

Referral Agent Agreement



This Referral Agreement (this "Agreement") is made effective as of the ____ day of _____, 20__ (the "Effective Date") by and between **MaxNOC Communications, LLC** with offices at 100 NE 80th Terrace, Suite 200 Miami Florida 33138 ("MaxNOC") and _____ Located at: _____ ("Referral").

IN CONSIDERATION OF the mutual promises and covenants hereinafter contained and other good and valuable consideration, the receipt of which is hereby acknowledged the parties here to agree as follows:

1. Referrals

- a. Subject to the terms and conditions of the Agreement, Referral may from time to time refer potential customers ("Potential Customers") to MaxNOC. Referral shall give MaxNOC written notice of Potential Customers by MaxNOC Online lead entry page or through email return receipt requested.
- b. MaxNOC, in its sole discretion, shall have the option to enter into, or decline to enter into, an agreement with any Potential Customer. In the event MaxNOC declines, for any reason, to enter into an agreement with any Potential Customer, MaxNOC shall have no obligation to Referral under this Agreement or otherwise with respect to such Potential Customer.
- c. If (a) such Potential Customer has (i) not previously entered into an agreement with MaxNOC; (II) not previously been referred or introduced to MaxNOC in writing by any other person; and (III) not previously been documented as a Customer (as defined below); and (b) MaxNOC enters into an agreement with any such Potential Customer, upon such terms and conditions acceptable solely to MaxNOC and such Potential Customer, within sixty (60) days of such Potential Customer being referred to MaxNOC by Referral, such Potential Customer shall be considered a "Customer" for purposes of this Agreement and MaxNOC shall pay a fee to Referral as set forth below in Section 2.
- d. In the event a referral of a Potential Customer is disputed among one or more Referrals, finders or other persons, MaxNOC alone shall determine which party, based solely upon who first provided it with written notice of such Potential Customer, is entitled to a fee, if any, with respect to such Potential Customer.

2. Compensation

- a. Referral shall be entitled to a minimum of two percent and up to Twenty percent (2% and up to 20% depending on the profitability of the negotiated deal as each and every deal is custom) of the monthly fees actually paid by referred Customer to MaxNOC pursuant to the initial contract entered into with such Customer (the “Referral Fee”). Referral fees will not be paid on power costs.
- b. MaxNOC shall pay the Referral Fee to Referral on the following dates (each such date shall be a “Payment Date”), in a given calendar year: on the 15th of each Month. Commencing on the first Payment Date following the commencement of an agreement, MaxNOC shall pay Referral the Referral Fee earned on the first payment collected. The Referral shall not be entitled to any payment from MaxNOC except as specifically provided herein.

3. Term and Termination

- a. The initial term of this Agreement shall be one (1) year from the Effective Date and shall be renewed there after automatically on a month-to-month basis, unless sooner terminated as here in after provided, subject to and upon the conditions specified herein.
- b. Either party may terminate this Agreement at any time upon ten (7) days prior written notice to the other party. Upon termination of the Agreement, a list shall be prepared of all pending unfinished business involving any Customers or Potential Customers introduced by Referral (which list shall be agreed to and signed by both parties hereto and shall control any and all claims for Referral Fees after the termination of this Agreement); provided, however, Referral shall cease to be entitled to any Referral Fees due to it as of the date of termination if this Agreement is terminated by MaxNOC for cause as hereinafter defined. As used herein, “cause” shall mean any breach of sections 4.1, 8.3 or 8.4 of this Agreement by Referral. In no event shall the above referenced list include any parties that were not identifies to MaxNOC by Referral as Potential Customers in writing prior to giving the termination notice.

4. Acting as Finder Only: Non-Exclusivity

- a. It is understood that Referral is acting as a finder only and shall have no authority to enter into any agreements, obligations or commitments on MaxNOC’s behalf, or to negotiate the terms of Potential Customers’ agreements with MaxNOC. Referral

hereby agrees to indemnify, defend, and hold MaxNOC harmless and from any claims, actions, lawsuits, damages, awards or judgments arising out of any such agreements, obligations, or commitments undertaken by Referral or the breach thereof.

- b. Referral acknowledges that MaxNOC may enter into referral agreements or similar arrangements with other parties and that Referral shall have no rights under such agreements or to any fees for customers referred to MaxNOC by others or identified by MaxNOC itself.

5. Relationship

Referral and MaxNOC expressly intending that no employment, partnership, or joint venture relationship is created by this Agreement, hereby agrees as follow: (i) neither Referral nor anyone employed by or acting for or on behalf of Referral shall ever be construed as an employee of MaxNOC and MaxNOC shall not be liable for employment taxes respecting Referral or any employee of Referral; (ii) Referral shall not make any commitment or incur any charge or expense in the name of MaxNOC without the prior written approval of MaxNOC; (iii) Referral expressly acknowledges and agrees that except to the extent expressly provided herein, neither Referral nor anyone employed by or acting on behalf of Referral shall receive or be entitled to any consideration, compensation or benefits of any kind from MaxNOC.

6. Indemnification

Each party shall indemnify, defend and hold the other party (and all officers, directors, employees, Referrals, and affiliates thereof) harmless from and against any and all claims, demands, actions, losses, damages, assessments, charges, liabilities costs and expenses (including without limitation interest, penalties, and attorney's fees and disbursements) which may at any time be suffered or incurred by, or be assessed against, any and all of them, directly or indirectly, on account of or in connection with: (i) such party's default under any provision herein, breach of any representation or warranty herein, or failure in any way to perform obligation hereunder; or (ii) negligent acts or omissions or the willful misconduct of such party or its employees, Referrals, contractors or invitees.

7. Liability

Under no circumstances shall either party be liable for any indirect, incidental, economic, special, punitive or consequential damages, whether for breach of contract, negligence or under any other cause of action, that result from the relationship or the conduct of business contemplated herein.

8. Explanations

a. Entire Agreement

This Agreement constitutes the sole and entire understanding between the parties with respect to the subject matter hereof and may not be altered or amended except in writing signed by both parties. This Agreement supersedes all prior communications or agreements written or oral, and is intended as a complete and exclusive statement of the terms of the Agreement between the parties.

b. Notice

All notices given and requests made hereunder must be sent in writing and must be delivered or sent either by nationally recognized overnight courier or registered or certified United States mail, return receipt requested, postage prepaid. All notices to either party shall be delivered to their respective addresses listed above. The parties may change their address by notice delivered to the other party. Any notice or request sent by registered or certified United States mail, return receipt requested, postage prepaid shall be deemed given on the date of receipt or refusal as indicated on the return receipt. Any notice or request sent by overnight courier service shall be deemed given on the date of receipt or refusal of the same.

c. Confidentiality

Referral acknowledges that by reason of its relationship to MaxNOC hereunder, it may have access to certain information and material concerning MaxNOC's business, plans, customers, technology and products that are confidential and of substantial

value to MaxNOC, which value would be impaired if such information were disclosed to third parties. Referral agrees that it will not use in any way for its own account or the account of any third party, nor disclose to any third party, any such confidential information revealed to it by MaxNOC. In the event of termination of this Agreement, there shall be no use or disclosure by Referral of MaxNOC and disclosure by Referral of any confidential information of MaxNOC and any materials related to MaxNOC shall be immediately returned to MaxNOC. Referral acknowledges that the provisions of this Section are reasonable and necessary for the protection of MaxNOC and that MaxNOC will be irrevocably damaged if such covenants are not specifically enforced. Accordingly, Referral agrees that, in addition to any other relief to which MaxNOC may be entitled in the form of actual or punitive damages, MaxNOC shall be entitled to seek and obtain injunctive relief from an arbitration panel or a court of competent jurisdiction for the purposes of restraining Referral from any actual or threatened breach of such provision. The terms of the Section shall survive termination of this Agreement.

d. Representations, Warranties and Covenants

Referral represents, warrants and covenants to MaxNOC that at the Effective Date and continuing for the term of this Agreement that neither the execution and delivery of this Agreement nor the sale of MaxNOC services in accordance with the terms of this Agreement violates or will violate the provisions or obligations of any other agreements to which Referral is a party or by which it is bound.

e. Successor and Assigns

Except as otherwise expressly provided in this Agreement, the obligations under this Agreement shall bind and benefit the successors and assigns of the parties hereto, Referral shall not assign this agreement without the prior written consent of MaxNOC.

f. Governing Law

The laws of the State of Florida shall govern this Agreement without giving effect to the choice of laws provisions thereof. Referral agrees to submit to the jurisdiction of the state or federal courts of Florida.

g. Authority

If either party is a corporation or limited liability company, each person executing this Agreement on behalf of such party hereby covenants, represents and warrants that such party is duly formed or duly qualified and that each person executing this Agreement on behalf of such a party is an officer or member of such party and is duly authorized or execute, acknowledge and deliver the Agreement to the other party.

h. Counterparts

This Agreement may be executed in one or more counterparts and facsimile signatures shall be sufficient to indicate acceptance by the parties, each of which shall be original and all of which shall constitute one and the same instrument named below.

Referral Agent Agreement



IN WITNESS WHEREOF, each of the parties hereto has caused the Agreement to be executed by its duly authorized representative on the date set forth above.

MaxNOC Communications LLC

100 NE 80th Terrace
Suite 200
Miami, FL 33138

By:

Name:

Title:

Date:

Referral Person:

By:

Name:

Title:

Date:

*Tax & Payment information :

Make checks payable to:

If above is a company enter EIN Number:

EIN#:

If payable name is your personal name then we require your SSN#

SSN#:

Finally, the address we can mail your checks:
