

REFERRAL AGREEMENT

This Referral Agreement (“Agreement”) is entered into as of the date on which You click the “Submit” button displayed herewith, between You and scaleMatters Inc., a Delaware corporation (“scaleMatters”), with its principal offices at 9841 Washingtonian Blvd., Ste. 325, Gaithersburg, MD 20878, USA. Capitalized terms are defined throughout this Agreement and in Section 7. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Table of Contents

1. Agreement Subject to Approval
2. Limitations of Activities
3. Referrals
4. Commissions
5. Term and Termination
6. Miscellaneous
7. Definitions

1. AGREEMENT SUBJECT TO APPROVAL

The effectiveness of this Agreement is subject to scaleMatters’s approval in writing (via e-mail) of Your application for participation in the scaleMatters Referral Program (“Approval”), and this Agreement shall commence on the date of the Approval (“Effective Date”). scaleMatters may reject or decline to accept your application for any or no reason at its sole discretion. scaleMatters may conduct background checks and other screening measures of any sort in connection with your application. If scaleMatters approves your application, you may refer sales leads to scaleMatters during the term and in accordance with all terms and conditions of this Agreement, to enable scaleMatters to solicit orders for scaleMatters products and/or services (“Products”).

2. LIMITATIONS OF ACTIVITIES

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

2.1.1 You shall conduct all of Your business in Your own name and in accordance with the highest business standards, acting dutifully, in good faith and in compliance with all laws (as set forth in Section 6.6), and not perform any act which would or might reflect adversely upon the Products or the business, integrity or goodwill of scaleMatters.

2.1.2 You shall not be, or purport to be, authorized to legally represent scaleMatters or to conduct negotiations on behalf of scaleMatters. You shall not have the authority to make any commitments or agreements or incur any liabilities whatsoever on behalf of scaleMatters or register this Agreement under local registered agency law nor shall scaleMatters be liable for any acts, omissions to act, contracts, commitments, promises or representations made by You.

2.1.3 You shall not use any trademarks, names or other identifiers owned or used by scaleMatters (“Marks”), except that You may refer to scaleMatters and the Products in conversations and written correspondence with potential customers in the same manner as scaleMatters does in its own marketing materials and website. Any other use of Marks (e.g., on Your website) must be pre-approved by scaleMatters in writing.

2.1.4 You are an independent contractor, and nothing contained in this Agreement shall be construed to (a) give either party the power to direct and control the day-to-day activities of the other; (b) create an employer-employee relationship; (c) give You the authority to bind scaleMatters to any contract with a third party; (d) constitute the parties as partners, joint venturers, co-owners or otherwise as participants in a joint undertaking; or (e) appoint you as a commercial agent.

2.1.5 All financial and other obligations associated with Your business are solely your responsibility. As an independent contractor, the mode, manner and method used by You shall be under Your sole control and You shall be solely responsible for risks incurred in the operation of Your business and the benefits thereof. You shall bear all of Your own expenses in connection with the performance of this Agreement and will not be entitled to reimbursement of any such expenses by scaleMatters.

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

2.2 No License. You acknowledge and agree that no license is granted under this Agreement to use or access any Products, any of scaleMatters's proprietary technologies embodied therein, or any data, information or other content provided thereby. As between scaleMatters and You, scaleMatters retains all right, title and interest in and to the Products and all technology, data, information or other content embodied therein or provided thereby, as well as any intellectual property rights or similar rights in connection therewith, and You acknowledge that You neither own nor acquire any rights in or to the Products.

2.3 Nonexclusive Referral Agreement. Each party acknowledges that this Agreement does not create an exclusive agreement between the Parties. Each Party shall have the right to recommend similar products and services of third parties and to work with other parties in connection with the design, sale, installation, implementation and use of similar services and products of third parties. Notwithstanding the foregoing, once You establish a Commissionable Lead with scaleMatters, You will not refer a direct competitor of scaleMatters to such Commissionable Lead. You will not enter into an agreement with a third party the effect of which would prohibit your submission of a Proposed Lead pursuant to this Agreement.

3. REFERRALS

3.1 Submission of Leads. You shall identify each potential customer (“Proposed Lead”) and relevant commercial conditions relating to such Proposed Lead in a scaleMatters Lead Form, a standard form generated by scaleMatters (available [here](#)), or refer the Proposed Lead via some other method jointly agreed to by scaleMatters and You. At scaleMatters’s request, You agree to (i) supply any additional information reasonably requested by scaleMatters, and (ii) discuss each completed Proposed Lead in detail with scaleMatters.

3.2 Acceptance of Leads. Within a reasonable period of time following Your submission of a Proposed Lead, scaleMatters shall review the Proposed Lead to determine whether to accept the Proposed Lead as commissionable under Section 4.1 below, or reject the Proposed Lead pursuant to this Section 3.2 and will provide You with a written (including email) notification of its acceptance or rejection of a Proposed Lead (“Referral Confirmation”). scaleMatters will be under no obligation to accept any Proposed Lead submitted by You and may reject or decline to accept Proposed Leads for any or no reason at its sole discretion, including, without limitation, because:

3.2.1 the Proposed Lead was an existing customer of scaleMatters at the time of submission of the Proposed Lead;

3.2.2 scaleMatters was already involved in preliminary or advanced discussions relating to the sale of a Products to the Proposed Lead at the time of submission of the Proposed Lead;

3.2.3 a Proposed Lead has previously been submitted to scaleMatters by You or another third party;

3.2.4 the Proposed Lead (a) does not meet scaleMatters’s credit 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;

3.2.5 the Proposed Lead is located outside the Territory, or is located in an area in which scaleMatters has an exclusive arrangement for the sale of Products or which scaleMatters is otherwise prohibited by agreement from accepting; or

3.2.6 scaleMatters has determined in its sole discretion that the Proposed Lead is not a good fit for the Products.

3.3 Pursuit of Leads by scaleMatters. The method of contacting and following up with Proposed Leads will be determined in scaleMatters's sole discretion; provided, however, that You shall actively support scaleMatters in the sales process with Proposed Leads when requested by scaleMatters which will likely involve arranging an introduction, meeting, conference call or other means of communication with the Proposed Lead. scaleMatters shall have sole discretion to refuse to offer any Products to any third party without liability to You.

4. COMMISSIONS

4.1 Commissionable Leads. A Proposed Lead qualifies as commissionable ("Commissionable Lead") only if:

4.1.1 You have submitted a Proposed Lead in accordance with Section 3.1; and

4.1.2 scaleMatters has accepted the Proposed Lead as a Commissionable Lead (i.e., not rejected the Proposed Lead for any of the reasons stated in Section 3.2, or otherwise).

4.2 Commissions and Payment. Subject to Your compliance with all terms and conditions of this Agreement, scaleMatters will pay You commissions equal to some percentage of Lead Referral Revenue, such percentage which will be published on the Lead Form at the time you submit a Proposed Lead. Commission payments (less any applicable withholding taxes or other levies) will be due within 30 days after scaleMatters receives payments of Lead Referral Revenue from the Commissionable Lead. You will need to provide scaleMatters with a current W-9 prior to receiving any commission payments.

4.3 Modifications. scaleMatters may modify the Referral submission process and the percentage amounts and conditions relating to commissions upon thirty (30) calendar days written notice. Such changes will only affect Referrals submitted by You after said thirty (30) day period.

4.4 Payments post Termination. Other than in conditions of Termination for Cause, scaleMatters will continue to pay You commissions on any valid Lead Referral Revenue associated with business agreements / orders consummated between scaleMatters and Commissionable Leads referred by You prior to termination, even if the Lead Referral Revenue is received by scaleMatters post termination.

4.5 No Other Payments. Except as expressly provided in this Section 4, You are not entitled to any fees, reimbursements or other payments. You shall promptly refund to scaleMatters any overpayments (e.g., Commission payments on Lead Referral Revenue that was reduced due to returns or cancellations by the customer).

5. TERM AND TERMINATION

5.1 Term. This Agreement shall commence on the Effective Date and shall continue in effect until terminated.

5.2 Termination for Convenience. 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 desired termination date (or with such minimum advance notice as required by mandatory applicable law). Neither party shall have any expectation as to the minimum term of this Agreement.

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 of 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. If, at the time of Your acceptance of this Agreement or any time thereafter, scaleMatters would be prohibited from doing business with You under United States export regulations and controls, this Agreement shall automatically be null and void.

5.4 Effect of Termination. Sections 2, 4.4, 4.5, 5.4, and 6 shall survive termination of this Agreement. Upon termination of this Agreement for any reason, You shall immediately cease the use of all scaleMatters brochures, literature, documentation and other materials within Your control and shall return such materials to scaleMatters within ten (10) business days. Except as provided in Section 4.5, You shall have no rights or claims against scaleMatters in connection with termination, expiration or non-renewal of this Agreement; in particular, without any limitation, You hereby irrevocably waive 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 Maryland, without giving effect to conflict of laws principles thereof.

6.1.2 Except as provided in Section 6.1.3, all Disputes shall be finally resolved by binding arbitration administered by the American Arbitration Association in accordance with Commercial Arbitration Rules, before a single arbitrator. The arbitration proceedings shall be conducted in the English language and take place in the State of Maryland.

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 6.1 may be enforced by any court of competent jurisdiction.

6.1.4 If it is necessary for either party to retain the services of an attorney or attorneys to enforce the terms of this Agreement or to file an action to enforce any of the terms, conditions or rights contained herein, or to defend any action, then the prevailing party in any such action will be entitled to recover from the other party its reasonable fees for attorneys and expert witnesses, plus such court costs and expenses as may be fixed by any arbitration panel or 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 scaleMatters via mail or e-mail (to the address or number You provide) or (b) by You via email to info@scaleMatters.com and at the address set forth in the first paragraph of this Agreement to the attention of General Counsel or such other address as may be subsequently specified by scaleMatters.

6.5 Assignment. You may not assign, subcontract or delegate this Agreement or any of Your rights or obligations hereunder, in whole or in part, including without limitation by operation of law, without scaleMatters's prior written consent. Any attempt to assign

this Agreement without such consent will be null and void. scaleMatters may assign this Agreement and subcontract or delegate its obligations hereunder to any third party with or without Your consent. Subject to the foregoing, this Agreement will bind and inure to the benefit of each party's permitted successors and assigns.

6.6 Compliance.

6.6.1 You represent and warrant that (i) You will conduct Your business activities in a legal and ethical manner; (ii) You have submitted and will submit complete and truthful information in connection with your application and all referrals; (iii) You will submit all filings and obtain any approvals that may be necessary for You to perform Your obligations under this Agreement, (iv) You will commit no act that would reflect unfavorably on scaleMatters; (v) You are not a party with whom scaleMatters is prohibited from doing business under U.S. export regulations and controls; and (iv) You will comply with all applicable local, state, federal, and foreign laws, treaties, regulations, and conventions in connection with Your performance of this Agreement, including without limitation, privacy, anti-spam, advertising, copyright, trademark and other intellectual property laws.

6.6.2 You will comply with all export control and anti-boycott laws and regulations of the United States. In particular, without limitation, You will refrain from (i) referring Proposed Leads that could be suspected of engaging in re-exports that would be illegal under U.S. law, and (ii) disclosing any technical information related to Products to prohibited persons or destinations in violation of U.S. law. You certify that neither Products 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 You acknowledge that any sums paid to You under this Agreement are for Your own account and that, except as appropriate to carry out Your duties set forth herein in a legal manner, You did not, have no 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 Your referral activities hereunder. In particular, without limitation, You agree not to take any actions that would cause You or scaleMatters to violate the United States Foreign Corrupt Practices Act or any other antibribery law.

6.7 Indemnification. You shall indemnify and hold scaleMatters harmless from and against any and all third party claims against scaleMatters arising out of any act, default, misrepresentation or any omission on Your part (including, without limitation, negligence and breach of this Agreement), or any of Your agents, employees or representatives, directly or indirectly relating to this Agreement, including without limitation any claims relating to allegations, actions or proceedings for breach of contract or warranty, regulatory or other legal claims, claims for bodily injury (including death) and damage to property.

6.8 Non-Solicitation. To the extent permissible under applicable law, you are prohibited from soliciting any of the employees of scaleMatters (either directly or through agents), without written permission of scaleMatters, during the term of this Agreement and for a period of one (1) year following its termination.

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 a writing that is signed by duly authorized representatives of both parties. This Agreement takes precedent over any additional or inconsistent terms contained in ELFs, Referral Confirmations or other communications, unless scaleMatters expressly agrees to derogate from a specifically referenced section of this Agreement in a duly signed writing.

6.11 Limitations of Liability. TO THE EXTENT PERMISSIBLE UNDER APPLICABLE LAW, scaleMatters WILL NOT BE LIABLE FOR ANY LOSS OF USE, LOSS OF DATA, INTERRUPTION OF BUSINESS, DOWNTIME, LOST PROFITS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY, OR OTHERWISE, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. IN NO EVENT WILL scaleMatters’S LIABILITY UNDER THIS AGREEMENT EXCEED THE PAYMENTS PAID BY scaleMatters TO YOU DURING THE PRECEDING TWELVE MONTHS. THE PARTIES ACKNOWLEDGE AND AGREE THAT THIS SECTION IS AN ESSENTIAL ELEMENT OF THE AGREEMENT AND THAT IN ITS ABSENCE THE ECONOMIC TERMS OF THIS AGREEMENT WOULD BE SUBSTANTIALLY DIFFERENT. THIS SECTION IS SEVERABLE AND SHALL SURVIVE ANY TERMINATION OR EXPIRATION OF THIS AGREEMENT.

7. DEFINITIONS

“Commissionable Period” means, in respect of a Commissionable Lead, a period of six (6) months from Your submission of the Referral for such Commissionable Lead.

“Commissionable Product(s)” means the Product(s) specified on scaleMatters’ website, as updated from time to time in scaleMatters’s sole discretion, or as specified by scaleMatters in writing.

“Lead Referral Revenue” means any payments actually received by scaleMatters from a Commissionable Lead resulting from a business agreement / order consummated between scaleMatters and the Commissionable Lead during the Commissionable Period for the first year total contract value for the Commissionable Lead’s first order of a Commissionable Product, minus any taxes, subsequently credited charges, write-offs, refunds or charge backs. For the avoidance of doubt, Lead Referral Revenue does not include any amounts received for follow-up orders, additional sales, renewals, or for products or services that are not Commissionable Products at the time of the relevant Referral Confirmation, such as professional services, support services, training services or third party software products

purchased by a Commissionable Lead, nor does it include amounts that are owed by the Commissionable Lead but have not actually been received by scaleMatters.

“Territory” means the geographic area(s) in which Your Proposed Leads shall be located, and which shall be determined in scaleMatters’s sole discretion, whose description is as follows: Worldwide, excluding Brazil, Japan, Malaysia, Peoples Republic of China, Middle East, Africa, Cuba, Sudan, North Korea, Iran, Syria or any other country to which the United States has chosen to embargo goods, as such list of countries may be updated from time to time.

BY CLICKING “SUBMIT” YOU ARE REPRESENTING THAT (1) YOU HAVE SUBMITTED TRUE AND COMPLETE INFORMATION IN CONNECTION WITH YOUR APPLICATION AND (2) YOU ARE ENTERING INTO THIS AGREEMENT ON YOUR OWN BEHALF OR THAT YOU HAVE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF YOUR COMPANY OR OTHER LEGAL ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY OR DO NOT WISH TO ENTER INTO THIS AGREEMENT ON YOUR OWN BEHALF, OR IF YOU DO NOT AGREE WITH THE TERMS AND CONDITIONS CONTAINED HEREIN, YOU MUST CLICK “I DECLINE” AND YOU WILL NOT BE ELIGIBLE FOR PARTICIPATION IN THE scaleMatters REFERRAL PROGRAM.