

## **INXEPTION REFERRAL AGREEMENT**

This Inxeption Referral Agreement (“Agreement”) is entered into as of the date noted below (“Effective Date”), between the entity identified below (“Company”), and Inxeption Corporation, a Delaware corporation (“Inxeption”), with its headquarters located at 185 Valley Drive, Brisbane, California 94005 individually referred to as a Party (“Party”) and collectively referred to as Parties (“Parties”). The Parties agree as follows:

### **1. BACKGROUND**

Inxeption operates an online commerce platform (the “Offerings”). Inxeption hereby appoints Company to solicit merchants to use the Offerings. Company shall, during the term of this Agreement, use commercially reasonable efforts to solicit potential merchants to list their products on the Inxeption platform.

### **2. LIMITATIONS ON ACTIVITIES**

2.1 Limitations on Activities. Company's activities under this Referral Agreement shall be limited as follows:

2.1.2 Company acknowledges that it has no authority to make any commitments or agreements on behalf of Inxeption or register this Agreement. All agreements with merchants regarding the Inxeption platform will be entered into directly between such merchants and Inxeption.

2.1.4 The parties are independent contractors, and not partners or co-venturers, and nothing contained in this Agreement will be construed to (a) give either Party the power to direct and control the day-to-day activities of the other; or (b) create a principal-agent or employer-employee relationship.

2.1.6 Company shall not make any representations or other statements about Offerings, prices or business practices, except that Company may forward to potential customers (i) unmodified marketing materials provided by Inxeption and (ii) references to Inxeption's standard conditions of sale, as published by Inxeption on its website or otherwise.

2.3 Nonexclusive Referral Agreement. Each Party acknowledges that this Agreement does not create an exclusive agreement between the Parties.

### **3. REFERRALS.**

3.1 Submission of Leads. Company shall identify each potential merchant (“Proposed Lead”) and relevant commercial conditions relating to such Proposed Lead in an Inxeption Lead Form (“NLF”), a standard form generated by Inxeption which will be made available by Inxeption to Company via an online link, or via some other method agreed upon in day-to-day collaboration between Company and Inxeption. At Inxeption's request, Company shall (a) supply any additional information reasonably requested by Inxeption, (b) discuss each completed NLF in detail with Inxeption, and (c) assist Inxeption in making contact with the Proposed Lead by arranging an introduction, meeting, conference call or other means of communication with the Proposed Lead.

3.2 Acceptance of Leads. Within a reasonable period of time following Company's submission of an NLF, Inxeption shall review the NLF to determine whether to accept the Proposed Lead under Section 4.1 below, or reject the Proposed Lead pursuant to this Section 3.2 and will provide

Company with a written (including e-mail) notification of its acceptance or rejection of a Proposed Lead (“Referral Confirmation”). Inception may reject a Proposed Lead and decline to accept NLFs for any or no reason at its sole discretion, including but not limited to the following:

- 3.2.1 the Proposed Lead was an existing customer of Inception’s at the time of submission of the NLF;
- 3.2.2 Inception was already involved in preliminary or advanced discussions relating to the sale of a subscription to the Proposed Lead at the time of submission of the NLF;
- 3.2.4 the Proposed Lead (a) does not meet Inception’s credit or cost of goods requirements, (b) is on a list of restricted or prohibited Parties issued by the government of the United States or any other jurisdiction, or (c) is located in a country that is subject to a United States trade embargo or that is deemed a terrorist supporting country by the United States Government.

3.3 Pursuit of Leads by Inception. The method of contacting and following up with Proposed Leads will be determined by Inception in its sole discretion provided, however, that Company shall actively support Inception in the sales process with Proposed Leads when requested by Inception. Inception shall have sole discretion to refuse to offer any Offerings to any third Party without liability to Company.

#### **4. REFERRAL FEES.**

4.1 Qualified Leads. A Proposed Lead qualifies for referral fees (“Qualified Lead”) only if:

- 4.1.1 Company has submitted an NLF for the Proposed Lead in accordance with Section 3.1; and
- 4.1.2 Inception approves the Proposed Lead as set forth in Section 3.2.

#### **4.2 Referral Fees and Payment.**

Inception will pay Company referral fees (which may include either money or other rewards) as described in Appendix A.

4.3 Reports. No later than 30 days after the end of each calendar quarter during which Company has submitted five or more Qualified Leads, Inception will issue quarterly reports to Company by mail, e-mail or through an online system, which will show the Lead Referral Revenue generated by each Qualified Lead and the referral fee amounts earned by Company as a result. Each report shall be deemed final and accepted by Company unless Inception receives a detailed written objection no later than 30 days after Company's receipt of Inception’s report.

4.4 Modifications. Inception may modify the NLF submission process and the percentage amounts and conditions relating to referral fees at will with written notice. Such changes will only affect NLFs submitted after the effective date of the modification.

4.5 Payments of Referral Fees After Termination. Except in the event of termination for breach by Company, Inception will continue to pay Company referral fees for the duration of the applicable referral payment period in accordance with Section on Lead Referral Revenue received following termination of the Agreement for Qualified Leads accepted prior to such

termination, and Inception will continue to issue reports in accordance with Section 4.3 through such time.

4.6 No Other Payments. Except as expressly provided in this Section, Company is not entitled to any fees, reimbursements or other payments.

## **5. TERM AND TERMINATION.**

5.1 Term. This Agreement shall commence on the Effective Date and shall continue in effect for an “Initial Term” of 90 days, unless terminated in accordance with this Section. Thereafter this Agreement will continue unless and until terminated in accordance with this Section.

5.2 Termination for Convenience. After the Initial Term, this Agreement may be terminated by either Party for any or no reason upon written notice to the other Party thirty (30) days prior to the effective date of termination.

5.3 Termination for Cause. Either Party may terminate this Agreement, effective immediately, (a) in the event of a material breach by the other Party, which the other Party fails to cure within five (5) business days after receipt of a written request to cure from the other Party, or (b) if the other Party becomes insolvent, makes any assignment for the benefit of creditors, goes to liquidation or has a receiver or trustee appointed for the benefit of creditors, whether voluntary or otherwise, or seeks the protection of, or has a proceeding instituted against it, under the bankruptcy code or any similar statute.

5.4 Effect of Termination. Sections 2, 4.5, 4.6, 5.4, and 6 will survive termination of this Agreement. Upon termination of this Agreement for any reason, Company shall immediately cease its activities to solicit as described in this Agreement. Except as provided in Section 4.5, Company shall have no rights or claims against Inception in connection with termination, expiration or non-renewal of this Agreement; in particular, without any limitation, Company hereby irrevocably waives any rights to severance or compensation for lost opportunities or investments to the maximum extent permissible under applicable law.

## **6. MISCELLANEOUS.**

6.1 Governing Law and Arbitration.

6.1.1 This Agreement and any dispute arising out of or in connection with this Agreement (“Dispute”) will be governed as to all matters, including, but not limited to the validity, construction and performance of this Agreement, by and under the laws of California, USA, without giving effect to conflict of laws principles thereof.

6.1.2 Each Party agrees that before it seeks mediation, arbitration, or any other form of legal relief it shall provide written notice to the other of the specific issues in dispute and shall reference the specific portions of the Agreement which are allegedly being breached. Within thirty (30) days after such notice, knowledgeable executives of the Parties shall hold at least one meeting (in person or by video- or teleconference) for the purpose of attempting in good faith to resolve the Dispute. Except as provided herein, any Dispute arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in San Francisco County, California and before a single arbitrator. The arbitrator selected shall be a retired judge

who has had experience with technology disputes. In any arbitration arising out of or related to this Agreement, the Parties agree the arbitrator is not empowered to award punitive or exemplary damages, and the Parties waive any right to recover any such damages. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures if the amount in dispute exceeds \$250,000 USD and its JAMS Streamlined Arbitration Rules and Procedures when lesser amounts are in issue. The arbitrator shall issue a written decision. Each Party shall bear its own costs in connection with the arbitration, although the arbitrator shall award the prevailing Party its reasonable costs and attorneys' fees.

6.1.3 Either Party may, at its sole discretion, seek preliminary judicial relief in any court of competent jurisdiction (including, but not limited to, preliminary injunctive relief). Also, the provisions of this Section may be enforced by any court of competent jurisdiction.

6.2 No Waiver. The failure by either Party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision. Neither Party will be deemed to have waived any rights or remedies hereunder unless such waiver is in writing and signed by a duly authorized representative of the Party against which such waiver is asserted.

6.3 Severability. If a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision of the Agreement will be enforced to the maximum extent possible to achieve as nearly as possible the intent of the Parties, and the remainder of this Agreement will remain in full force and effect.

6.4 Notices. Except as otherwise expressly provided herein, all notices, approvals, consents and other communications required or permitted under this Agreement will be invalid unless made in writing and given (a) by Inxeption via mail, fax or e-mail (to the address or number Company provides) or (b) by Company via email to [partner@Inxeption.com](mailto:partner@Inxeption.com).

6.5 Assignment. Company shall not assign, subcontract or delegate this Agreement or any rights or obligations hereunder, in whole or in part, including without limitation by operation of law, without prior written consent by Inxeption. Any attempt to assign this Agreement without such consent will be null and void. Inxeption may assign this Agreement upon written notice.

6.6 Compliance.

6.6.1 Company represents and warrants that (a) Company will conduct Company's business activities in a legal and ethical manner; (b) Company has submitted and will submit complete and truthful information in connection with Company's application and all referrals; (c) Company will submit all filings and obtain any approvals that may be necessary for Company to perform Company's obligations under this Agreement, (d) Company will commit no act that would reflect unfavorably on Inxeption; (e) Company is not a Party with whom Inxeption is prohibited from doing business under U.S. export regulations and controls; and (f) Company will comply with all applicable local, state, federal, and foreign laws, treaties, regulations, and conventions in connection with Company's performance of this Agreement, including without limitation, privacy, anti-spam, advertising, copyright, trademark and other intellectual property laws.

6.6.2 Company will comply with all export control and anti-boycott laws and regulations of the United States. In particular, without limitation, Company will refrain from (a) referring

Proposed Leads that could be suspected of engaging in re-exports that would be illegal under U.S. law, and (b) disclosing any technical information related to Offerings to prohibited persons or destinations in violation of United States law. Company certifies that neither Offerings nor any technical data related thereto nor the direct product thereof are intended (a) to be used for any purpose prohibited by the applicable export laws or regulations, including but not limited to nuclear proliferation, or (b) to be shipped or exported, either directly or indirectly, to any country to which such shipment is prohibited by the applicable export laws or regulations.

6.6.3 Company acknowledges that any sums paid to Company under this Agreement are for Company's own account and that, except as appropriate to carry out Company's duties set forth herein in a legal manner, Company did not have any obligation to, and will not, directly or indirectly, give, offer, pay, promise to pay, or authorize the payment of money or anything of value to any other person in connection with the performance of Company's referral activities hereunder. In particular, without limitation, Company agrees not to take any actions that would cause Company or Inception to violate the United States Foreign Corrupt Practices Act or any other anti-bribery law.

6.9 Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

6.10 Entire Agreement and Amendment. This Agreement, including all exhibits hereto, constitutes the entire agreement between the Parties relating to its subject matter and supersedes all prior or contemporaneous representations, discussions, negotiations, and agreements, whether written or oral, relating to its subject matter. Any amendments or renewals to this Agreement shall be invalid unless made in writing and signed by duly authorized representatives of both Parties. In the event of any additional or inconsistent terms contained in NLFs, Referral Confirmations or other communications, the terms and conditions in this Agreement shall prevail unless Inception specifically identifies the section(s) of this Agreement that Inception intends to override in a writing signed by Inception.

6.11 Limitations of Liability. TO THE EXTENT PERMISSIBLE UNDER APPLICABLE LAW, NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES.

## **7. DEFINITIONS.**

“Qualified Product(s)” means the products listed as Offerings on Inception’s website, as updated from time to time in Inception’s sole discretion, or as specified by Inception in writing.

“Qualified Revenue” means any payments actually received by Inception from a Qualified Lead based on Gross Revenue for its first 6-month subscription, excluding any taxes, third party charges, taxes, duties, or subsequently credited charges, write-offs, refunds or charge backs. For the avoidance of doubt, Lead Referral Revenue does not include any amounts received in connection with follow-up orders, additional sales, renewals after the first 6 months, or for professional services, support services, training services or third-party software products purchased by a Qualified Lead.

Effective Date: \_\_\_\_\_

Company:

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Inception:

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

## **Appendix A –Referral Fee Calculation**

### **Referral Fees:**

For each Qualified Lead that enters into an agreement with Inxeption to become a merchant at a 10% revenue share or more, Inxeption will pay Company referral fees equal to one half of a percent (0.5%) of GMV for that referred merchant for activity generated during the 6 months beginning on the date of merchant contract signature.

For each Qualified Lead that enters into an agreement with Inxeption to become a merchant at less than 10% revenue share, Inxeption will pay Company referral fees equal to one quarter of a percent (0.25%) of GMV for that referred merchant for activity generated during the 6 months beginning on the date of merchant contract signature.

Inxeption is not required to make referral payments to Company if the qualified lead fails to meet their payment obligations to Inxeption.