

FLOWFUSE, INC. REFERRAL AGREEMENT

This Referral Agreement ("**Agreement**") is entered into as of _____, 20____ ("**Effective Date**") by and between FlowFuse, Inc., a Delaware corporation ("**FlowFuse**"), and [REDACTED], a [State] [entity type] ("**Representative**"). The parties hereby agree as follows:

1. APPOINTMENT AND RELATIONSHIP

(a) **Appointment.** Subject to the terms of this Agreement, FlowFuse hereby appoints Representative, as a non-exclusive representative to solicit and refer prospective customers to FlowFuse. Representative will not have the authority, express or implied, to make any commitment or incur any obligations on behalf of FlowFuse, other than making referrals as set forth in this Agreement. Except as expressly specified in this Agreement, FlowFuse reserves the right to (i) establish relationships with third parties, including other sales representatives, to market and sell FlowFuse's products and services, and (ii) solicit orders directly from and sell directly to any customer.

(b) Relationship

(i) **Independent Contractors.** The relationship of the parties established by this Agreement is that of independent contractors, and nothing contained in this Agreement should be construed to give either party the power to (1) act as an agent or (2) direct or control the activities of the other. Financial and other obligations associated with each party's business are the sole responsibility of that party.

(ii) **No Employment.** No individual whose compensation for services is paid for by Representative is employed by FlowFuse, nor will that individual be deemed to be employed by FlowFuse for any purpose. Representative accepts exclusive liability for all payroll taxes or contributions according to federal, state, or local tax laws with respect to individuals whose compensation is paid by Representative. Representative will remain solely responsible for the performance of any of its employees or agents.

2. REFERRAL PROCESS

(a) **Cloud Referral Codes.** FlowFuse will provide Representative with unique referral code(s) ("**Code(s)**"), which Representative may only share on an individual basis with prospective customers; Representative may not publish or distribute Codes except as expressly permitted under this Agreement. When Representative identifies and wishes to refer a prospective customer seeking to purchase FlowFuse cloud-hosted services, Representative will provide such prospective customer with the Code to be entered upon checkout on FlowFuse's platform in accordance with any instructions provided by FlowFuse (a "**Cloud Referral**").

(b) **Self-Managed Deal Registration.** When Representative identifies and wishes to refer a prospective customer seeking to purchase FlowFuse self-managed installation software, Representative will provide FlowFuse with the relevant information of such prospective customer and the number of instances to be licensed by such prospective customer and such other information reasonably requested by FlowFuse (a "**Self-Managed Referral**", together with any "**Cloud Referral**," collectively, "**Referrals**").

(c) **Acceptance of Referrals.** Representative acknowledges that all sales made through FlowFuse's platform will be subject to the end customer agreeing to FlowFuse's end customer agreement and being subject to FlowFuse's privacy policy, and will be subject to pricing and other terms, conditions and restrictions as may be set therein or elsewhere on FlowFuse's platform. FlowFuse will have 10 business days from the date of the Referral to accept or reject the Referral. A Referral may be rejected for any reason, including, but not limited to, because the applicable prospective customer (the "**Referred Entity**") is not qualified, contact with FlowFuse has already been established with the Referred

Entity, or the Referred Entity is an existing contact, customer or business partner. Notwithstanding the introduction of a Referred Entity to FlowFuse by Representative, FlowFuse shall be under no obligation to enter into any agreement with such Referred Entity.

3. REPRESENTATIVE'S OBLIGATIONS

(a) **Best Efforts.** Representative will use good faith efforts to refer to FlowFuse prospective customers. Representative will ensure that its employees and agents that are involved in performing under this Agreement are knowledgeable about FlowFuse's business and products.

(b) **Assistance.** Upon FlowFuse's request, Representative will set up and attend meetings with prospective customers and provide FlowFuse with sufficient background of Referred Entity and representatives of the Referred Entity. Notwithstanding the foregoing, Representative shall not be authorized to conduct any negotiations on behalf of FlowFuse, conclude any contract on FlowFuse's behalf, or make any representation, warranty, promise or take any other action binding upon FlowFuse, in each case without the prior written consent of FlowFuse.

(c) **Business Practices.** When seeking prospective customers and otherwise performing under this Agreement, Representative will: (i) not engage in any deceptive, misleading, illegal, or unethical practices; (ii) not make any representations or warranties concerning FlowFuse or its products, except as set forth in printed marketing collateral or documentation furnished by FlowFuse; (iii) conduct business in a manner that reflects favorably at all times on the good name, goodwill, and reputation of FlowFuse; and (iv) comply with all applicable federal, state, and local laws and regulations.

(d) **Reporting.** Representative will provide FlowFuse periodic written updates containing a list and status of Referred Entities and prospective customers for which Representative anticipates submitting a Referral.

(e) **Co-marketing.** Representative grants FlowFuse a license to use its trademarks or logos for the purpose of promotion on the FlowFuse website as well as through case studies.

4. FLOWFUSE'S OBLIGATIONS

(a) **Marketing Materials.** FlowFuse may, at its own expense and reasonable discretion, provide Representative with marketing and technical information concerning FlowFuse and its products. FlowFuse will retain all right, title, and interest in and to all marketing materials that it provides to Representative under this Agreement. For clarity, Representative may not create or modify marketing literature without obtaining FlowFuse's express written consent.

5. COMPENSATION

(a) **Referral Compensation.** In consideration for the services rendered by Representative hereunder, FlowFuse shall pay to Representative as sole compensation the amount calculated and payable in accordance with **Exhibit A ("Compensation")**.

6. TERM AND TERMINATION

(a) **Term.** This Agreement will commence upon the Effective Date and continue for [1 year], unless earlier terminated in accordance with the provisions of this Agreement.

(b) **Termination without Cause.** Either party may terminate this Agreement for any reason upon [14] days' prior written notice to the other party.

(c) **Termination for Cause.** If either party fails to perform any of its material obligations under this Agreement, the other party may terminate this Agreement by giving 30 days prior written

notice, provided that the matters set forth in such notice are not cured to the other party's reasonable satisfaction within the 30-day period.

(d) **No Liability for Termination.** Except as expressly required by law, if either party terminates this Agreement in accordance with any of the provisions of this Agreement, neither party will be liable to the other, because of such termination, for expenditures or commitments made in connection with this Agreement or damages caused by the loss of prospective profits or anticipated sales. Termination will not, however, relieve either party of obligations incurred prior to the effective date of the termination.

(e) **Effects of Termination or Expiration**

(i) Upon termination or expiration, FlowFuse will only be responsible for paying Compensation for Referrals made by the Representative prior to the effective date of the termination or expiration. All claims of Representative against FlowFuse, including without limitation those pertaining to Compensation hereunder, are hereby waived unless made in writing to FlowFuse by Representative within thirty (30) days of when such Compensation would have been payable.

(ii) In addition, the following provisions will survive any termination or expiration of this Agreement: Sections 1(b), 5 (solely with respect to Referrals accepted prior to termination), 6(d), 6(e), and 7-10.

7. LIMITED WARRANTY AND DISCLAIMER

(a) **Mutual Warranties.** Each party represents and warrants to the other that: (i) this Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against such party in accordance with its terms; (ii) no authorization from any third party is required in connection with such party's execution, delivery, or performance of this Agreement; and (iii) the execution, delivery, and performance of this Agreement does not violate any applicable laws.

(b) **WARRANTY DISCLAIMER.** EXCEPT FOR THE WARRANTIES MADE IN SECTION 7(a), FLOWFUSE MAKES NO ADDITIONAL REPRESENTATION OR WARRANTY OF ANY KIND WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER. FLOWFUSE EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, QUALITY, ACCURACY, AND TITLE.

8. CONFIDENTIAL INFORMATION

(a) **"Confidential Information"** means any information disclosed one Party to the other Party which is marked as "confidential" at the time of disclosure (if disclosed in tangible or written form) or that would otherwise reasonably be considered by a third party to be confidential based on the nature of the information or the circumstances surrounding its disclosure. Confidential Information will not include any information that (i) was publicly known and made generally available prior to the time of disclosure by the disclosing party, (ii) becomes publicly known and made generally available after disclosure by the disclosing party to the receiving party through no action or inaction of the receiving party, (iii) is already rightfully in the possession of the receiving party at the time of disclosure, (iv) is obtained by the receiving party from a third party without a breach of such third party's obligations of confidentiality, or (v) is independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information. Notwithstanding anything to the contrary herein, FlowFuse may freely use and disclose without restriction any feedback, suggestions, or other ideas provided by Representative to FlowFuse at any time that relate to the FlowFuse's current or future anticipated business, products, or services (collectively, **"Feedback"**), and Representative hereby grants FlowFuse a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to use, reproduce, disclose, sublicense, distribute, modify, and otherwise exploit such Feedback without restriction.

(b) **Non-Use and Non-Disclosure.** Each Party will (i) treat as confidential all of the other Party's Confidential Information, (ii) not disclose such Confidential Information to any third party, except on a "need to know" basis to third parties that have signed a non-disclosure agreement containing provisions substantially as protective as the terms hereof provided, and (iii) will not use such Confidential Information except in connection with performing its obligations or exercising its rights under this Agreement. Notwithstanding the foregoing, each Party is permitted to disclose the other Party's Confidential Information if required by law so long as the other Party is given prompt written notice of such requirement prior to disclosure and assistance in obtaining an order protecting such information from public disclosure.

(c) **Confidentiality of Agreement.** Neither party to this Agreement will disclose the terms of this Agreement to any third party without the consent of the other party, except as required by securities or other applicable laws. Notwithstanding the above provisions, each party may disclose the terms of this Agreement (i) in connection with the requirements of a public offering or securities filing, (ii) in confidence, to accountants, banks, and financing sources and their advisors, (iii) in confidence, in connection with the enforcement of this Agreement or rights under this Agreement, or (d) in confidence, in connection with a merger or acquisition or proposed merger or acquisition, or the like.

9. LIMITATION OF LIABILITY

(a) **DISCLAIMER OF CONSEQUENTIAL DAMAGES.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, FLOWFUSE WILL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO REPRESENTATIVE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, EVEN IF FLOWFUSE IS APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES.

(b) **CAP ON LIABILITY.** UNDER NO CIRCUMSTANCES WILL FLOWFUSE'S TOTAL LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT, OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID BY FLOWFUSE TO REPRESENTATIVE DURING THE PREVIOUS 12 MONTHS UNDER THIS AGREEMENT (DETERMINED AS OF THE DATE OF ANY FINAL JUDGMENT IN AN ACTION).

(c) **INDEPENDENT ALLOCATIONS OF RISK.** EACH PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS OF THIS AGREEMENT BETWEEN THE PARTIES. THIS ALLOCATION IS REFLECTED IN THE COMPENSATION OFFERED BY FLOWFUSE TO REPRESENTATIVE AND IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THIS AGREEMENT, AND EACH OF THESE LIMITATIONS WILL APPLY EVEN IF THEY HAVE FAILED OF THEIR ESSENTIAL PURPOSE.

10. GENERAL

(a) **Assignment.** Representative may not assign its rights and obligations under this Agreement without the written consent of FlowFuse. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the parties and their successors and assigns.

(b) **Notices.** Any notice required or permitted to be given under this Agreement will be effective if it is in writing and sent by certified or registered mail, or insured courier, return receipt requested, to the appropriate party at the address set forth below and with the appropriate postage affixed. Either party may change its address for receipt of notice by notice to the other party in accordance with this Section. Notices are deemed given two business days following the date of mailing or one business day following delivery to a courier.

(c) **Force Majeure.** Nonperformance of either party will be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts, orders or restrictions, or any other reason where failure to perform is beyond the control and not caused by the negligence of the non-performing party.

(d) **Foreign Corrupt Practices Act.** In conformity with the United States Foreign Corrupt Practices Act and with FlowFuse's corporate policies regarding foreign business practices, Representative and its employees and agents shall not directly or indirectly make an offer, payment, promise to pay, or authorize payment, or offer a gift, promise to give, or authorize the giving of anything of value for the purpose of influencing an act or decision of an official of any government (including a decision not to act) or inducing such a person to use his influence to affect any such governmental act or decision in order to assist FlowFuse in obtaining, retaining, or directing any such business.

(e) **Governing Law.** This Agreement will be interpreted, construed, and enforced in all respects in accordance with the local laws of the State of California, U.S.A, without reference to its choice of law rules and not including the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods. Except as specified in Section 10.6, any action arising out of or in connection with this Agreement will be heard in the federal, state, local courts in San Francisco, California, and each party hereby irrevocably consents to the exclusive jurisdiction and venue of these courts.

(f) **Remedies Cumulative.** The remedies provided to the parties under this Agreement are cumulative and will not exclude any other remedies to which a party may be lawfully entitled.

(g) **Waiver and Severability.** The waiver by either party of any breach of this Agreement does not waive any other breach. The failure of any party to insist on strict performance of any covenant or obligation under this Agreement will not be a waiver of such party's right to demand strict compliance in the future, nor will the same be construed as a novation of this Agreement. If any part of this Agreement is unenforceable, the remaining portions of this Agreement will remain in full force and effect.

(h) **Drafting and Interpretation.** The parties have had an equal opportunity to participate in the drafting of this Agreement and the attached exhibits. No ambiguity will be construed against any party based upon a claim that that party drafted the ambiguous language. The headings appearing at the beginning of several sections contained in this Agreement have been inserted for identification and reference purposes only and must not be used to construe or interpret this Agreement. Whenever required by context, a singular number will include the plural, the plural number will include the singular, and the gender of any pronoun will include all genders. This Agreement is in English only, and all versions, if any, in any other language will not be binding on the parties. All communications and notices under this Agreement must be provided in English.

(i) **Entire Agreement.** This Agreement, including any exhibits, is the final and complete expression of all agreements between these parties and supersedes all previous oral and written agreements regarding these matters. It may be changed only by a written agreement signed by the party against whom enforcement is sought. The exhibits referred to in this Agreement are incorporated by this reference as if fully set forth here, and in the event of a conflict with this Agreement, the exhibits shall supersede.

(j) **Execution in Counterparts and by Facsimile.** The Agreement may be executed in counterparts, each of which will be deemed an original, but all of which taken together will constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

“FlowFuse”

FlowFuse, Inc.

Name _____
:
Title: _____
Signature: _____

Date: _____

Address for notice: _____

“REPRESENTATIVE”

[REDACTED]

Name _____
:
Title: _____
Signature _____
:

Date _____
:

Address for notice: _____

EXHIBIT A

A. Compensation

- a. **Compensation for Referrals:** FlowFuse will pay Representative the percentage of Net Revenue as Compensation in accordance with the table set forth below for each Referral. “**Net Revenue**” means amounts actually received by FlowFuse from a Referred Entity as recurring subscription fees (whether received on a monthly or annual basis, as applicable to the FlowFuse services purchased by a Referred Entity) pursuant to a definitive end user agreement entered between FlowFuse and such Referred Entity (each such agreement, a “**Qualifying Agreement**”), less refunds, chargebacks, markdowns, rebates, discounts, and sales, use VAT and other similar taxes, if any customs, duties and other governmental charge incurred in connection with transactions.

Time Period	Percentage of Net Revenue
Months 1-12 of the Qualifying Agreement	10%
Months 13-24 of the Qualifying Agreement	10%

- B. **Exclusions.** Notwithstanding the foregoing or any introduction of a Referred Entity by Representative, no compensation shall be paid by FlowFuse to Representative with respect to any arrangements entered into with any Referred Entity not approved pursuant to Section 2(b) of the Agreement.
- C. **Split Compensation.** If more than one representative is involved in the solicitation of a Referred Entity, FlowFuse, in its sole discretion, may split the Compensation for the applicable referral among such multiple representatives (including its internal sales team employees). In no event shall the total Compensation for a specific Referred Entity exceed the amount determined pursuant to Section A above.
- D. **Payment of Compensation.** All amounts payable by FlowFuse pursuant hereto shall be paid to Representative within 30 days after the date FlowFuse receives payment in full of amounts used to calculate Net Revenue from each Referred Entity.
- E. **Payment in United States Dollars.** Payment of Compensation shall be in United States Dollars and shall be subject to all applicable governmental statutes, regulations and rulings, including the withholding of any taxes required by law.
- F. **Currency Conversion.** If any currency conversion is required in connection with the calculation of the amounts payable to Representative hereunder, such conversion shall be made using the selling exchange rate for conversion of the foreign currency into United States Dollars, quoted in the Wall Street Journal (New York edition) for the last business day prior to the date such calculation is made.