



## TUNE Referral Agreement

This Referral Agreement (the "**Referral Agreement**") is entered into as of the date you agree to the terms by clicking "apply" ("**Effective Date**") by and between TUNE, Inc., a Delaware corporation located at [11350 McCormick Road, Executive Plaza 3, Suite 200, Hunt Valley, MD 21031](#) ("**TUNE**") and you ("**Referring Party**"). TUNE and Referring Party shall hereinafter collectively be referred to as the "**Parties**".

### 1. SCOPE

This Referral Agreement sets forth the terms and conditions pursuant to which Referring Party shall refer third parties to TUNE that may be potential clients for TUNE ("**Leads**").

### 2. AUTHORITY

TUNE hereby grants Referring Party a non-exclusive right to market and promote TUNE products and services to Referring Party's clients, prospects and contacts. Referring Party's authority under this Referral Agreement shall be limited to: (i) referring Leads to TUNE, and (ii) providing descriptions and information about TUNE products to potential Leads in accordance with the provisions of this Referral Agreement. Referring Party has no authority or right, express, implied, or otherwise, (iii) to make representations or warranties of any kind to third parties regarding the nature and quality of the services offered by TUNE, (iv) to make or accept offers on behalf of TUNE, (v) to bind TUNE in any contract, obligation, commitment or otherwise, (vi) to incur expenses on behalf of TUNE, (vii) to obligate TUNE in any way whatsoever by reason of this Referral Agreement, (viii) to resell or otherwise distribute any of TUNE's products or services, or (ix) to use any of TUNE's trademarks or intellectual property, except for the sole purpose of marketing and promoting TUNE products and services. Nothing in this Referral Agreement shall be construed as limiting in any manner the marketing or distribution activities of TUNE or the appointment of other referrers, representatives, dealers, distributors, licensees, partners, integrators or agents.

### 3. TERM AND TERMINATION

This Referral Agreement is effective as of the Effective Date and shall continue on a month-to-month basis until terminated by either party. Either party may terminate this Referral Agreement immediately for cause or upon thirty (30) days prior written notice for convenience. Upon termination of this Referral Agreement, the obligation to pay Referral Fees shall terminate immediately.



#### 4. RIGHTS AND RESPONSIBILITIES OF THE PARTIES

- a. For each Lead, in order to qualify as a Qualified or Converted Lead (defined below) under this Referral Agreement, Referring Party shall be responsible for either submitting to TUNE a completed electronic Referral Form as provided to you by TUNE ("**Referral Form**") for each Lead or by referring Leads to TUNE pursuant to a process that has been agreed upon by the Parties. Any Lead that does not result in a Converted Lead within three (3) months after the Submission Date of the Referral Form shall be deemed expired, and not eligible for a Referral Fee.
- b. In order for a Lead to be deemed a Qualified Lead, it must be a lead with the following criteria:
  - (1) Has an Affiliate Program
  - (2) Has budget and plans on purchasing affiliate in the next 6 months
  - (3) Has not been a sales engaged lead in the past 6 months
- c. TUNE, in its sole discretion, shall determine the pricing and service fees charged to its customers, including but not limited to Converted Leads referred by Referring Party. TUNE shall also have sole control, responsibility and authority to negotiate with, create a TUNE account for, and generally manage the relationship with its customers, including but not limited to Converted Leads referred by Referring Party. TUNE reserves the right to refuse to sign up or enter into an agreement with any Lead.

#### 5. PAYMENT

- d. **Referral Fee.** Subject to the terms and conditions of this Referral Agreement, for each Lead that signs a 12-month or longer committed contract with TUNE ("**Converted Lead**"), TUNE will pay Referring Party one lump sum fee for that Converted Lead (each a "**Referral Fee**"). TUNE will only pay Referral Fees for a Converted Lead that has no outstanding payments due to TUNE. The amount of the Referral Fee owed to the Referring Party will be based on the customer account type of the Converted Lead, as designated by TUNE in its sole discretion. The Referral Fees will be based on the following:
  - (1) For a Qualified Lead, the Referral Fee will be \$250.
  - (2) For a Converted Lead that is designated as a Pro Network Account, the Referral Fee will be \$250.
  - (3) For a Converted Lead that is designated as an Enterprise Network Account, the Referral Fee will be \$400.



- (4) For a Converted Lead that is designated as a Performance Plan Account, there is no initial payout. However, if the account is upgraded to a Scale Advertiser account within the first year, the Referral Fee will be \$750.
- (5) For a Converted Lead that is designated as a Bootstrap Advertiser Account, the Referral Fee will be \$250.
- (6) For a Converted Lead that is designated as Scale Advertiser Account, the Referral Fee will be \$750.

e. **Payment Terms.** Referral Fees are earned in the quarter that the Converted Lead's contract effective date falls in. TUNE shall pay the Referral Fee within thirty (30) days of the close of the fiscal month in which it is earned, provided that TUNE has received accurate banking details for wire transfer from the Referring Party, and a completed W-9 Form if the Referring Party is based in the United States. TUNE shall remit payment for Referral Fees by sending a wire transfer in United States currency, less any applicable payment fees.

f. **Exceptions.** No Referral Fees shall be paid (i) if Referring Party provides to TUNE any incorrect or misleading information about the Lead or fails to submit a Referral Form, (ii) for any Lead that is a then-current or previous customer or partner of TUNE or its affiliates, distributors, or resellers, or (iii) for any Lead with whom TUNE or its affiliates

distributors, or resellers had previously contacted within the last six (6) months prior to Referring Party's submission of a Referral Form.

g. **Expenses.** Referring Party shall be solely responsible for all expenses incurred by it in connection with the performance of its duties and obligations under this Referral Agreement, including, but not limited to: expenses incurred in fulfilling its duties and responsibilities; compensation, bonuses, and benefits, if any, for its personnel; and advertising and promotion expenses.

h. **Multiple Referrals.** In the event that two or more authorized referrers of TUNE claim a Referral Fee for the same Converted Lead, TUNE reserves the right to award the Referral Fee to one of the referrers or to divide the Referral Fee among the Referring Party and referrers in such proportions as TUNE shall determine to be equitable, and its decision to do so and the manner in which it does shall be final and binding on all parties involved.

## 6. CONFIDENTIALITY



- i. Referring Party acknowledges during the term of this Referral Agreement, the Parties may be required to disclose Confidential Information. "**Confidential Information**" refers to certain information that TUNE or Referring Party reasonably regard as proprietary or confidential relating to TUNE or Referring Party's business, customers, products, proposed products, plans, inventions, processes and techniques, including without limitation: (i) information, software, designs, text, graphics, pictures, reviews, and sound files used by TUNE or Referring Party to support its business operations ("**Materials**"); (ii) trade secrets, business plans, strategies, methods and/or practices; (iii) computer systems architecture and configurations; (iv) information which is governed by any now-existing or future non-disclosure Referral Agreement between the Parties; (v) any other information relating to TUNE or Referring Party that is not generally known to the public, including information about government investigations and actions (where disclosure is permitted), personnel, products, customers, financial information, marketing and pricing strategies, services or future business plans; and (vi) any and all analyses, compilations, notes or Materials prepared which contain or are based on Confidential Information.
  
- j. Except as expressly allowed herein, if a Party receives any Confidential Information from the other Party, the Parties will hold in confidence and not use or disclose any such Confidential Information except in accordance with this Referral Agreement and as necessary to the Parties employees or third parties who have agreed in writing to non-disclosure terms at least as protective as the provisions of this Section 6, and who are required to have access to the Confidential Information in order to comply with this Referral Agreement.
  
- k. The foregoing obligations shall not apply to the extent that Confidential Information: (i) must be disclosed to comply with any requirement of law or order of a court or administrative body; (ii) is known to or in TUNE's or Referring Party's possession prior to receiving the disclosure of such Confidential Information as documented by notes or records; (iii) is known or generally available to the public through no act or omission of Referring Party or TUNE or Referring Party's or TUNE's representatives in breach of this Referral Agreement; or (iv) is made available free of any legal restriction by a third party. The duties and requirements under this Section 6 shall survive termination of this Referral Agreement.
  
- l. Referring Party acknowledges that it may be necessary for TUNE to share Referring Party's Confidential Information with TUNE subsidiaries and vendors and suppliers. Referring Party hereby grants TUNE and TUNE's subsidiaries and vendors and suppliers a worldwide, limited license to use Referring Party's Confidential Information in accordance with this Referral Agreement. We agree that such subsidiaries and vendors and suppliers will be bound by the terms of this Referral Agreement.



- m. Referring Party agree that any unauthorized disclosure of Confidential Information may cause immediate and irreparable injury to the disclosing Party and that, in the event of such breach, the disclosing Party will be entitled, in addition to any other available remedies, to immediate injunctive and other equitable relief, without bond and without the necessity of showing actual monetary damages. The foregoing notwithstanding, Referring Party irrevocably waives any right to enjoin or restrain the onboarding of any Lead or the on-going relationship between TUNE and any Converted Lead as a whole or Our use of any content or other material used or displayed through the Services other than Your Confidential Information.

## **7. NON-COMPETITION; NON-SOLICITATION**

- n. Referring Party acknowledges that TUNE's technology as well as its relationships with its customers, clients, vendors, employees and other entities are valuable business assets, and that there is a substantial likelihood that if the Referring Party directly competes with TUNE, it would result in the unauthorized use or disclosure of Confidential Information or interfere with TUNE's relationships with its customers, clients, vendors, employees and other entities, and the use or disclosure of such Confidential Information would be extremely difficult to detect or prove. Therefore, and in consideration for this Referral Agreement with TUNE, Referring Party agrees that, during Referring Party's engagement with TUNE or any of its predecessors and for a period of twenty-four (24) months thereafter, Referring Party will not establish or act, directly or indirectly, by way of ownership, management or otherwise, whether or not for compensation, as a referrer, employer, employee, agent, principal, partner, stockholder (other than ownership of less than (1%) of the outstanding capital stock of a publicly-traded corporation), officer, director or in any other representative or individual capacity for, any business that (i) is similar to, (ii) is directly competitive with, or (iii) provides goods or services to any aspect of the business in which TUNE is engaged or contemplates engaging. During the term of this Referral Agreement, Referring Party will not undertake any planning for any outside business competitive with TUNE. Referring Party recognizes that there is no geographic

limitation to this Section 7 because of the international application of TUNE services and products and the nature of TUNE's business.

- o. Referring Party is not aware of any conflicts of interest that would prevent it from complying with this Referral Agreement. If Referring Party becomes aware of an actual or potential conflict of interest, Referring Party will promptly discuss this with TUNE and the parties shall mutually determine whether the conflict will prevent Referring Party from continuing with this Referral Agreement. Referring Party agrees not to enter into any Referral Agreement that contains any term that may conflict, either actually or potentially, with the terms of this Referral Agreement.



- p. Referring Party agrees that during the term of this Referral Agreement and for a period of twelve (12) months thereafter, Referring Party will not disrupt, damage, impair or interfere with TUNE's business by recruiting, soliciting or otherwise inducing any of TUNE's employees, agents or representatives to enter into employment or a consulting relationship with any other business entity that competes with TUNE.
- q. Referring Party also agrees that, during the term of this Referral Agreement and for a period of twenty-four (24) months thereafter, Referring Party will not engage in any acts, or attempted acts, to call on, solicit, induce, recruit, interfere with, divert, or take away, either for Referring Party's own benefit or for the benefit of another person or entity, any TUNE customer or potential customer whom Referring Party was introduced to pursuant to its relationship with TUNE, or whom TUNE was introduced to pursuant to its relationship with Referring Party. Referring Party will not solicit or induce any customer or potential customer to terminate a business relationship with TUNE.

## **8. REPRESENTATIONS AND WARRANTIES**

TUNE and Referring Party each represent and warrant that: (i) it has all requisite legal and corporate power to enter into this Referral Agreement; (ii) it has no agreement or understanding with any third party that interferes with or will interfere with its performance of its obligations under this Referral Agreement; (iii) it has obtained and shall maintain all rights, approvals and consents necessary to perform its obligations and grant all rights and licenses granted under this Referral Agreement; and (iv) its business and performance under this Referral Agreement is and shall be in compliance with all applicable domestic and foreign laws, rules, ordinances and regulations. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS REFERRAL AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER. ALL OTHER EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS AND WARRANTIES ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW. NEITHER PARTY SHALL MAKE OR PASS ON ANY REPRESENTATION OR WARRANTY ON BEHALF OF THE OTHER PARTY TO ANY THIRD PARTY. TUNE MAKES NO REPRESENTATIONS OR WARRANTIES TO REFERRING PARTY THAT TUNE'S ACTIONS UNDER THIS REFERRAL AGREEMENT WILL PRODUCE

ANY LEVEL OF PROFIT OR BUSINESS OR THAT ANY DEFINED ACTION WILL LEAD TO FURTHER ECONOMIC BENEFIT FOR REFERRING PARTY OR ANY CONVERTED LEADS. TUNE SHALL NOT BE RESPONSIBLE TO REFERRING PARTY OR A LEAD FOR ANY WARRANTY EXTENDED BY REFERRING PARTY.



## 9. LIMITATION OF LIABILITY

UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR INDIRECT, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES INCLUDING, BUT NOT LIMITED TO, ANY LOST REVENUE OR LOST PROFITS, ARISING FROM THIS REFERRAL AGREEMENT, REGARDLESS OF WHETHER THE PARTY WAS INFORMED OF OR HAD KNOWLEDGE OF THE POSSIBILITY OF SUCH DAMAGES OR LOSS. FURTHER, THE PARTIES' AGGREGATE LIABILITY (INCLUDING ATTORNEY'S FEES) ARISING UNDER THIS REFERRAL AGREEMENT SHALL NOT EXCEED THE AMOUNT OF REFERRAL FEES PAID TO REFERRING PARTY IN THE TWELVE (12) MONTH PERIOD PRIOR TO THE DATE ON WHICH SUCH DAMAGES ARISE.

## 10. INDEMNIFICATION

The Referring Party hereby agrees to indemnify TUNE, and its respective partners, members, managers, affiliates, directors, officers, employees, representatives and agents (each being an "**Indemnified Party**"), from, and agrees to defend and hold such Indemnified Party harmless against, any and all losses, liabilities, charges, damages, expenses and fees which may be asserted against such Indemnified Party arising out of, resulting from, or related in any way to a breach of any representation, warranty, covenant or agreement of the Referring Party contained in or made pursuant to this Referral Agreement, or any facts or circumstances constituting such a breach.

## 11. MISCELLANEOUS

It is understood and agreed that none of the provisions of this Referral Agreement are intended to create, or shall be deemed or construed to create, any employer-employee relationship between the Parties. Neither Party, nor any of their respective directors, members, officers or employees, shall act as or be construed to be the agent, employee or representative of the other. It is understood and agreed that no failure or delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof. Neither TUNE or Referring Party may assign or transfer this Referral Agreement or any rights or obligations hereunder without the prior written consent of the other, which consent shall not be unreasonably withheld; provided, however, either TUNE or Referring Party may, upon notice to the other, assign this Referral Agreement to a parent, subsidiary, division, affiliate, or successor upon the merger, consolidation, sale or transfer of all or substantially all assets, so long as Referring Party's or TUNE's successor to such transaction assumes all of the obligations under this Referral Agreement. Subject to the above restrictions, this Referral Agreement shall be binding on and shall inure to the benefit of Referring Party or TUNE, and Referring Party's and TUNE's respective heirs,



administrators, successors, and permitted assigns. This Referral Agreement is made and shall be governed and construed in accordance with the laws of the State of Washington. The proper venue for any action arising from or in connection to the interpretation or enforcement of this Referral Agreement shall be laid in the state or federal courts located in the city of Seattle, Washington and the Parties hereby submit to the exclusive jurisdiction of any such court. This Referral Agreement may be executed in counterparts, each of which shall be deemed an original and all such counterparts shall constitute one and the same agreement. If any portion of this Referral Agreement shall be held invalid, such invalidity shall not affect the other provisions hereof, and to this extent, the provisions of this Referral Agreement are to be and shall be deemed severable.

**By accepting these terms, TUNE and Referring Party are bound by this Referral Agreement in its entirety as of the Effective Date set forth herein.**