprietary trade designations protected by law (“Marks”) supplied by Message Systems to Referral Partner in order to market and promote the Message Systems Products. Referral Partner agrees to state on all materials using the Marks that such Marks are trademarks of Message Systems and to include the appropriate trademark symbol. Referral Partner will provide Message Systems (at Message Systems’ reasonable request) with samples of all products and materials that contain the Marks prior to their public use, distribution, or display and obtain Message Systems’ approval, with such approval not to be unreasonably withheld, before such use, distribution, or display. All goodwill arising out of any use of any of the Marks by Referral Partner will inure solely to the benefit of Message Systems. Referral Partner agrees that it will not engage or participate in any activity or course of action that diminishes or tarnishes the image or reputation of any Mark. Referral Partner agrees to provide prompt notice to Message Systems if it becomes aware of any mark infringing on the Marks.
- 3 Restrictions.** Message Systems reserves all other rights not expressly granted in this Agreement. Message Systems also reserves the right at any time to modify the Message Systems Products, appoint other distributors, referral partners, or brokers to promote and sell the Message Systems Products, and to set the terms of sale for the Message Systems Products. Referral Partner is an independent contractor of Message Systems and shall not have the right or power to bind Message Systems in any way with regard to a Customer or otherwise. Any potential sale is subject to acceptance by Message Systems, which Message Systems may withhold or reject in its sole discretion.
- 4 Obligations.** Referral Partner shall use commercially reasonable efforts to diligently and actively promote, market, and refer the Message Systems Products to Customers. Referral Partner agrees to comply with all laws and regulations applicable to this Agreement and its marketing activities hereunder and to conduct its marketing activities in a manner that reflects favorably at all times on the Message Systems Products and the goodwill of Message Systems. If at any time during this Agreement Message Systems notifies Referral Partner of a replacement version, upgrade or update to the Message Systems Products, or any part thereof, Referral Partner shall immediately cease marketing of the existing version of the Message Systems Products, or the affected part thereof, unless notified by Message Systems in writing to the contrary, and market the replacement, upgraded or updated version. Aside from the foregoing, Referral Partner shall have sole responsibility and discretion for selecting the Customers to which and the manner in which Referral Partner will market and make available the Message Systems Products.

- 5 **Message Systems Obligations.** Message Systems shall be responsible for supplying the Message Systems Products directly to Customers and will directly bill Customers with respect to all orders solicited by Referral Partner and accepted by Message Systems. All payments by Customers shall be made directly to Message Systems pursuant to Message Systems' terms of sale.
- 6 **Commissions.** Referral Partner shall be entitled to receive commissions equal to 8% of the net revenue actually received by Message Systems from the sale of the first Momentum Product that Message Systems sells to the Customer referred by Referral Partner and the first sale of an Other Product to such Customer (so long as such sale is referred to Message Systems by the Referral Partner), but not on any future extensions or renewals of such contract(s) or on any other future contracts with such Customer. Such commission shall constitute the only compensation payable by Message Systems to Referral Partner under this Agreement. All commissions due to Referral Partner hereunder shall be payable 30 days after the end of the calendar month during which payment was received by Message Systems for the applicable Message Systems Products(s). Referral Partner shall be responsible for its own costs and expenses in connection with the performance of its obligations under this Agreement and any federal, state, or local taxes payable as a result of the consummation of the transactions contemplated by this Agreement (other than taxes assessed on the income or property of Message Systems). Message Systems shall have the sole right to cancel orders for any reason and shall have no obligation for any commission on any order that it is unable to fill after acceptance due to circumstances beyond its reasonable control. If subsequently Message Systems makes collection, Message Systems shall then remit to Referral Partner the proper commission, after adjustment for any collection charges or legal fees incurred by Message Systems in collecting the debt.
- 7 **Proprietary Rights and Confidentiality.** The parties acknowledge and agree that the Message Systems Products and Documentation and all data Referral Partner collects through its use and marketing of the Message Systems Products, Marks and Documentation are proprietary to Message Systems, including all patent, copyright, trade secret, trademark, and other associated proprietary rights. No title to or ownership of the Message Systems Products, Marks, Documentation, or the data (or any part of each (including any derivative work)) is transferred or assigned to Referral Partner hereunder. Referral Partner agrees not to take any action inconsistent with Message Systems' ownership of the Message Systems Products, Marks, Documentation, or data or assist any third party in doing the same. The parties further acknowledge that prior to the Effective Date and thereafter in the course of performing the responsibilities under this Agreement, each party may have been or may be exposed to or acquire information, which is proprietary to or confidential to the other party or its end users or business partners. The parties agree to hold such information in strict confidence. The terms of this Agreement shall be confidential information that shall be held in strict confidence by Referral Partner.
- 8 **Warranties and Disclaimers.** Each party hereby represents and warrants that it has all the necessary power and authority to execute, deliver, and perform its obligations under this Agreement. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH ABOVE, EACH PARTY HEREBY DISCLAIMS ANY AND ALL OTHER EXPRESS WARRANTIES OF ANY KIND OR NATURE, AND ANY AND ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE, SOFTWARE INTEGRATION, OR INFORMATIONAL CONTENT. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR LOST PROFITS OR ANY OTHER CONSEQUENTIAL, SPECIAL, PUNITIVE, EXEMPLARY OR INCIDENTAL DAMAGES, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 9 **Indemnification.** Referral Partner shall indemnify, defend, and hold Message Systems harmless for any claims, demands, liabilities, losses, damages, judgments, including costs and expenses related thereto (including without limitation reasonable attorneys' fees) arising out of Referral Partner's activities under this Agreement.
- 10 **Term & Termination.** This Agreement shall commence as of the Effective Date and continue for one (1) year and automatically renewal on an annual basis unless terminated by either party with or without cause

upon 30 days prior written notice. Upon termination of this Agreement, all rights and licenses granted to Referral Partner shall end, and Referral Partner will immediately return to Message Systems all Confidential Information. The provisions of this Agreement relating to proprietary rights and confidentiality, liability limitations, indemnification, and choice of law shall survive the termination of this Agreement.

- 11 Dispute Resolution.** Prior to either party commencing any legal action under this Agreement, the parties agree to try in good faith to settle any disputes amicably between them. If a dispute has not been settled after 30 days of good-faith negotiation, then the dispute will be addressed by the top management of each company to be resolved in an additional 30 days. If this action does not resolve the dispute then either party may commence legal action against the other. Nothing herein shall preclude a party from seeking at any time emergency injunctive relief in the event of an action or omission by the other party that is likely to cause irreparable harm to it in the reasonable opinion of the party seeking the emergency remedy.
- 12 Registration.** Referral partner must send an email to a designated Message Systems contact to request registration of a specific Customer. A Message Systems representative will reply within 72 hours of receipt of such email, confirming or declining the registration of the Customer. Without a written or email reply from a Message Systems representative, the registration is not valid and no commission will be paid by Message Systems for the referral. Message Systems will only decline a registration if Message Systems already has a relationship or ongoing opportunity with the specific Customer. If Message Systems grants the registration, the registration shall remain effective for 12 months, during which time any sales of Message Systems Products to such Customer shall be included for commissions payable to Referral Partner. At the end of the 12 month period, Referral Partner can request that Message Systems extend the registration; however, Message Systems has no obligation to provide any extension.
- 13 General.** Both parties may communicate the general existence of this Agreement to other parties; provided, however, that Message Systems' terms of sale and the specific terms and conditions in this Agreement may not be disclosed. Referral Partner may not voluntarily or by operation of law assign, license, or otherwise transfer or encumber all or any part of its rights, duties, or other interests in this Agreement. Any notice provided pursuant to this Agreement, unless otherwise provided, shall be in writing and shall be deemed given (i) if by hand delivery, upon receipt thereof, (ii) if mailed, three days after deposit in the United States mail (or if Referral Partner is not located in the United States, after deposit with an internationally known and reputable carrier), postage prepaid, certified mail return receipt requested, or (iii) if sent via overnight courier with receipt, upon confirmed delivery, in each case to each party at the addresses noted at the beginning or end of this Agreement, unless a party has notified the other of a change of address. This Agreement and performance hereunder shall be governed by the laws of the State of Maryland, without regard to conflicts of law. The sole jurisdiction and venue for actions related to the subject matter hereof shall be the state and U.S. federal courts located in Baltimore, Maryland. The parties shall at all times be independent contractors with respect to each other in carrying out this Agreement, and each party shall be solely responsible for its own employees in connection with performance under this Agreement, and all salary, wages, and benefits owed thereto. This Agreement may be executed by the parties in counterparts. This Agreement constitutes the complete understanding and agreement of the parties with respect to the subject matter hereof and supersedes and merges any prior understandings, statements, and negotiations between the parties, whether oral or otherwise. This Agreement may not be modified except by a writing subscribed to by both parties.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives as of the date first set forth above.

MESSAGE SYSTEMS, INC.

By: _____

Name: _____

Title: _____

Date: _____

REFERRAL PARTNER

By: _____

Name: _____

Title: _____

Date: _____

Address: _____
