

REFERRAL AGREEMENT

Version: January 2022

This Referral Agreement ("**Agreement**") effective on the last signature date set forth below ("**Effective Date**") is entered into by and between Agiloft, Inc. ("**Agiloft**") and the person or entity identified in the signature block for a referral partner below (hereinafter referred to as "**Referral Partner**").

1. DEFINITIONS

The following terms as used in this Agreement have the meanings set forth in this Section and the singular includes the plural and vice versa:

- 1.1 "Customer Agreement"** means an agreement between Agiloft and an approved Prospect relating to the provision of Software Products and which was entered into at a time no later than 180 days after the date Referral Partner submitted a Prospect Referral form to Agiloft for the Prospect.
- 1.2 "Customer Fees"** mean the fees paid by an approved Prospect to Agiloft for the Software Products under a Customer Agreement during the initial term of the Customer Agreement. Customer Fees do not include (a) fees for the performance of services, including but not limited to off-site and on-site professional consulting fees, training fees, and maintenance and support contract fees, or (b) fees associated with subsequent Software Product purchases.
- 1.3 "Prospect"** means any potential customer for which Referral Partner has submitted to Agiloft a Prospect Referral form in accordance with Section 3.1 (Referral of Prospects).
- 1.4 "Qualified Transaction"** means a Customer Agreement under which Agiloft receives Customer Fees.
- 1.5 "Referral Fee"** means the referral fee set forth in Exhibit A.
- 1.6 "Software Products"** mean those software products listed on Exhibit A.

2. APPOINTMENT

- 2.1 Appointment.** Subject to the terms and conditions of this Agreement, Agiloft hereby appoints Referral Partner for the term of the Agreement as its non-exclusive representative to identify potential customers interested in entering into Qualified Transactions with Agiloft.
- 2.2 Reserved Rights.** Agiloft reserves the right: (a) to solicit purchases directly from, and to sell directly to, any potential customer; (b) to appoint other business contacts on a non-exclusive basis to promote the Software Products; and (c) to, in its sole discretion, change the Referral Fee or list of Software Products set forth on Exhibit A, from time to time, provided that Agiloft gives 30 days prior written notice to Referral Partner. In

addition, Agiloft will not pay more than one Referral Fee on any given Qualifying Transaction, and Agiloft reserves the right to apportion a Referral Fee if more than one Referral Partner has contributed to the close of a Qualifying Transaction. Agiloft shall be under no obligation to enter into a Qualifying Transaction.

- 2.3 Relationship.** The relationship of Agiloft and Referral Partner established by this Agreement is that of independent contractors. Use of the word “partner” in this Agreement is solely for convenience, and nothing contained in this Agreement shall be construed to: (a) give either party the power to direct or control the day-to-day activities of the other; (b) constitute the parties as partners, joint venturers, co-owners or otherwise as partners in a joint undertaking; or (c) allow a party to create or assume any obligation on behalf of the other party for any purpose whatsoever. All financial and other obligations associated with a party’s business are the sole responsibility of such party. Neither this Agreement nor any of the services contemplated hereby is intended to nor shall create a fiduciary relationship between Agiloft and Referral Partner, nor shall anything herein constitute or appoint Referral Partner an employee of Agiloft.
- 2.4 Expenses.** Unless otherwise expressly provided in this Agreement, or mutually agreed by the parties in writing, all costs and expenses incurred by Referral Partner in performing its obligations under this Agreement shall be borne solely by Referral Partner, and Agiloft shall not be required to make any payments to Referral Partner other than those expressly agreed to by Agiloft.
- 2.5 No Other Rights.** No other rights or licenses are granted to Referral Partner under this Agreement. This Agreement does not grant Referral Partner any right to resell or otherwise distribute any Agiloft product, nor any right to use any Agiloft trademark, nor any right to provide any services related to any Agiloft product. Such rights may only be granted under an Agiloft Reseller Agreement.
- 2.6 Scope.** In the event Referral Partner is or becomes an Agiloft Reseller Partner with rights to resell Software Products, Agiloft shall, in its sole discretion, determine whether an approved Prospect will be provided Software Products either (a) directly by Agiloft or (b) directly by the Referral Partner under an Agiloft Reseller Agreement. In no event will Referral Partner be eligible for fees or benefits under more than one Partner tier (as set forth in the Agiloft Reseller Partner Program Policies) for a given transaction.
- 2.7 Reseller Partner Program Policies.** Referral Partner shall comply with the Agiloft Reseller Partner Program Policies set forth at <https://www.agiloft.com/agiloft-partner-agreements.htm>. The Agiloft Reseller Partner Program Policies are incorporated into this Agreement by reference.

3. REFERRAL OF PROSPECTS

- 3.1 Referral of Prospects.** Referral Partner shall use reasonable efforts to successfully identify potential customers interested in entering into Qualified Transactions with Agiloft. For each potential customer that Referral Partner reasonably believes is interested in entering into a Qualified Transaction with Agiloft, the Referral Partner must

identify the potential customer directly to Agiloft by submitting a complete and accurate Prospect Referral form online using the login/password and hyperlink provided by Agiloft. Agiloft reserves the right to not approve a Prospect for any reason, including, without limitation, because Agiloft has already established contact with the Prospect or the Prospect is an existing customer. An existing customer of Agiloft may be eligible as a Prospect if the customer has more than one division, and the sale is made to a division that is not already using the Software Product. If Agiloft approves the Prospect, Agiloft will inform Referral Partner of the approval by email. Each party acknowledges and agrees that in any event, Agiloft shall, in its sole discretion, determine whether or not to enter into any Qualified Transaction.

3.2 Restrictions. When seeking customer referrals and otherwise performing under this Agreement, Referral Partner shall: (a) not engage in any deceptive, misleading, illegal, or unethical practices; (b) not make any representations or warranties concerning the Software Products, except as set forth in marketing collateral or documentation furnished by Agiloft; (c) not disparage Agiloft or any product or service of Agiloft; (d) conduct business in a manner that reflects favorably at all times on the good name, good will, and reputation of Agiloft; (e) comply with all applicable federal, state, and local laws and regulations; (f) not, during the term of this Agreement, direct any Prospect to any individual or entity deemed a competitor by Agiloft; (g) not attempt to promote the Software Products to any entities that have already purchased the Software Products from Agiloft or an Agiloft reseller; (h) not attempt to promote the Software Products to any entity that has requested and received a quote from Agiloft or an Agiloft reseller unless (1) Agiloft or the Agiloft reseller confirms by email that the quote was for a different department or division of the entity and is independent of the entity, or (2) a period of six (6) calendar months or more has passed since the most recent quote was received by the entity; and (i) not, without the prior written consent of Agiloft, conduct any negotiations, conclude any contract, or make any representation, warranty, or promise on Agiloft's behalf, or take any action binding upon Agiloft.

4. REFERRAL FEES AND PAYMENT TERMS

4.1 Referral Fees and Payment. The Referral Fee for a given Qualified Transaction will be deemed payable when and as Agiloft receives Customer Fees from the Prospect under a Qualified Transaction. All payable Referral Fees pursuant to this Section 4 (Referral Fees and Payment Terms) will be paid to Referral Partner within 30 days of the date Agiloft receives Customer Fees from the Prospect under a Qualified Transaction. Payment of any Referral Fee will be in United States Dollars. Referral Partner may choose to receive payment of the Referral Fee by wire transfer or ACH. Any resulting transaction costs, such as wire transfer fees, will be deducted from the Referral Fee.

4.2 Referral Fees Under \$500. Notwithstanding Section 4.1 above, if the Referral Fee is less than \$500, Agiloft will pay the Referral Fee to Referral Partner in the calendar month following the calendar month in which the Referral Fee reaches or exceeds \$500 or on

the last business day of the calendar quarter in which the Referral Fee was earned, whichever comes first.

5. TAXES

Referral Partner shall be solely responsible for payment of any taxes to which the Referral Fee is subject. Referral Partner shall indemnify and hold Agiloft harmless from any taxes, penalties, duties and interest levied by any government on the Referral Fee. Payment of any Referral Fee will be subject to all applicable governmental statutes, regulations and rulings, including but not limited to the withholding of any taxes required by law. Agiloft may withhold from the Referral Fee and any other payments to Referral Partner under this Agreement any withholding taxes required to be withheld by Agiloft under applicable laws, including but not limited to those of the United States. Such amounts will be paid to the appropriate taxing authorities.

6. WARRANTY DISCLAIMER

AGILOFT MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER. AGILOFT EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, QUALITY, ACCURACY, AND TITLE.

7. INDEMNIFICATION

Referral Partner shall defend Agiloft and its affiliates and Agiloft's and Agiloft's affiliates' respective officers, directors, employees, contractors and agents ("**Agiloft Indemnified Parties**") against any actual or threatened third party claim or demand arising out of or related to Referral Partner's breach of this Agreement or based upon Referral Partner's negligence or intentional misconduct, and shall indemnify and hold harmless each of the Agiloft Indemnified Parties from all damages, losses, expenses, and costs (including, without limitation, reasonable attorneys' fees) incurred by any of them in connection with the foregoing.

8. OWNERSHIP AND CONFIDENTIALITY

- 8.1 Ownership.** As between Agiloft and Referral Partner, Agiloft owns exclusively all rights, title and interest in and to, and all intellectual property rights in and to, the Software Products and any other materials or information provided or made available by or on behalf of Agiloft to Referral Partner under this Agreement or that Referral Partner otherwise obtained or had access to in connection with this Agreement.
- 8.2 Confidentiality. "Confidential Information"** means any information, whether oral, written or observed, that is designated as confidential at the time of disclosure by Agiloft or that Referral Partner should reasonably understand to be confidential given its nature or the circumstances of its disclosure. Confidential Information includes, without limitation, the terms of this Agreement and Agiloft's specifications, requirements, plans, programs, processes, technologies, products, costs, equipment,

operations, finances or customers which may come within the knowledge of Referral Partner. Referral Partner shall hold Confidential Information in trust and confidence for Agiloft and shall not disclose such Confidential Information to any third party without Agiloft's prior written consent. Referral Partner shall not use such Confidential Information for any purpose other than to perform as required by this Agreement. All Confidential Information will remain the exclusive property of Agiloft, and Referral Partner shall immediately destroy, or return to Agiloft, all Confidential Information, together with all copies thereof, upon Agiloft's request or upon expiration or termination of the Agreement.

9. LIMITATION OF LIABILITY

UNDER NO CIRCUMSTANCES SHALL AGILOFT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER, ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR LOSS OF BUSINESS, REGARDLESS OF THE LEGAL THEORY UPON WHICH SUCH ACTION OR CLAIM FOR DAMAGES IS BASED, EVEN IF AGILOFT HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL AGILOFT'S TOTAL LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE), OR OTHERWISE, EXCEED THE AGGREGATE REFERRAL FEES PAID BY AGILOFT TO REFERRAL PARTNER UNDER THIS AGREEMENT IN THE TWELVE MONTHS PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY. EACH PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES CONSTITUTES A REASONABLE ALLOCATION OF THE RISKS BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THIS AGREEMENT, AND EACH OF THESE PROVISIONS WILL APPLY EVEN IF FAILED OF ITS ESSENTIAL PURPOSE.

10. TERM AND TERMINATION

10.1 Term; Termination. This Agreement will commence upon the Effective Date and will remain in effect for a period of two (2) years following such date unless otherwise terminated earlier under this Agreement. Thereafter, this Agreement will automatically renew for additional one (1) year periods, unless either party provides at least fifteen (15) days prior written notice to the other party of its intent not to renew. Either party may terminate this Agreement at any time by providing the other party with ninety (90) days prior written notice.

10.2 Final Payment Upon Expiration or Termination. Upon any expiration or termination of this Agreement, subject to all the provisions of this Agreement and to Referral Partner's compliance with Section 10.3 (Return of Materials) below, Agiloft shall pay Referral Fees to Referral Partner on all Qualified Transactions meeting all of the following requirements: (a) the Qualified Transaction is entered into by Agiloft within

90 days of the expiration or termination of this Agreement; and (b) Agiloft receives Customer Fees under a Qualified Transaction within 90 days of the expiration or termination of this Agreement. Notwithstanding the above, Agiloft shall have the right to equitably divide such Referral Fee with succeeding business contacts to the extent such succeeding business contacts render services with respect to such Qualified Transaction. If Agiloft is owed any amounts by Referral Partner, Agiloft shall have the right, in its absolute discretion, to offset any Referral Fee payable by Agiloft to Referral Partner by such obligation owed to Agiloft by Referral Partner. Upon expiration or termination of this Agreement, Agiloft's sole obligation to Referral Partner under the terms of this Agreement shall be for any unpaid Referral Fee under this Section 10.2 (Final Payment Upon Expiration or Termination) and Section 4 (Referral Fees and Payment Terms).

- 10.3 Return of Materials.** Within 30 days of the expiration or termination of this Agreement, Referral Partner shall return or securely destroy, at Agiloft's election, all of Agiloft's materials, including, without limitation, all copies of Agiloft's Confidential Information.
- 10.4 Referral Partner Claims.** Upon expiration or termination of this Agreement, all claims of Referral Partner against Agiloft, including, without limitation, those pertaining to the Referral Fee, are hereby waived unless made in writing to Agiloft by Referral Partner within 30 days of when such Referral Fee would have been first payable.
- 10.5 No Liability to Other Party.** NEITHER PARTY SHALL, BY REASON OF TERMINATION OF THIS AGREEMENT, BE LIABLE TO THE OTHER FOR COMPENSATION, INDEMNIFICATION, REIMBURSEMENT OR DAMAGES ON ACCOUNT OF ANY LOSS OF PROSPECTIVE PROFITS OR ANTICIPATED SALES OR ON ACCOUNT OF EXPENDITURES, INVESTMENTS, LEASES OR COMMITMENTS MADE IN CONNECTION WITH THIS AGREEMENT OR THE ANTICIPATION OF EXTENDED PERFORMANCE UNDER THIS AGREEMENT.
- 10.6 Survival.** Section 1 (Definitions), Section 2.5 (No Other Rights), and Sections 5 (Taxes), 6 (Warranty Disclaimer), 7 (Indemnification), 8 (Ownership and Confidentiality), 9 (Limitation of Liability), 10.2 (Final Payment Upon Expiration or Termination), 10.3 (Return of Materials), 10.4 (Referral Partner Claims), 10.5 (No Liability to Other Party), 10.6 (Survival) and 11 (General) will survive expiration or any termination of this Agreement.

11. GENERAL

- 11.1 Publicity.** Within thirty (30) days of the execution of this Agreement, Referral Partner shall publicize its status as an Agiloft Partner on its website and display the Agiloft logo there (subject to compliance with Agiloft's trademark usage guidelines).
- 11.2 Severability.** The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall continue in full force and effect without said provision and will be interpreted to reflect the original intent of the parties.

- 11.3 No Assignment.** Referral Partner shall not assign its rights or delegate its obligations under this Agreement without the written consent of Agiloft. Agiloft may freely assign this Agreement. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the parties and their successors and assigns.
- 11.4 Governing Law and Arbitration.** This Agreement and the rights and obligations of the parties under this Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded by the parties. The rights and obligations of the parties under this Agreement shall be governed by and construed under the laws of the State of California without reference to conflict of laws principles. Any dispute or claim arising out of or in connection with this Agreement or the performance, breach or termination thereof, shall be finally settled by binding arbitration in San Mateo County, California under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with said rules. Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Notwithstanding the foregoing, (a) either party may apply to any court of competent jurisdiction for injunctive relief without breach of this arbitration provision; and (b) the arbitrators shall have no power or authority to hear or provide an award on any claims arising out of or related to intellectual property rights.
- 11.5 Equitable Relief.** Referral Partner recognizes and agrees that if it breaches any obligation under this Agreement, Agiloft may suffer immediate and irreparable harm for which monetary damages alone would not be a sufficient remedy, and that, in addition to all other remedies, Agiloft shall be entitled to equitable relief, including, without limitation, injunctive relief or specific performance, to remedy a breach or threatened breach of this Agreement and to enforce this Agreement, and Referral Partner hereby waives any and all defenses and objections it may have on the grounds of jurisdiction and venue, including, but not limited to, lack of personal jurisdiction and improper venue, and waives any requirement for the securing or posting of any bond in connection with such remedy.
- 11.6 Notices.** Any notice required or permitted by this Agreement shall be in writing and shall be sent by prepaid registered or certified mail, return receipt requested, addressed to the other party at the address shown at the beginning of this Agreement or at such other address for which such party gives notice under this Agreement. Such notice shall be deemed to have been given 7 days after deposit in the mail.
- 11.7 WAIVER OF JURY TRIAL.** EACH PARTY KNOWINGLY AND IRREVOCABLY WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON, ARISING OUT OF, OR RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING WHETHER CLAIMS ARE ASSERTED ON AN INDIVIDUAL BASIS OR AS A PUTATIVE REPRESENTATIVE OF A CLASS. THIS PROVISION IS AN ESSENTIAL BARGAIN EMBODIED BY THIS AGREEMENT.

- 11.8 No Waiver.** The failure of either party to require performance of any provision of this Agreement or the waiver by either party of any breach of any provision shall not prevent the subsequent enforcement of nor be deemed a waiver of any subsequent breach of such provision.
- 11.9 Construction.** The headings of the sections used in this Agreement are inserted for convenience of reference only and shall not affect the interpretation of the respective sections of this Agreement. The parties have had an equal opportunity to participate in the drafting of this Agreement. No ambiguity will be construed against any party based upon a claim that that party drafted the ambiguous language.
- 11.10 Counterparts.** This Agreement may be executed in two or more counterparts, each of which will be an original and all of which will constitute one Agreement. This Agreement may be delivered by electronic or facsimile transmission, and electronic or facsimile copies of executed signature pages will be binding as originals.
- 11.11 Entire Agreement.** This Agreement constitutes the entire agreement of the parties and supersede and cancel any and all previous agreements, understandings or negotiations, whether oral or written, between the parties related to the subject matter of this Agreement. This Agreement may only be amended by a written agreement executed by the parties hereto.

BY SIGNING BELOW, REFERRAL PARTNER ACKNOWLEDGES THAT IT HAS READ, UNDERSTANDS AND AGREES TO ALL OF THE TERMS AND CONDITIONS CONTAINED IN THIS REFERRAL AGREEMENT.

For:	Agiloft	Referral Partner
Company	Agiloft, Inc.	
Type	Delaware Corporation	
Corporate Tax ID	71-0907214	
Telephone	650-587-8615	
Facsimile	650-745-1209	
Street Address	460 Seaport Blvd, #200	
City	Redwood City	
State	CA	
Zip Code	94063	
Printed Name		
Title		
Date		
Signature		

EXHIBIT A**Software Products:****Referral Fee:**

10% of all Customer Fees from a Qualifying Transaction that is Sourced

5% of all Customer Fees from a Qualifying Transaction that is Influenced

A Qualifying Transaction is Sourced if it is generated by the Referral Partner with Agiloft's sales team leading the sales cycle. A Qualifying Transaction is Influenced if it is generated and led by Agiloft's sales team with Referral Partner leveraging its existing relationships and expertise to support deal closure.