

REFERRAL AGREEMENT

Last Updated: April 17, 2023

This Referral Agreement (together with the applicable Program Document, collectively the “**Agreement**”) is entered into by: (i) you on behalf of the partner identified in the applicable Program Document (“**Partner**”); and (ii) the BigCommerce or Feedonomics entity identified in the applicable Program Document (including itself and its affiliates, collectively “**Company**”). By executing a Program Document which references this Referral Agreement, Partner acknowledges that it has reviewed and accepts all of the terms and conditions of the Agreement and that you are duly authorized to act on behalf of Partner and bind it to the Agreement. Terms used but not defined in this Referral Agreement have the meaning ascribed to them in the Program Document. Partner and Company each a “**Party**” and collectively the “**Parties**”.

This Referral Agreement outlines the core legal terms that govern the referral relationship between the Parties. These terms are standardized across Company’s entire referral ecosystem. The Program Document provided separately outlines the specific commercial terms and other engagement details which are unique to Partner. In the event of a conflict between this Referral Agreement and the Program Document, the Program Document shall control and govern.

The Party providing the Referral is the “**Provider**” and the Party receiving the Referral is the “**Recipient**”. Each Party may be a Provider and/or Recipient based on the specifics of the engagement detailed in the Program Document.

1. **Commissions.** Recipient shall pay Provider the Commission for the Commission Length subject to any Other Considerations (collectively the “**Commission Payment**”).
 - a. “**Commission**” means the Commissionable Revenue multiplied by the Commission Percentage for the applicable Covered Product.
 - b. “**Commissionable Revenue**” means the subscription fees collected and retained by Recipient from a Qualified Referral for the Covered Product less any chargebacks, refunds, return credits or similar costs. For clarity, Commissionable Revenue excludes fees for professional services provided with the Covered Product and fees for third party products and services purchased in connection with the Covered Product.
 - c. “**Qualified Referral**” means a Referral that: (i) is referred by Provider to Recipient through the mutually agreed referral process (e.g., Recipient’s partner portal, Provider call-to-action, dedicated landing page, etc.); (ii) is not a Recipient customer or listed in Recipient’s active and qualified leads database at the time of Provider’s referral; and (iii) executes a subscription agreement for a Covered Product within 6 months from the date of Provider’s referral to Recipient. Notwithstanding the foregoing, if the Parties agree in the Program Document that Recipient will pay Commission (y) on an up-sell, and/or (z) even if the Referral is an existing Recipient customer of a non-Covered Product, then such Referral shall be a Qualified Referral, as applicable.
2. **Payment.** Recipient shall make the Commission Payment within 30 days following the end of each Commission Payment Interval. All Commission Payments will be made in U.S. Dollars unless otherwise agreed in the Program Document. The Commission Payment shall be the sole and complete compensation to which Provider shall be entitled in connection with Referrals to Recipient. Each Party will be responsible for payment of all taxes assessed against it as a result of the Agreement.
3. **Reporting.** Each Commission Payment will be accompanied by a report containing information on the amount and calculation of Commission earned by Provider. The Parties agree to use good faith efforts to resolve any discrepancy between their respective records relating to Commission Payments. If Provider in good faith believes Recipient has underpaid Commission, Provider may request, and Recipient shall promptly provide, records reasonably evidencing Recipient’s calculation of Commission.
4. **Term and Termination.**
 - a. **Term.** The Agreement will commence on the Effective Date of the Program Document and shall continue for the Initial Term (as defined in the Program Document). Following the Initial Term, the Agreement shall continue until terminated as provided in this Section ‘Term and Termination’.
 - b. **Termination for Convenience.** Following the Initial Term, either Party may terminate the Agreement for convenience by providing the other Party at least 60 days prior written notice. For clarity, if a Party would like

to terminate the Agreement effective as of the last day of the Initial Term, then such Party may provide notice of termination at least 60 days prior to the last day of the Initial Term.

- c. **Termination for Cause.** Either Party may terminate the Agreement with immediate effect by written notice if the other Party commits a material breach of the Agreement and fails to remedy such breach within 30 days of receipt of written notice of such breach.
- d. **Post Termination Obligations.** Upon termination of the Agreement, Recipient shall continue to make Commission Payments in accordance with the terms of the Agreement for each Referral that becomes a Qualified Referral prior to the date of termination of the Agreement. Notwithstanding the foregoing, if a Party terminates the Agreement for cause in accordance with Section 'Termination for Cause', then such terminating Party will not be required to continue to make Commission Payments to other Party following termination of the Agreement.

5. Trademarks.

- a. Each Party ("**Licensor**") grants the other Party ("**Licensee**") a nontransferable, non-sublicensable, non-exclusive, revocable license to use the Licensor's trademarks provided by Licensor to Licensee to promote the Licensor's products and services to prospective customers in accordance with the Agreement. Licensee's use of any Licensor trademarks must be in accordance with the Licensor's trademark usage guidelines provided by Licensor to Licensee (if any). Company's trademark usage guidelines current as of the Effective Date are located at https://partners.bigcommerce.com/English/bc_trademark_usage.aspx. Upon Licensor's request, Licensee shall promptly and reasonably cooperate with a review of Licensee's use of Licensor's trademarks.
- b. **Ownership.** The Agreement does not grant Licensee any right, title or interest in Licensor's trademarks. Licensee agrees to not challenge or assist others to challenge Licensor's trademarks or the registration thereof or attempt to register any trademarks confusingly similar to those of Licensor. All use and goodwill associated with usage of Licensor's trademark shall inure to the benefit of Licensor. Licensor shall have the right to immediately suspend the Licensee's use of its trademarks by providing written notice (email sufficient) if Licensee's usage is inconsistent with the terms of the Agreement. Upon termination of the Agreement, Licensee must cease all use of the Licensor's trademarks.
- c. **Publicity.** Except as otherwise expressly permitted in the Agreement, neither party may distribute public announcements or external communications about the Agreement or the referral relationship described herein without the other Party's prior written approval (email sufficient).

6. **Independent Authority.** Recipient will have no obligation to enter into a subscription agreement with a Referral, or to sell or continue to sell any product or service to a Referral, and Recipient may refuse to do so for any or no reason. If Recipient enters into a subscription agreement with a Referral, such subscription agreement shall be deemed a separate and independent agreement solely between Recipient and the applicable Referral and shall be separately and independently enforceable. Provider shall not be deemed a third-party beneficiary under any subscription agreement between Recipient and a Referral. Neither Party will have any right or authority to act on behalf of or bind the other Party, and neither Party shall represent that it has such right or authority. Neither Party shall make any representations concerning the other Party's products or services without such Party's prior written approval (email sufficient).

7. Representations and Warranties.

- a. **Mutual.** Each Party represents and warrants to the other Party that: (i) it has all licenses, permissions and agreements necessary or appropriate to enter into the Agreement, grant the rights granted by it under the Agreement, and to perform its obligations under the Agreement; (ii) it will perform its obligations described in the Agreement in compliance with all applicable law, rules, and regulations and in a professional manner; and (iii) it will comply with the Compliance Supplement located at <https://www.bigcommerce.com/compliance-supplement/> in connection with its performance of the Agreement.
- b. **Deceptive Practices.** Neither Party shall: (i) engage in any deceptive, misleading or unethical practices; (ii) engage in any practice that might be detrimental to the other Party, including but not limited to disparagement of the other Party or its offerings; (iii) make false or misleading representations regarding the other Party or its offerings; or (iv) publish, initiate, or cooperate in the publication of any misleading or deceptive advertising material. The foregoing obligations will survive the termination or expiration of this Agreement.

- c. **Disclaimer.** EXCEPT FOR THE EXPRESS WARRANTIES PROVIDED IN THE AGREEMENT, AND EACH PARTY DISCLAIMS, ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT OF THIRD-PARTY RIGHTS.

8. Limitation of Liability.

- a. **Aggregate.** EXCEPT AS PROVIDED IN SECTION 'EXCLUSIONS', EACH PARTY AND ITS AFFILIATES' AGGREGATE LIABILITY IN ANY EVENT FOR ANY AND ALL CLAIMS ARISING FROM OR RELATING TO THE AGREEMENT, WHETHER IN CONTRACT, TORT, STRICT LIABILITY, OR ANY OTHER LEGAL THEORY, SHALL NOT EXCEED \$25,000.00 USD.
- b. **Other.** EXCEPT AS PROVIDED IN SECTION 'EXCLUSIONS', IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, LOST PROFITS, REVENUES, ANTICIPATED SAVINGS, COSTS OF DELAY, FAILURE OF DELIVERY, BUSINESS INTERRUPTION, DATA LOSS, OR LOSS OF GOODWILL, HOWSOEVER CAUSED, REGARDLESS OF THE NATURE OF THE CLAIM AND EVEN IF SUCH PARTY OR ITS AFFILIATES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- c. **Exclusions.** THE LIMITATIONS OF SECTION 'AGGREGATE' AND 'OTHER' SHALL NOT APPLY TO: (I) A PARTY'S COMMISSION PAYMENT OBLIGATIONS, (II) LIABILITY RESULTING FROM A PARTY'S BREACH OF SECTION 'CONFIDENTIALITY', OR (III) LIABILITY RESULTING FROM A PARTY'S VIOLATION OF APPLICABLE LAW.

9. Confidentiality.

- a. **Defined. "Confidential Information"** means any and all information disclosed by a Party or its affiliate(s) ("**Disclosing Party**") to the other Party or its affiliate(s) ("**Receiving Party**") that is either identified as confidential or proprietary at the time of disclosure or is information which Receiving Party knows, or reasonably should have known, is confidential. Notwithstanding the foregoing, Confidential Information excludes information which Receiving Party can establish is: (i) in the public domain through no fault of Receiving Party; (ii) already in Receiving Party's possession at the time of disclosure by the Disclosing Party; (iii) lawfully obtained by Receiving Party from a third party without a breach of confidentiality obligations; or (iv) independently developed by Receiving Party without use of or reference to Disclosing Party's Confidential Information.
- b. **Recipient Obligations.** Receiving Party agrees that it will: (i) keep Confidential Information secure and confidential and only disclose it as permitted by the Agreement; (ii) protect Confidential Information with at least the same degree of care that Receiving Party uses to protect its own Confidential Information, but in no case less than reasonable care; (iii) only access or use Confidential Information as necessary to perform its obligations under the Agreement; and (iv) only disclose Confidential Information to Receiving Party's affiliates, employees, or authorized representatives who have a need-to-know and have signed confidentiality agreements containing, or are otherwise bound by confidentiality obligations, at least as restrictive as those contained herein. Receiving Party shall be liable for its respective affiliates, employees, and authorized representatives' compliance with the terms of this Section 'Confidentiality'. Receiving Party may disclose Confidential Information to the extent such disclosure is required by applicable law, valid court order, or other governmental body of competent jurisdiction, and to the extent not prohibited by applicable law, Receiving Party shall give Disclosing Party prompt written notice of such requirement and use reasonable efforts at Disclosing Party's cost to seek, or to assist Disclosing Party in seeking, a protective order or other appropriate relief.
- c. **Compliance.** All Confidential Information is provided 'as-is.' Disclosing Party makes no warranties, express or implied, regarding the accuracy or completeness of the Confidential Information. Disclosing Party shall retain all right, title and interest in and to its Confidential Information. The Agreement does not grant Receiving Party any intellectual property rights or other rights of Disclosing Party, except the limited right to use Confidential Information as permitted herein. Each Party agrees it will comply with all applicable law and regulations with respect to the disclosure and use of Confidential Information, including applicable data privacy law and export compliance regulations.
- d. **Confidentiality Period.** Receiving Party's obligations with respect to Confidential Information continue for 3 years from the date of termination of the Agreement, provided, however, Receiving Party's obligations with respect to Confidential Information that constitutes a trade secret shall continue until such Confidential

Information no longer constitutes a trade secret through no fault of Receiving Party. Upon Disclosing Party's request, Receiving Party shall promptly destroy or erase any Confidential Information it holds, except the Receiving Party may retain Confidential Information that is: (i) securely stored in archival or computer backup systems; or (ii) required to be retained to meet legal or regulatory obligations, provided, however, that any retained Confidential Information shall remain subject to the terms of the Agreement.

10. Data Protection.

- a. **Data Protection Legislation.** Each Party will comply with all applicable data protection, privacy, and security laws, rules, or regulations, including but not limited to, Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (collectively, "**Data Protection Legislation**"). The Parties acknowledge and agree that each Party acts independently as, and shall be bound by the obligations of, a controller under Data Protection Legislation. Each Party will promptly and without undue delay notify the other if it becomes aware of any complaint, unauthorized access, processing, or disclosure with respect to personally identifiable information related to the Agreement and will provide such assistance as may be reasonably requested in connection with mitigating and resolving any of the foregoing.
- b. **Security.** Each Party will maintain appropriate physical, technical, and organizational measures to protect any personally identifiable information related to the Agreement. If and to the extent a Party has access to the other Party's Confidential Information through systems managed or held by the other Party (an "**Accessing Party**"), then the Accessing Party will comply with the following prerequisites: (i) the Accessing Party will reasonably cooperate with the other Party's data security assessment efforts, including responding to questionnaires and providing any relevant industry certifications or audit reports; (ii) the Accessing Party will implement and maintain reasonable security measures appropriate to the nature of the Confidential Information; and (iii) subject to reasonable vulnerability redacts, the Accessing Party will (x) provide, upon written request, its information security policy and data handling and backup policy, and (y) notify the other Party of any changes that would materially diminish its data security protections related to the Agreement.

11. Attribution.

- a. **Omni Actions.** Partner shall ensure Company receives the sole and exclusive attribution for all purchases, sales, listings or other actions used as performance metrics ("**Actions**") taken via 3P Solutions by Qualified Referrals provided by Company to Partner. "**3P Solutions**" means any third-party platform, marketplace, and omnichannel solution partner (e.g., Microsoft, Google, Facebook, Instagram, WhatsApp, OpenSea, TikTok, Walmart, Mercado Libre, Wish, eBay, Amazon MCF, Snap, etc.). For clarity, Qualified Referrals may be using any eCommerce platform (e.g., BigCommerce, Shopify, Salesforce Commerce Cloud, etc.).
- b. **Attribution Period.** Partner agrees to take all actions required by each relevant 3P Solution to ensure that Company receives the primary account attribution (not sub attribution) for all Qualified Referrals provided by Company to Partner via the 3P Solution so long as the Qualified Referral is a customer of Partner and utilizes the applicable 3P Solution, including post termination of the Agreement.
- c. **3P Solutions Requirements.** Partner agrees to work with Company and each applicable 3P Solution to ensure the 3P Solution establishes any necessary lead or referral forms and/or webpages to track referrals and attribution in accordance with this Section 'Attribution'. To the extent a 3P Solution allows Partner to affirmatively include attribution to Company within the 3P Solution, Partner will be responsible for staying up to date on each applicable 3P Solution's requirements for attribution for the Actions.
- d. **Attribution Reporting.** Partner will adhere to a mutually agreed monthly reporting process which will identify the relevant performance and attribution data for each Qualified Referral for which attribution is due under this Section 'Attribution'.

12. Miscellaneous.

- a. **Governing Law.** The Agreement is governed by and construed in accordance with the laws of the State of Texas, without regard to conflicts of law provisions thereof. Each Party consents to and waives all defenses of lack of personal jurisdiction and forum non conveniens with respect to the jurisdiction and venue of the federal and state courts located in Travis County, Texas. Each Party agrees to waive the right to trial by jury in any action or proceeding that takes place relating to or arising out of the Agreement. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information

Transactions Act shall not apply to this Agreement. Nothing in the Agreement prevents either Party from seeking injunctive relief in a court of competent jurisdiction.

- b. **Notices.** Other than routine administrative communications, which may be exchanged by the Parties via email or other means, all notices and approvals shall be in writing, shall be addressed to the Party's address on the Program Document, and shall be deemed to have been given upon: (i) personal delivery; (ii) the day of receipt, as shown in the applicable carrier's systems, if sent via nationally recognized express carrier; or (iii) the third business day after first class, postage prepaid, posting.
- c. **Assignment.** Neither Party shall have any right or ability to assign or transfer the Agreement, in whole or in part, including without limitation any obligations or benefits under this Agreement without the prior written consent of the other Party, and any contrary attempt will be void. Notwithstanding the foregoing, either Party may assign the Agreement in its entirety, without consent of the other Party but with prompt written notice thereof, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other Party. Subject to the foregoing, this Agreement will bind and inure to the benefit of the Parties, their respective successors and permitted assigns.
- d. **Waiver.** The failure of either Party to enforce its rights under the Agreement at any time for any period will not be construed as a waiver of such rights.
- e. **Remedies.** Except as otherwise expressly stated herein: (i) termination of the Agreement by a Party will be a nonexclusive remedy and will be without prejudice to any other right or remedy of such Party; and (ii) the rights and remedies of the Parties are cumulative and not alternative.
- f. **Survival.** The rights and obligations of the Parties which are required to carry out their continuing rights and obligations in the Agreement, and all other terms and conditions which by their nature are intended to continue after the termination of the Agreement, will survive the termination of the Agreement.
- g. **Independent Contractors.** The Parties are independent contractors. The Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the Parties. There are no third-party beneficiaries to the Agreement.
- h. **Severability.** If any provision or portion thereof, of the Agreement is found to be invalid, unlawful, or unenforceable to any extent, such provision of the Agreement will be enforced to the maximum extent permissible by applicable law so as to affect the intent of the Parties, and the remainder of the Agreement will continue in full force and effect. The Parties will negotiate in good faith an enforceable substitute provision for any invalid or unenforceable provision that most nearly achieves the intent and economic effect of such provision.
- i. **Force Majeure.** Neither Party shall be liable to the other for any failure to perform any of its obligations (except payment obligations) under the Agreement during any period in which such performance is delayed by circumstances beyond its reasonable control, such as fire, flood, war, cyber warfare, including, but not limited to, Internet-based conflict and attacks on information systems designed to or resulting in the disabling of websites and networks, embargo, strike, riot or the intervention of any governmental authority (a "**Force Majeure**"). In such event, however, the delayed Party must promptly provide the other Party with written notice of the Force Majeure.
- j. **Updates.** From time to time, Company may update this Referral Agreement by posting an updated version on the Company's website. Any updates shall only apply prospectively. If an update would meaningfully: (i) reduce Partner's rights; or (ii) add Partner obligations, then Company will notify Partner by sending an email to the Partner employee then-currently managing its relationship with Company. If, within 30 days of Partner's receipt of such email, an officer of Partner certifies in writing that the update is material and adverse to Partner, then: (y) Company shall waive the update for Partner; or (z) if Company does not waive the update, then Partner may, within 30 days, terminate the Agreement for convenience with immediate effect by providing Company written notice. Partner shall regularly check Company's website for updates and except as provided in this Section, will be bound by the updated Agreement.
- k. **Entire Agreement.** The Agreement constitutes the entire agreement and understanding between the Parties regarding the subject matter hereof and supersedes any prior representations (except if fraudulent), advertisements, statements, proposals, negotiations, discussions, or agreements regarding such subject

matter. Except as provided in Section 'Modifications', no changes, modifications, or waivers are effective under the Agreement unless evidenced in writing and signed by both Parties. In the event of a conflict between the Special Terms (as defined in the Program Document) and any other terms in the Program Document or this Referral Agreement, the Special Terms shall control and govern.

- i. **Execution.** The Program Document may be executed in counterparts, each of which will be deemed to be an original but all of which together will constitute one instrument. Any executed copy of the Program Document made by reliable means (e.g., photocopy, pdf, etc.) will be considered an original.
- m. **Construction.** Headings herein are for convenience of reference only and will in no way affect interpretation of the Agreement. The Agreement will be construed without regard to any presumption or rule requiring construction against the drafting party. Each of the individuals executing the Agreement on behalf of a Party individually represents and warrants that they have been authorized to do so and has the power to bind the Party for whom they are signing.