

GETGO REFERRAL PARTNER PROGRAM AGREEMENT

PARTICIPATION IN THE GETGO REFERRAL PARTNER PROGRAM (THE "REFERRAL PROGRAM") IS GOVERNED BY THIS REFERRAL PARTNER PROGRAM AGREEMENT ("AGREEMENT"), WHICH IS A LEGAL AND BINDING INSTRUMENT EFFECTIVE AS OF THE DATE ON WHICH THE AUTHORIZED PARTY ACCEPTING THIS AGREEMENT ("REFERRAL PARTNER") COMPLETES THE ELECTRONIC ACCEPTANCE PROCESS AND CLICKS THE "ACCEPT" BUTTON. THE AUTHORIZED PARTY ELECTRONICALLY ACCEPTING THIS AGREEMENT REPRESENTS THAT IT (i) HAS THE AUTHORITY TO BIND REFERRAL PARTNER AND (ii) HAS READ, UNDERSTANDS AND AGREES TO THE TERMS AND CONDITIONS OF THE REFERRAL PROGRAM AND THIS AGREEMENT.

1. DEFINITIONS.

- 1.1. **Customer** means any customer identified by Referral Partner pursuant to this Agreement.
- 1.2. **Customer Information** means any Customer information, including referral information, delivered by Referral Partner to GetGo under this Agreement.
- 1.3. **Direct Sale** means any sale of the Services to a Customer that directly results from Referral Partner's performance of its obligations under this Agreement; provided, however, that sales through the GetGo websites or other GetGo online sales channels shall not be Direct Sales.
- 1.4. **Effective Date** means the date this Agreement is electronically accepted by Referral Partner.
- 1.5. **GetGo** means the GetGo contracting entity identified in [Section 10.14](#) below.
- 1.6. **GetGo Marks** means any name, logo or mark belonging to GetGo or its affiliates.
- 1.7. **Services** means the GetGo software-as-a-service offerings and audio services (which are offered by GetGo Audio, LLC or Grasshopper Group LLC, the telecommunications providers responsible for the rates and terms relating to the respective audio services), as described in the [Service Descriptions](#). GetGo may update the Services at any time. The Services are for professional/business use only.
- 1.8. **Lead** means an identified opportunity to sell Services to a potential Customer.
- 1.9. **Net Revenue** means, only with respect to Direct Sales, the total amount billed to and paid by Customers for Services, excluding taxes, refunds, credits, and charge-backs for the initial subscription term.
- 1.10. **Online Sale** means any sale of the Services to a Customer through the GetGo website, which sale directly results from Referral Partner's performance of its duties under this Agreement.
- 1.11. **Qualified Referral** means a Customer that is an active customer of GetGo for not less than ninety (90) consecutive days.
- 1.12. **Referral Fee** means the fee payable by GetGo to Referral Partner as set forth below in Section 3 or in the Referral Partner Program terms.
- 1.13. **Registered Lead** means (i) for Direct Sales, a Lead submitted by Referral Partner to a lead registration webpage designated by GetGo and, (ii) for Online Sales, a Lead originating from a link to a GetGo website that contains a Referral Partner channel tag embedded for tracking. GetGo shall have sole discretion to review and validate all Registered Leads.
- 1.14. **Service Descriptions** means the overview of the Services and may include service-specific additional terms.
- 1.15. **Terms of Service** means the standard terms for the use of Services as updated from time to time, and found at: Terms of Service, or such other written agreement entered into between GetGo and Customer.

2. RIGHTS AND OBLIGATIONS.

- 2.1. **Referral Partner Rights.** GetGo appoints Referral Partner as a non-exclusive partner to market and promote the Services. In no event is Referral Partner authorized to distribute Services, or any other GetGo products or services for resale or otherwise obligate GetGo to provide Services to any third party.
- 2.2. **Compliance with Agreement and Laws.** Referral Partner must at all times comply with the provisions of this Agreement and applicable laws in order to participate in the Referral Partner Program, and Referral Partner shall, at all times, act in good faith and shall not engage in any fraudulent activities.

2.3. **Referral Partner Representations.** Referral Partner shall not make any representation or warranty about the Services or the rights granted hereunder that is contrary to any term or condition in this Agreement or the Terms of Service.

2.4. **Customer Information.** Referral Partner will maintain all Customer Information records and deliver such Customer Information to GetGo. GetGo shall maintain records of all Customer Information delivered by Referral Partner to GetGo as a result of Referral Partner's performance pursuant to this Agreement. All Customer Information shall be jointly owned by Referral Partner and GetGo and, pursuant to such ownership, may be used by either party in any manner deemed appropriate subject to (i) each party's published privacy policies then in effect, and (ii) all privacy and data protection laws and regulations applicable to the gathering, processing, storage and transmission of the Customer Information.

2.5. **GetGo Ownership.** All rights related to the Services not expressly granted herein are reserved by GetGo.

2.6. **GetGo Service Fees and Customer Agreement.** GetGo reserves the right in its sole discretion to determine pricing for the Services and to change the list price at any time. GetGo has the exclusive right to determine terms and conditions for marketing and promotion of the Services to Customers. Delivery of Services to any Customer will be conditioned on each Customer accepting the GetGo then-current standard Terms of Service.

2.7. **Additional Terms of Use.** Participation in the Referral Partner Program may require acceptance of additional terms that supplement or modify this Agreement. Referral Partner shall be subject to any such additional terms of use as a condition of continued participation in the Referral Partner Program in accordance with any such additional terms of use in addition to this Agreement.

3. **LEADS AND FEES.**

3.1. **Lead Submission.** In order to qualify under this Agreement, any Registered Lead must originate: (i) for Direct Sales, from the specific GetGo Lead registration Web page, and/or, (ii) for Online Sales, from a link to the applicable GetGo Web page embedded with a Referral Partner channel tag for tracking purposes.

3.2. **Referral Fees.** GetGo will pay Referral Partner applicable Referral Fees, for Qualified Referrals as set forth below:

a. **Direct Sales.** Referral Fees for Direct Sales Registered Leads shall be based on the cumulative Net Revenue collected by GetGo for active Customer subscriptions during the prior calendar month ("Month") and based on the Referral Partner's qualification tier as described below. Referral Fees are only payable for a Customer's initial subscription term, up to a maximum twelve (12) month period. Renewal terms for Services may be eligible for additional renewal fees as described in Section 3.5 below.

| Referral Partner Qualification Tier | Referral Fee % |
|--|-----------------------|
| Silver | 20% |
| Gold | 25% |
| | 10% Renewal Fees |
| Platinum | 30% for new Customers |
| | 20% renewals |

b. **Online Sales.** The Referral Fee for Online Sales Registered Leads of any Services shall be based on the applicable qualification tier for the initial sale of each such GetGo Service to a Customer.

3.3. **Qualified Referrals.** Notwithstanding any provision of this Agreement to the contrary, if Customer does not meet the requirements for a Qualified Referral, GetGo shall deduct from Referral Partner's next monthly payment, any Referral Fees already paid to Referral Partner for such Customer.

3.4. **Referral Fee Payment.** GetGo shall invoice Customers directly for, and shall be entitled to retain all fees collected from Customers for use and implementation of the Services. GetGo will pay Referral Fees monthly to Referral Partner (i) in US dollars only, (ii) by ACH/direct debit/international fund transfer, and (iii) in an aggregate amount owed for the prior Month for all Direct Sales and Online Sales. Referral Partner is responsible for fees and expenses associated with payment by any other means. GetGo shall not be required to make any payment due under this Agreement until the aggregate Referral Fees payable to Referral Partner is at least fifty dollars (\$50).

3.5. **Renewal Rewards.** For Customers that renew agreements with GetGo following expiration of such Customer's initial subscription term, GetGo will pay the qualified Referral Partner an additional renewal fee ("Renewal Rewards") based on the applicable qualification tier as set forth below:

a. Gold Referral Partners will earn 10% Renewal Rewards for all Customers that renew subscriptions for Services for an additional minimum one (1) year term.

b. Platinum Referral Partners will earn 20% Renewal Rewards for all Customers that renew subscriptions for Services for an additional minimum one (1) year term.

c. Renewal Rewards will be paid to Referral Partner during the month following the Customer's annual renewal date in accordance with the provisions of [Section 3.2](#) above.

d. Referral Partners must meet the Gold or Platinum qualification thresholds in new business during the prior calendar year ("[Minimum](#)") in order to qualify for Renewal Rewards in the following calendar year. If Referral Partner fails to meet the Minimum or falls to the Silver qualification tier, Referral Partner may not carry over any generated Net Revenue to the following year to be applied to the Minimum.

4. **TERM AND TERMINATION.**

4.1. **Term.** This Agreement shall commence on the Effective Date and continue for a twelve (12) month term ("[Initial Term](#)") and thereafter, shall automatically renew for additional twelve (12) month terms (each, a "[Renewal Term](#)" and together with the Initial Term, the "[Term](#)"), unless earlier terminated pursuant to this [Section 4](#).

4.2. **Termination.** Either party may terminate this Agreement for any or no reason upon thirty (30) days prior written notice to the other party; provided, however, a party may terminate this Agreement in the event of a breach that remains uncured for fifteen (15) days following receipt of notice by the non-breaching party. Notwithstanding the foregoing, either party may terminate this Agreement immediately in the event of a breach by Referral Partner of [Section 2](#) (Rights and Obligations), or [5](#) (Trademarks), or a breach by either party of [Section 6](#) (Confidentiality).

4.3. **Termination for Inactivity.** Notwithstanding any provision to the contrary, GetGo shall have sole discretion to terminate this Agreement and deactivate Referral Partner's account in the Referral Partner Program after eighteen (18) months of inactivity.

4.4. **Effect of Termination.** Upon termination of this Agreement for any reason, Referral Partner will (i) immediately discontinue all marketing and promotion of the Services, and (ii) cease to represent in any form that it is a "Referral Partner" of GetGo. Each party additionally agrees to destroy or return all Confidential Information of the other party in its possession. Neither party shall be liable for any damages resulting from a termination of this Agreement as provided for herein; provided, however, termination of this Agreement shall not affect any claim arising prior to such termination. GetGo shall pay to Referral Partner any Referral Fees earned prior to the effective date of termination, but Referral Partner shall not be entitled to payment of any Renewal Rewards following the effective termination date.

4.5. **Customer Agreements.** Termination of this Agreement shall not affect the term, validity or enforceability of any separate contract between GetGo and a Customer then in effect.

4.6. **Survival.** The provisions of [Sections 2.6](#) (GetGo Ownership), [6](#) (Confidentiality), [8](#) (Indemnification), [4.4](#) (Effect of Termination), [4.5](#) (Customer Agreements), [9](#) (Limitation of Liability), and [10](#) (Additional Terms) shall survive any termination of this Agreement.

5. **TRADEMARKS.** During the Term and subject to the terms of this Agreement, GetGo and Referral Partner shall each have the right to identify Referral Partner as a GetGo "Referral Partner" and Referral Partner may refer to the Services using the GetGo Marks. Any other use shall require GetGo prior written consent. For any authorized use of the GetGo Marks, Referral Partner represents that it has reviewed and will adhere to [Trademark & Copyright Guidelines](#), and incorporated herein by reference and as may be periodically updated by GetGo. Referral Partner agrees that it shall not register or apply for registration of any trademark, service mark, business name, company name or trade name, domain name or social media account name or handle which is comprised of, or incorporates in whole or in part, any GetGo Mark, or is otherwise confusingly similar to a GetGo Mark. Referral Partner agrees that it will do all things necessary to effect the transfer of any such same or similar trademark, service mark, business name, company name or trade name, domain name or social media account name or handle to GetGo, including but not limited to executing assignment documentation. Except as expressly granted herein, GetGo does not grant any rights to any of GetGo's copyrights, patents, trademarks (whether registered or unregistered), trade secrets or trade names, and in no event will such a grant be implied.

6. **CONFIDENTIALITY.**

6.1. **Obligations.** Each party acknowledges that it may receive Confidential Information of the other party during the performance of its respective obligations under this Agreement. With respect to the other party's Confidential Information, the recipient hereby agrees that during the term of this Agreement and for three (3) years thereafter, it shall maintain such Confidential Information in confidence and shall not use, commercialize, publish, transfer, report or disclose such Confidential Information to any person or entity, except to its own employees, representatives and agents having a "need to know" (and who are themselves bound by similar nondisclosure restrictions), and to such other recipients as the other party may approve in writing; provided that all such other recipients shall have first executed a confidentiality agreement. Neither party nor any recipient may alter or remove from any software or associated documentation owned or provided by the other party any proprietary, copyright, trademark, service mark or trade secret legend. Each

party shall use at least the same degree of care in safeguarding the other party's Confidential Information as it uses in safeguarding its own Confidential Information, but in no event less than reasonable care.

6.2. **Injunctive Relief.** The parties acknowledge and agree that an actual or potential violation of either party's trademark or other intellectual property rights, obligations with respect to Confidential Information, or a failure by Referral Partner to comply with Section 2.2 (Compliance with Laws), may cause irreparable harm to the other party for which a remedy at law would be inadequate. In the event of any threatened or actual violation of the material provisions of this Agreement, each party shall be entitled to seek injunctive relief or other equitable remedies in all legal proceedings in the event of any threatened or actual violation of any or all of the material provisions of this Agreement.

7. **LIMITED WARRANTY.** Any warranty relating to the Services shall be provided in accordance with the Terms of Service entered into between GetGo and the Customer. GetGo makes no warranties to Referral Partner, whether express or implied, with respect to the Services, or any other matters relating to this Agreement or the Referral Partner Program.

8. **INDEMNIFICATION.** Referral Partner agrees, at its sole expense, to indemnify, defend and hold GetGo harmless from and against any and all losses, liabilities, claims, costs, fines, and damages of any type (including attorneys' fees) arising out of, or in any way related to, the Referral Partner's breach of its obligations or any of the terms of this Agreement, and Referral Partner's participation in the Referral Partner Program.

9. **LIMITATION OF LIABILITY. IN NO EVENT SHALL GETGO BE LIABLE TO REFERRAL PARTNER AND/OR ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL LOSS, EXEMPLARY OR OTHER DAMAGES, WHETHER DIRECT OR INDIRECT, ARISING OUT OF OR RELATING TO: (i) LOSS OF DATA, (ii) LOSS OF INCOME, (iii) LOSS OF OPPORTUNITY, (iv) LOST PROFITS, (v) COSTS OF RECOVERY OR ANY OTHER DAMAGES, HOWEVER CAUSED AND BASED ON ANY THEORY OF LIABILITY, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR VIOLATION OF STATUTE WHETHER OR NOT GETGO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO REFERRAL PARTNER. GETGO'S TOTAL CUMULATIVE LIABILITY ARISING OUT OF THIS AGREEMENT SHALL BE LIMITED TO TOTAL AMOUNT PAID AND OWING TO THE SUM OF THE AMOUNTS PAID TO REFERRAL PARTNER DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE INCIDENT GIVING RISE TO THE LIABILITY.**

10. **ADDITIONAL TERMS.**

10.1. **Assignment.** Neither party may assign its rights or delegate its duties under the Agreement either in whole or in part without the other party's prior written consent, which shall not be unreasonably withheld, except that either party may assign the Agreement as part of a corporate reorganization, consolidation, merger, or sale of all or substantially all of its assets. Any attempted assignment without consent will be void. The Agreement will bind and inure to the benefit of each party's successors or assigns.

10.2. **Notices.** GetGo may provide Referral Partner with notice (i) in writing by personal delivery, commercially recognized overnight air courier or by certified or registered mail to the address last designated on Referral Partner's account, (ii) by email to address last designated on the Referral Partner's account, or (iii) electronically via postings on the GetGo Referral Partner Program website. Unless otherwise specified in this Agreement, notices to GetGo shall be in writing and delivered in person, by commercially recognized overnight air courier or by certified or registered mail to address for the GetGo contracting entity specified below with a copy to GetGo Legal Department, 7414 Hollister Avenue, Goleta, California 93117 USA. Notice shall be deemed given (a) upon personal delivery; (b) if sent via commercially recognized overnight delivery, on the second business day after notice is sent, (c) if sent by registered or certified mail, on the fifth business day after notice is sent, (d) if sent by email, when the email is sent, or (e) if posted electronically, upon posting.

10.3. **Entire Agreement.** This Agreement sets forth the entire agreement and understanding between the parties relating to the subject matter of this Agreement and supersedes all prior or contemporaneous oral or written agreements (excluding any subscription agreements for the use of Services unrelated to the referral activities contemplated by this Agreement). The terms of this Agreement may be updated at any time and Referral Partner's continued participation shall be deemed an acceptance of the then-current terms. For any conflict between the terms of this Agreement and the Referral Partner Program, the conflict shall be resolved in that order.

10.4. **Foreign Corrupt Practices Act.** Referral Partner and its employees and agents will not directly or indirectly make an offer, payment, promise to pay, or authorize payment, or offer a gift, promise to give, or authorize the giving of anything of value for the purpose of influencing any act or decision of an official of any government (including a decision not to act) or inducing such a person to use his influence to affect any governmental act or decision in order to assist GetGo in obtaining, retaining or directing any business.

10.5. **International Distribution.** Referral Partner shall not facilitate the export or re-export of any Services, related documentation, or technical data of GetGo to any country, person, entity or potential Customer to which such export would be a violation

of any applicable export restriction. Restricted countries for the purposes of United States law and regulations currently include: Cuba, Iran, Myanmar, North Korea, Sudan and Syria, and additional countries as may be updated by U.S. law from time to time.

10.6. **Publicity.** Neither party will make any disclosures concerning the commercial relationship between GetGo and Partner without the other party's prior written consent unless otherwise permitted by this Agreement. Notwithstanding the foregoing, GetGo may use Referral Partner's marks on its website, subject to Referrals Partner's reasonable approval.

10.7. **General Terms** If any term of this Agreement is not enforceable, this will not affect any other terms. Both parties are independent contractors and nothing in this Agreement creates a partnership, agency, fiduciary or employment relationship between the parties. No person or entity not a party to the Agreement will be a third party beneficiary. Our authorized distributors do not have the right to modify the Agreement or to make commitments binding on us. Failure to enforce any right under the Agreement will not waive that right. Unless otherwise specified, remedies are cumulative. The Agreement may be agreed to online, or executed by electronic signature and in one or more counterparts. No party will be responsible for any delay or failure to perform under the Agreement due to force majeure events (e.g. natural disasters; terrorist activities, activities of third party service providers, labor disputes; and acts of government) and acts beyond a party's reasonable control, but only for so long as those conditions persist.

10.8. **Contracting Party, Choice of Law and Location for Resolving Disputes.** The contracting entity, notice address, governing law and venue will depend on where the Referral Partner is domiciled, as set forth here: [Contracting Entities](#).

Last Updated: February, 2017