

Referral Partner Agreement

This Referral Partner Agreement (the “Agreement”) is a legal agreement between the party applying for the Kloudspot Referral Partner Program (“Referral Partner”) and Kloudspot Inc., having its principal place of business at 1285 Oakmead Parkway, Sunnyvale, CA USA 94085 (“Kloudspot”), herein being collectively referred to as the “Parties.” BY APPLYING FOR THE KLOUDSPOT REFERRAL PARTNER PROGRAM ON THE KLOUDSPOT “REFERAL PARTNER” PAGE, YOU AGREE TO AND ARE BOUND BY THE TERMS AND CONDITIONS CONTAINED IN THIS AGREEMENT. THIS AGREEMENT INCLUDES THE TERMS AND CONDITIONS BELOW AND ANY DOCUMENTS OR MATERIALS REFERENCED HEREIN. This Agreement shall be effective as of the date of submission of your application to the Kloudspot Referral Partner Program (“Effective Date”).

- 1. Purpose.** Referral Partner may submit leads of potential new customers (each an “End Customer Prospect”) to Kloudspot for the purpose of assisting Kloudspot to win new customer business. The Parties are independent contracting parties and nothing in this Agreement shall be deemed to establish or otherwise to create a relationship of principal and agent, partners, fiduciaries, joint venture or employment relationship.
- 2. Customer Agreement.** Only Kloudspot may enter into an agreement with an End Customer Prospect (a “Customer Agreement”) for Kloudspot products and services (“Kloudspot Products”).
- 3. Qualification Process.** Referral Partner shall submit leads to Kloudspot for each End Customer Prospect through the online form on the ‘Refer a Prospect’ webpage. Referral Partner shall complete all required fields on the webpage. Kloudspot shall notify Referral Partner, via email, if a lead has been ‘accepted’ within two business days of submission of the form. Kloudspot may reject any lead for any reason at its sole discretion.
- 4. Referral Fees and Payment.** In order for Referral Partner to receive a referral commission (a “Referral Fee”) for an End Customer Prospect, Kloudspot and such End Customer Prospect must enter into a valid and binding Customer Agreement within one hundred twenty (120) days of Kloudspot’s email notification to Referral Partner of its acceptance of the lead identifying such End Customer Prospect. An End Customer Prospects who enter into a Customer Agreement within 120 days of Kloudspot’s acceptance of the lead identifying such End Customer Prospect is hereafter referred to as an “End Customer”.
Kloudspot shall pay to Referral Partner the following Referral Fees: 10% of all Subscription Fee Revenue received by Kloudspot for Kloudspot Products from End Customers pursuant to Customer Agreements. ‘Subscription Fee Revenue’ shall mean the fees paid to Kloudspot by End Customer for the first twelve (12) months of End Customer’s subscription to Kloudspot’s Products, minus Incidental Expenses and excluding and Add-on Sales. “Incidental Expenses” shall mean (a) costs attributable to sales, use, value-added, excise and other taxes, customs duties and other governmental charges; and (b) returns or credits. “Add-on Sales” shall mean additional purchases of Kloudspot’s Products made following End Customer’s initial purchase. For avoidance of doubt, the Parties understand and agree that Subscription Fee Revenue shall exclude

any hardware, professional services, training services or consulting services fees. The Referral Fee is payable no later than sixty (60) days after the date on which Kloudspot receives payment from the End Customer in connection with the Customer Agreement. Referral Partner shall be responsible for all taxes, duties, VAT charges and similar taxes and fees which are levied or imposed by reason of Referral Fees paid to Referral Partner, including but not limited to taxes on Referral Partner's income.

5. **Unauthorized Representations; No Authority.** Referral Partner shall refrain from making any representations, warranties or guarantees to Prospective End Customers or to the trade with respect to the specifications, features or capabilities of Kloudspot Products that are deceptive, misleading or otherwise inconsistent with the literature distributed by Kloudspot or its suppliers with respect thereto. Referral Partner is not an agent of Kloudspot and has no authority to execute contracts on Kloudspot's behalf. Referral Partner agrees to take all commercially reasonable steps to preserve and protect the goodwill and reputation of Kloudspot. Referral Partner shall not engage in any conduct which may damage Kloudspot's reputation. This Agreement is non-exclusive. The Parties understand and agree that Kloudspot has the right to solicit End Customers directly and to appoint any number of additional representatives or agents to provide leads to Kloudspot.
6. **Representations and Warranties.**
 - (a) **Warranty Disclaimers.** Except for the express warranties set forth in Section (b), the Parties expressly disclaim all warranties of any kind, whether express, implied, statutory, or otherwise, including without limitation any warranty of merchantability, title, performance, quality, noninfringement, fitness for a particular purpose. Kloudspot makes no warranty or representation regarding the Kloudspot Products or that the Kloudspot Products will meet Company's or Customers' requirements, or be uninterrupted, timely, secure or free from error or defect. Warranties, if any, from Kloudspot to End Customers will be contained in the Customer Agreements.
 - (b) Each Party represents and warrants solely to and for the benefit of the other that: (i) it has the right and power to enter into and fully perform the obligations it has undertaken in this Agreement; and (ii) it is not under any obligations, contractual or otherwise, to any other entity that is inconsistent with any of the provisions of this Agreement.
7. **Limitation of Liability.** To the extent permitted by applicable law, under no circumstances will either Party be liable to the other under this Agreement for any consequential, special, indirect, incidental or punitive damages of any kind, including, but not limited to, lost profits, lost data, business interruption, loss of business reputation or goodwill, or the cost of procurement of substitute goods or services, even if the Party has been advised of the possibility of such damages. In no event will Kloudspot's cumulative, aggregate liability under this Agreement exceed the Referral Fees due to Company in the previous 12 months.
8. **Term and Termination.** The term of this Agreement shall commence on the Effective Date and shall continue until terminated in accordance with the terms of this section 8. Either party may terminate this Agreement for its convenience at any time providing the other Party with fourteen (14) days advance written notice of termination. The termination of this Agreement will not terminate or affect any Customer Agreements. The following provisions shall survive expiration or termination of this Agreement: Sections 6(a), 7, 8, and 10 of this Agreement. Any referrals received and accepted by Kloudspot

prior to the effective date of termination shall be honored and payment made pursuant to the terms of the Agreement.

9. **Notices.** Any notices given under this Agreement shall be deemed to have been given upon the second business day of confirmed email or sent by nationally recognized overnight courier to the addresses of application of agreement. Notices to Kloudspot shall be sent to the attention of its General Counsel at ReferralPartner@kloudspot.com and notices to Referral Partner shall be sent to the signatory of this Agreement.

General Provisions. Neither Party may assign or otherwise transfer this Agreement or any interest or right hereunder or delegate the performance of any of its obligations hereunder to any third party. Any specific right or remedy provided in this Agreement shall not be exclusive but will be cumulative of all other rights and remedies set forth herein and allowed in law or equity. In the event of any litigation between the Parties with respect to this Agreement, the prevailing Party (the Party entitled to recover costs of suit at such time as all appeals have been exhausted or the time for taking such appeals has expired) shall be entitled to recover reasonable attorneys', accountants' and experts' fees, and costs in addition to such other relief as the court may award. The headings of Sections in this Agreement are for convenience and reference only, and they shall in no way define, limit, broaden, or otherwise describe the scope of the provisions or be considered in the interpretation, construction or enforcement hereof. This Agreement shall be governed by and construed in accordance with the laws of the United States and the State of California as applied to agreements entered into and to be performed entirely within California between California residents. Any disputes between the Parties will be resolved via arbitration in Santa Clara County under the rules and administration of JAMS before a single arbitrator. The Parties shall abide by all applicable laws and regulations, including but not limited to those with respect to privacy, export control and the issuance of unsolicited commercial email. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, that provision will be amended to achieve as nearly as possible the same economic effect of the original provision and the remainder of this Agreement will remain in full force and effect. Neither Party shall be liable to the other for any delay in the performance of any of its obligations hereunder due to any cause beyond such Party's reasonable control or due to acts of god, acts of civil or military authorities, fires, labor disturbances, floods, epidemics, governmental rules or regulations, war, riot, delays in transportation, shortages of raw materials, power outages, or unauthorized hacking on or through the internet. Construction and Complete Agreement, this Agreement supersedes, terminates and otherwise renders null and void any and all prior or contemporaneous written and/or oral agreements between Referral Partner and Kloudspot with respect to the matters herein expressly set forth, except that nothing herein contained shall be construed as intended to relieve or release either Party from its obligation to make payment of any monies which either Party may owe to the other Party. This Agreement represents and incorporates the entire understanding of the Parties hereto with respect to the matters herein expressly set forth and each Party acknowledges that there are no warranties, representations, covenants or understandings of any kind, nature or description whatsoever made by either Party to the other, except as are herein expressly set forth. This Agreement may be modified only by a written instrument signed by the Parties to this Agreement, which instrument makes specific reference to this Agreement and the changes to be made hereto.