

# xennsoft®

## Referral Agreement

This Referral Agreement (“Agreement”) grants to the person or entity Referring Party identified below (“Contractor”) the right to refer to Xennssoft LLC, a Utah Limited Liability Company (Xennsoft), together known as “Parties”, qualifying new customers (“Prospective Customers”) for the purchase of products and services (Products) of Xennssoft LLC directly from Xennssoft LLC in exchange for inclusion in Xennssoft Marketing Initiatives (“Marketing”) and/or a Referral Fee (“Referral Fee”), as set forth below.

1. **Term of Agreement.** This Agreement is effective as of the day executed on this site or set forth on the signature page of this Agreement (“*Effective Date*”) and will continue in effect for one year from the Effective Date, unless earlier terminated pursuant to Section 12, below.

2. **Performance of Services.** Contractor agrees to serve as an independent sales representative of Xennssoft to perform, at Contractor’s own discretion and to the best of Contractor’s ability, the following services (collectively, the “*Services*”):

2.1 Locating, identifying, and soliciting prospective customers (the “*Prospective Customers*”) of the Products offered by Xennssoft;

2.2 Conveying to Xennssoft, via email, letter, or online form, when available, the names and contact information of each Prospective Customer for which Contractor wishes to introduce Xennssoft to, before or soon after the Contractor’s solicitation of each Prospective Customer (“*PC*”).

2.3 Enrolling PC for Products on the Xennssoft LLC web site.

2.4 Communicating with PC about the nature and scope of the Products provided by Xennssoft and the terms under which the Products would be provided;

2.5 Communicating with Xennssoft about the preferences and requirements of PC, as well as other factual and research information desired by Xennssoft relating to PC.

2.6 Under Xennssoft’s direction, assisting Xennssoft in negotiating with PC or, if requested by Xennssoft to, on a case-by case basis, representing Xennssoft in negotiations with PC regarding the Products.

2.7 Under Xennssoft’s direction, assist in the setup, training and support of the Products with PC.

3. **Qualifying/Qualified Referral.** For the purposes of this Agreement, a Qualifying or Qualified Referral is an individual or company wherewith the Contractor, 1); has already established a working relationship with the entity, 2); has the permission to introduce the Qualified Referral to Xennssoft, 3); has the information needed by Xennssoft to set the Qualifying Referral up on Xennssoft system with Xennssoft Products and 4); must maintain communications and a working relationship with the Qualified Referral once Xennssoft accepts them as a Client. A working relationship between the Contractor and the Qualified Referral is that the Contractor must maintain on-going (no less than every 90 days) communications with Qualifying Referral and/or Xennssoft Client, fulfilling specific tasks as outlined by Xennssoft from time to time as outlined on Xennssoft web site.

4. **Best Efforts; Exclusivity.** Contractor must use its best efforts to promote, market and sell the products and services offered by Xennssoft. Contractor may request to be granted, for no longer than 30 days from the date of Contractor’s introduction of the PC to Xennssoft via the method(s) described in section 2.2 above, an exclusive right to market, sell or solicit sales of the Products to any PC of Contractor (as to each PC of Contractor, an “*Exclusive Right*”), which request must accompany the PC Information at the

time that it is submitted pursuant to Section 2.2, above (“**Request**”). Xensoft may grant an Exclusive Right to Contractor at Xensoft’s discretion, upon Contractor’s submission of a Request; provided, however, each Exclusive Right will expire 30 calendar days after submission of such Request under which the expiring Exclusive Right was granted, unless however, the Contractor can show to Xensoft, on-going communications to PC via email, written format or other traceable mechanism as agreed upon by both Parties, the Contractor has continued, within a 30 day period from the last communication, to promote Xensoft Products to PC.

5. **Reserved Rights**

5.1 This Agreement shall in no way limit Xensoft LLC’s right to sell directly or indirectly any product or service to any current or prospective customers, including Prospects.

5.2 Xensoft reserves the right to apportion any commission if more than one Contractor has contributed to the close of a Prospective Customer.

6. **Marketing Initiatives (Marketing), and Advertising**

6.1 If selected, Contractor may participate, at Xensoft’s full and complete discretion in select marketing initiatives as developed from time to time and at Xensoft full discretion. Marketing may include, but is not limited to, inclusion in Xensoft’s web site, advertising and client and perspective notifications. Xensoft shall receive written approval from Contractor for inclusion of the Contractors information in each Marketing initiative before Contractor can to be listed or participate in any Marketing. Xensoft may terminate a Marketing initiative at any time it deems necessary.

6.2 Contractor agrees and allows Xensoft the use of any and all information provided by Contractor, information available to Xensoft in the execution of this Agreement, information which is publicly know, information agreed upon by both parties and information generated or realized through the operation and outcome of running the Xensoft’s PRP program and Marketing initiatives, such as but not limited to, pictures, PRP earned income, expertise, profile and experience, at Xensoft’s sole discretion and that said materials used by Xensoft belong exclusively to Xensoft in their format, place and function used. Contractor may opt-out of these Marketing initiatives, by writing Xensoft, requesting to be excluded from all Marketing initiatives of Xensoft.

6.3 Upon termination or cancelation of this agreement, Xensoft may remove Contractor’s information from any and all Marketing initiative and Contractor must immediately cease and desist referring to or listing in any way, a relationship with Xensoft, unless such request is first agreed upon by both Parties and exclusively approved of by Xensoft.

6.4 Contractor agrees that it shall not use Xensoft’s name, trade name, image, symbol, design, or trademark in any marketing, advertising, or promotional campaign or in any brochure, written information, television or radio announcements, or in any other medium without Xensoft’s prior written consent.

7. **Referral Fee (Commission).**

7.1 If selected, Contractor may receive a commission only on the minimum monthly hosting fee of Xensoft products. Fees for the performance of services (such as professional service fees and costs, training costs; maintenance and support fees; maintenance and support renewal fees) and fees associated with subsequent product purchases of any kind are not eligible for commission unless negotiated and agreed upon by both parties.

7.2 If (i) Contractor performs its obligations under this Agreement and (ii) Xensoft enters into an Approved Contract with a Prospective Customer during the terms of this Agreement and (iii) once

payment is made by the Prospective Customer for Products, Contractor will be entitled to receive a commission (“Commission”) calculated at 10% of the monthly net proceeds collected from the Customer under Approved Contract. By way of example, if Xensoft receives \$1,000 from the prospective client, (now “Client” under contract), then Xensoft shall send Contractor a payment of \$100. Xensoft has the right to withhold payment to Contractor on non-collected and charged back amounts.

7.3 Without limiting or modifying Section 5 above, and subject to the terms and conditions of this Agreement, Contractor will be entitled to Commission even after the termination of this Agreement in accordance with Section 5.2, above, for the duration of each Approved Contract; but not to exceed six (6) months from the termination of this agreement; provided, however, a Contractor will not be entitled to any Commission for any renewal terms of an Approved Contract or after an Approved Contract is amended in any way, unless Contractor performs Services in accordance with this Agreement or as outlined on the Ongoing Independent Contractor Rules of Engagement as outlined on this website, with respect to each renewal term of an Approved Contract or Addendum of the same.

7.4 Contractor will not be entitled to any Commission whatsoever if a Prospective Customer and Xensoft do not enter into an Approved Contract during the terms of this Agreement.

7.5 Xensoft shall within thirty (30) days after receipt of payment from Prospect for the Xensoft Products included in the Qualifying Transaction, remit the applicable Referral Fee to the Contractor(s). All amounts payable by Xensoft to Contractor are subject to offset by Xensoft against any amounts owed by Contractor to Xensoft.

7.6 The Commission shall be based on the amount actually collected by Xensoft for an Approved Contract and any amounts owed by Prospective Client or Client, may, at Xensoft’s sole discretion, be deducted from Contractor Commissions.

8. **Independent Contractor Relationship and Waiver of Benefits.** It is the express intention of the parties that Contractor shall be an independent contractor and not an employee of or a partner or joint venture participant with Xensoft. Except as Xensoft may expressly designate in writing to Contractor, neither party shall be the agent of the other. Each party shall make it clear to third parties that it is not the agent of the other party. Neither party shall make any representations or warranties or promises on behalf of the other party without its prior written consent. In addition, Contractor is not entitled to and knowingly and voluntarily waives any of the benefits that Xensoft provides its common law employees, including, but not limited to, health insurance, life insurance, participation in Xensoft’s stock option plan, and similar benefits.

Neither Contractor nor Xensoft shall have the authority to bind the Parties to any third party.

9. **Insurance; Indemnification.** Contractor is solely responsible for securing and maintaining all forms of insurance, if legally required, for Contractor and Contractor’s agents. In addition, Contractor will maintain insurance coverage against all liability of Contractor arising out of, or in connection with, Contractor’s performance of Services.

Each of the parties (“***Indemnifying Party***”) hereby agrees to defend, indemnify and hold harmless the other party and its officers, directors, employees, agents, parent, representatives, partners, joint ventures, affiliates, and subsidiaries (each an “***Indemnified Party***”) from and against any and all damages, costs, liability and expense, whatsoever, including attorneys’ fees and related disbursements, incurred by reason of (i) any failure by Indemnifying Party to perform any covenant or agreement of Indemnifying Party set forth herein; (ii) the death or injury to any individual, or damage to or loss of an Indemnified Party (including, in the case of Xensoft, any such damage to or loss of any customers of Xensoft) due to the negligent and/or willful acts of Indemnifying Party; or (iii) any breach by Indemnifying Party of this Agreement.

10. **Contractor's Tax Obligations.** Contractor agrees to assume full responsibility for the payment and deduction of all state and federal taxes for unemployment insurance, retirement, pension, or other social security benefits for all persons employed by Contractor in the performance of this Agreement. Contractor agrees that Contractor and its employees shall not be treated as employees of Xensoft for purposes of the Federal Insurance Contributions Act (FICA), the Social Security Act, the Federal Unemployment Tax Act (FUTA), income tax withholding, or any state or local law providing for such benefits, unemployment benefits, disability benefits, workers' compensation, or other benefits. Contractor also agrees to assume full responsibility for all self-employment and other taxes incurred by it in the performance of the Services.

11. **Responsibility for Expenses.** The compensation described in Section 5, above, shall be deemed full compensation for all reasonable business expenses incurred by Contractor in connection with performing the Services between the Parties. It is understood by Xensoft that the Contractor may invoice the Client directly for any work needed by the Contractor to accommodate for the integration and operation of the Products. Any expense to be paid by Xensoft to the Contractor and any third party, shall be explicitly pre-approved in writing by Xensoft before the work can begin.

12. **Protection of Proprietary Information.** Contractor agrees that its providing services to Xensoft creates a relationship of confidence and trust with **Xensoft** with respect to proprietary information of Xensoft or third parties, learned or otherwise obtained by Contractor arising out of or relating to Contractor's provision of services.

12.1 ***"Proprietary Information"*** means trade secrets, confidential knowledge, data and any other proprietary information that Xensoft owns, licenses or has obtained from third parties to whom Xensoft owes a duty of confidentiality with respect to such information. By way of illustration but not limitation, ***"Proprietary Information"*** includes: (i) inventions, trade secrets, ideas, data, programs, works of authorship, know-how, improvements, discoveries, designs, techniques and other sensitive information Xensoft receives from its customers or other third parties; (ii) technical information relating to Xensoft's existing and future products, including, where appropriate and without limitation, financial techniques and procedures, financial production, software, firmware, information, patent disclosures, patent applications, development or experimental work, formulae, engineering or test data, product specifications, structures, models, techniques, processes and apparatus relating to the same disclosed by Xensoft to Contractor or obtained by Contractor through observation or examination of information or developments; (iii) confidential marketing information (including without limitation marketing strategies, customer names and requirements and products and services, prices, margins and costs); (iv) confidential future product plans; (v) confidential financial information provided to Contractor by Xensoft; (vi) personnel information (including, without limitation, employee compensation); and (vii) other confidential business information of Xensoft or any third party.

12.2 At all times during its providing services to Xensoft, and at all times after termination of this contractual relationship, Contractor will keep in confidence and trust all Proprietary Information, and Contractor will not use or disclose any Proprietary Information or anything relating to it without the written consent of Xensoft, except as may be necessary in the ordinary course of performing Contractor's services for Xensoft.

12.3 All Xensoft property (***"Property"***), including, but not limited to, Proprietary Information, tangible embodiments of Property that includes or is based on Proprietary Information, documents, data, records, apparatus, equipment and other physical property, whether or not pertaining to Proprietary Information, provided to Contractor by Xensoft or produced by Contractor or others in connection with Contractor providing services to Xensoft, is and remains the sole property of Xensoft and shall be returned promptly to Xensoft as and when requested by Xensoft. Contractor must return and deliver all such Property upon termination of this agreement or its' providing services to Xensoft, and Contractor will not take any such Property or any reproduction of such Property upon such termination.

12.4 The obligations of Contractor shall continue until such time as, and to the extent that, the Proprietary Information is publicly known, without fault on the part of Contractor.

13. **Non-Solicitation.**

13.1 The Parties agree that, during the period of providing Product or Services, and for a period of two years thereafter, Parties will not directly or indirectly engage or participate in the solicitation or attempt to knowingly solicit or in any manner encourage employees or independent contractors of Parties and its affiliates to work for any business that is in competition in any manner whatsoever with the business of the Parties.

13.2 The Parties acknowledges and agrees that the names, addresses, product preferences, information regarding customer accounts and other information regarding the Parties relationship with their customers, as well as Proprietary Information of the Parties customers, constitute the Parties Proprietary Information and that the sale or unauthorized use or disclosure of this or any other Proprietary Information that is obtained during the course of its providing services for the Parties, would constitute unfair competition.

14. **Developed Information.**

14.1 “***Developed Information***” means all ideas, improvements, inventions, programs, formulae, processes, techniques, discoveries, developments, designs, trade secrets, know-how and data, developed specifically for the Services and this Agreement, whether or not patentable or registrable under copyright or similar statutes, and all designs, trademarks and copyrightable works that Contractor may solely or jointly make, conceive, reduce to practice, learn or develop during the period of its providing services for Xensoft which (i) are within the scope of the services to be provided or result from any work performed by Contractor for Xensoft, or (ii) are related to or useful in the business of Xensoft or to Xensoft’s actual or demonstrably anticipated research, design, development, experimental, production, financing, operations, licensing, distribution or marketing activity carried on by Xensoft, or (iii) are funded by Xensoft, or (iv) result from use of or access to Property owned, leased or contracted for by Xensoft.

14.2 Contractor agrees to promptly disclose to Xensoft, or any persons designated by it, all Developed Information specific to this agreement, that is made, conceived, reduced to practice, learned or developed by Contractor during the period of Contractor providing services for Xensoft. In addition, for six months thereafter, Contract agrees to disclose to Xensoft, or its designee(s) anything that would be Developed Information specific to this agreement, if made, conceived, reduced to practice, learned or developed during the term of providing services which were developed specifically for the Services and this Agreement,. Such information will be considered to be Developed Information for purposes of this Agreement.

14.3 Contractor and Xensoft agree that all Developed Information developed by each Party is the sole property of the developing Party and its assigns, each Party and its assigns are the sole owners of all patents, trademarks, copyrights and other rights in connection with that Parties Developed Information which are developed specifically for the Services and this Agreement,.

14.4 Contractor further agrees as to all Developed Information to assist Xensoft in every proper way to obtain and from time to time enforce patents, trademarks, copyrights and other rights on the Developed Information in any and all countries. To that end, Contractor will perform any further acts and execute and deliver all documents for use in applying for and obtaining such patents and copyrights thereon and enforcing same, as Xensoft may desire, together with any assignments thereof to Xensoft or persons designated by it. Contractor’s obligation to assist Xensoft in obtaining and enforcing patents, trademarks, copyrights and other rights for the Developed Information in any and all countries continues beyond the termination of the Agreement, but Xensoft will compensate Contractor at a rate not to exceed \$50.00 per hour, for time actually spent by Contractor at Xensoft’s request on such assistance.

14.5 This Agreement does not require assignment of any invention which Contractor develops entirely on its own time without using Xensoft Property or Proprietary Information except for those inventions that either:

(a) Relate at the time of conception or reduction to practice of the invention to Xensoft's business, or actual or demonstrably past or anticipated research or development of Xensoft; or

(b) Result from any work performed by the Contractor for Xensoft where Xensoft has paid Contractor for the specific work or invention.

15. **Property of Others.**

15.1 Contractor covenants, represents and warrants that: (i) Contractor's performance under the Agreement, does not and will not breach any agreement to keep in confidence proprietary information, trade secrets or other materials, if any, acquired by Contractor in confidence or in trust prior to Contractor providing services for Xensoft; (ii) there are no agreements, written or oral, conveying rights in any research conducted by Contractor; and (iii) Contractor will notify Xensoft if they represent or re-sell like products or services similar to Xensoft from third parties.

15.2 Contractor covenants and represents, as part of the consideration for entering into the Agreement, that Contractor has not brought and will not bring to Xensoft or use in the performance of Contractor's services for Xensoft any equipment, supplies, facility or trade secret information of any current or former employer or organization to which Contractor provided services or any third party which are not generally available to the public, unless Contractor has obtained written authorization for their possession and use.

16. **Conflict of Interest.** During the period Contractor provides services to Xensoft, Contractor shall not accept employment or consulting work or enter into a contract or accept an obligation inconsistent or incompatible with its obligations under this Agreement to maintain the confidentiality of Xensoft's Proprietary Information or trade secrets.

17. **Equitable Relief.** Contractor acknowledges that any breach or threatened breach by Contractor of the provisions of Sections 6, 7, 8, 10, 11, 12, 13, 14, 15 and 16 of this Agreement will result in immediate and irreparable harm to Xensoft, for which there will be no adequate remedy at law, and that Xensoft will be entitled to equitable relief to restrain Contractor from violating the terms of these sections, or to compel Contractor to cease and desist all unauthorized use and disclosure of the Proprietary Information, without posting bond or other security. Xensoft will be entitled to recover from Contractor any costs or expenses incurred in obtaining relief against breach of this Agreement by Contractor, including, but not limited to, legal fees and costs. Nothing in this section shall be construed as prohibiting Xensoft from pursuing any other remedies available to it for such breach or threatened breach, including recovery of damages from Contractor.

18. **Termination.**

18.1 This Agreement will terminate on the occurrence of any of the following events:

- (a) Dissolution or bankruptcy of Contractor's business (automatic termination);
- (b) Assignment of this Agreement by Contractor without Xensoft's consent (upon notice of termination by Xensoft);
- (c) Sale of Contractor's business (upon notice of termination by Xensoft);

- (d) For convenience, with or without cause (upon thirty days written notice of either party to the other party); and
- (e) For the Parties default in the performance of this Agreement or material breach of any of its terms (upon notice of termination by Xensoft). For the purpose of this clause, material breach of this Agreement includes, but is not limited to, habitual neglect, gross negligence or willful wrongdoing in the performance of the Services, or Contractor's breach of Section 2, 3, 4 or 6 of Exhibit A.

19. The parties agree and acknowledge that Section 6, 7, 8, 9, 10, 11, 12, 14, 15 and 16 shall survive termination or expiration of this Agreement for any reason.

20. **Notices.** Any notice or communication required or permitted under this Agreement must be sent by e-mail (provided delivery is confirmed) or U.S. Mail (certified only) return receipt requested pursuant to the addresses set forth on the signature page hereof, or at such other addresses as shall be designated in writing by either party to the other in accordance with this Section. Such notice will be deemed to be given when received.

21. **Severability.** If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will continue in full force without being impaired or invalidated in any way.

22. **Injunctive Relief.** Nothing in this Agreement shall prevent Xensoft from seeking injunctive relief in a court of law for violations of Section 6, 7, 8, 9, 10, 11, 12, 14, 15 and 16.

23. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Utah, exclusive of its choice of law provisions.

24. **No Assignment.** Contractor must not, in whole or in part, assign or transfer its rights or delegate or subcontract its duties under this Agreement by operation of law or otherwise. Any attempted assignment or delegation by Contractor is void. Subject to the preceding sentence, this Agreement is binding upon and inures to the benefit of Xensoft, its successors and assigns.

25. **Integrated Agreement.** This Agreement, together with its exhibits, supersedes and cancels any and all previous agreements of whatever nature between Xensoft and Contractor with respect to the matters covered by this Agreement. This Agreement constitutes the full, complete and exclusive agreement between Contractor and Xensoft with respect to such matters. As used in this Agreement, the singular shall include the plural and the masculine shall include the feminine and vice versa.

26. **No Warranty.** XENNSOFT LLC MAKES NO WARRANTIES AND REPRESENTATIONS, AND EXPRESSLY DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY OR OTHERWISE WITH RESPECT TO THIS REFERRAL AGREEMENT.

27. **Limitation of Liability.** UNDER NO CIRCUMSTANCES SHALL XENNSOFT LLC BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER, ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT REGARDLESS OF THE LEGAL THEORY UPON WHICH SUCH CLAIM FOR DAMAGES IS BASED, EVEN IF XENNSOFT LLC HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IF SUCH DAMAGES COULD HAVE BEEN REASONABLY FORESEEN. IN NO EVENT SHALL XENNSOFT LLC'S LIABILITY UNDER THIS REFERRAL AGREEMENT EXCEED THE AMOUNT OF THE REFERRAL FEE FOR THE QUALIFYING TRANSACTION.

28. **Waiver**. The failure of either party to insist on strict compliance with any of the terms, covenants, or conditions of this Agreement by the other party shall not be deemed a waiver of that term, covenant, or condition nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other time.



**Selection of Contractors Involvement with Xensoft, LLC.**

**Check one of the following and sign below.**

Initial
---------

**For my involvement in this program (Referral Agreement), I/We would like to be included in Xensoft Marketing Initiatives (“Marketing”) only.**

Initial
---------

**For my involvement in this program (Referral Agreement), I/We would like to be included in Xensoft Marketing Initiatives (“Marketing”) and Referral Fee (“Referral Fee”) Programs.**

Acknowledgment. CONTRACTOR ACKNOWLEDGES THAT, IN EXECUTING THIS AGREEMENT, CONTRACTOR HAS HAD THE OPPORTUNITY TO SEEK THE ADVICE OF INDEPENDENT LEGAL COUNSEL, WHO HAS READ, UNDERSTANDS AND WILL FAITHFULLY COMPLY WITH ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT.

**BY SIGNING BELOW, REFERRING PARTY ACKNOWLEDGES IT HAS READ, UNDERSTANDS AND AGREES TO ALL OF THE TERMS AND CONDITIONS HEREIN CONTAINED.**

<b>Contractor (Referring Party):</b>	<b>Xensoft LLC</b>
By (signature)	By (signature)
Print Name	Print Name:
Title	Title:
Date	Date:

Last updated on: 5/13/2016