



## **REFERRAL AGREEMENT (Inbound Referrals)**

THIS **REFERRAL AGREEMENT** (this “Agreement”) is entered into as of \_\_\_\_\_, 2021 (the “Effective Date”), between Element Analytics, Inc., a Delaware corporation (“Element”), and \_\_\_\_\_, with its principal place of business at \_\_\_\_\_ (“Referral Partner”).

- 1. Referrals.** Referral Partner may refer potential client opportunities (“Opportunities”) to Element to receive certain products and services as set forth on Exhibit A (the “Services”). Referral Partner will use commercially reasonable efforts to promote the Services and generate Opportunities and will assist and support Element throughout the resulting sales cycle for any Opportunity. In its efforts, Referral Partner will obtain Element’s prior written consent before using any marketing materials that includes Element’s trademarks, logos, copyrights, or other identifiers. Referral Partner acknowledges and agrees that Element is not bound to any price (or any other term) with respect to its Services until it has entered into an agreement for such Services with the Opportunity and Referral Partner will not represent or imply anything to the contrary to any party. Referral Partner, for itself and its agents, representatives and employees, shall conduct all activities hereunder in a lawful manner, consistent with the highest standards of fair trade, fair competition and business ethics.
- 2. Acceptance.** With respect to any referrals by Referral Partner, Element may reject an Opportunity with which Element has already (i) entered into a Client Agreement (as defined below) with Element; (ii) received a referral for such Opportunity from a third party; or (iii) identified as a prospective client.
- 3. Client Agreement.** Element will use commercially reasonable efforts to contact each referred Opportunity within thirty (30) days of referral, and to enter into an agreement with each referred Opportunity to receive the Services (a “Client Agreement”). At Element’s request, Referral Partner will arrange an introductory meeting between the Opportunity and Element as soon as practical. Notwithstanding the foregoing, Element may reject entering into a Client Agreement with a referred Opportunity in its reasonable discretion.
- 4. Payment and Referral Fees.** Element will pay to Referral Partner the Referral Fees set forth on Exhibit A. The Referral Fees shall only be payable if the applicable Client Agreement is entered into within the earlier of (a) twelve (12) months after the Opportunity was accepted by Element and (b) three (3) months after the expiration or termination of this Agreement. Notwithstanding anything to the contrary, the Referral Fees will not be payable if prohibited by applicable law or regulation as determined by Element in its reasonable discretion.
- 5. Publicity; Marks.** Neither party will issue any press releases nor make any public statements regarding this Agreement without the prior written consent of the other party. Subject to the terms of this Agreement, Element grants Referral Partner the right to use and display the Element trademarks, tradenames and other designations of source (“Marks”) solely for the purposes set forth in this Agreement. All such use of the Marks shall be in accordance with Element’s trademark usage guidelines provided from time to time. Referral Partner will not use, register or take other action with respect to any Mark anywhere in the world, except to the extent authorized in advance writing by Element. Referral Partner will cease or modify any use of the Marks upon Element’s request. All goodwill in the Marks will inure for the sole benefit of Element. Referral Partner shall make no representation, guarantee or warranty concerning the Services except as expressly authorized in advance by Element in writing.
- 6. Term and Termination.** This Agreement will commence as of the Effective Date and will continue for unless earlier terminated as provided in this Section 6. Either party will have the right to terminate this Agreement, at any time, by giving thirty (30) days written notice to the other party, except that Element will have the right to terminate this Agreement if Referral Partner materially breaches any term or condition hereof and does not cure such breach within ten (10) days after receipt of written notice thereof. Referral Partner will be entitled to Referral Fees only on referrals accepted by Element prior to such notice of termination, subject to Section 4. Sections 5 (but not the right to use the Marks), 6, 7, 8, 9, 10, 11, and 12 will survive termination or expiration of this Agreement.



**7. Confidentiality.** Referral Partner acknowledges that, in the course of performing its duties under this Agreement, it may obtain non-public business, technical or financial information relating to Element (“Confidential Information”). Referral Partner and its employees and agents shall, at all times, during and after the term of this Agreement, keep in trust and confidence all such Confidential Information using at least reasonable security measures, and shall not use such Confidential Information other than as necessary to perform its duties as expressly provided in this Agreement; nor shall Referral Partner or its employees or agents disclose any such Confidential Information to any person without Element’s prior written consent. Referral Partner shall not be bound by this Section with respect to information it can document has entered or later enters the public domain as a result of no act or omission of Referral Partner, or is lawfully received by Referral Partner from third parties without restriction and without breach of any duty of nondisclosure by any such third party.

**8. Warranty Disclaimer.** ELEMENT EXPRESSLY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT.

**9. LIMITATIONS ON LIABILITY.** EXCEPT FOR OBLIGATIONS UNDER SECTION 10 OR A BREACH OF SECTION 5 OR 7, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR (A) ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF PROFITS OR BUSINESS), WHETHER BASED ON BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EVEN IF ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGE, OR (B) ANY OTHER DAMAGES IN EXCESS OF THE REFERRAL FEES PAID AND/OR DUE FROM ELEMENT TO REFERRAL PARTNER. THIS SECTION 9 WILL APPLY TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW.

**10. Indemnification.** Each party (the “Indemnifying Party”) shall indemnify and hold harmless the other party or its affiliates (the “Indemnified Party”) from and against any claim, suit or proceeding brought against an Indemnified Party by a third party alleging facts or circumstances that, if true, would constitute a breach of any covenant, representation or warranty of the Indemnifying Party under this Agreement or the negligence or willful misconduct of the Indemnifying Party or any of its employees or agents in connection with their activities under this Agreement.

**11. Dispute Resolution.** In the event of any dispute between the parties arising out of or related to the terms of this Agreement, or the breach thereof, the parties agree to attempt to first resolve the dispute in good faith via negotiation. If the dispute cannot be settled through negotiation within 14 days, the parties shall submit the dispute to non-binding mediation before resorting to arbitration, litigation or some other dispute resolution procedure (collectively, a “Proceeding”). The parties hereby irrevocably agree that any mediation must be brought in Alameda County, California. If a party wishes to invoke this provision, the party must do so within the time provided under law for commencement of an action on which the claim is based in a court of law. Within ten (10) business days of receipt of a request for mediation, the parties shall attempt to select a neutral mediator. If the parties are unable to agree on a neutral mediator, the dispute will be administered by the AAA under its Commercial Mediation Procedures (which shall also govern the selection of the mediator). This provision shall constitute a written agreement to submit any such dispute arising from the transactions contemplated hereby to non-binding mediation in accordance herewith.

**12. General.** Neither party may assign this Agreement nor any right or obligation without the prior written consent of the other party and any purported transfer or assignment will be void; provided that each party may assign this Agreement in connection with a merger, acquisition or sale of all or substantially all of its assets or business. Subject to the foregoing, this Agreement will inure to the benefit of the parties successors and assigns. The parties are independent contractors and will have no power or authority to assume or create any obligation on behalf of each other. This Agreement will not be construed to create or imply any partnership, agency or joint venture. Failure of either party to exercise or enforce any of its rights under this Agreement will not act as a waiver of such rights. This Agreement will be governed by and construed in accordance with the laws of the State of



California, without regard to or application of conflicts of law rules or principles. The parties agree to bring any action arising under this Agreement only in state and federal courts located in Oakland, California. This Agreement contains the entire understanding of the parties relating to the subject matter and supersedes all prior agreements and understandings, both written and oral, regarding such subject matter. This Agreement may not be modified nor any rights under it waived except in writing, signed by both parties. If any part of this Agreement is determined to be invalid or unenforceable by a court of competent jurisdiction, that provision will be enforced to the maximum extent permissible and the remaining provisions of this Agreement will remain in full force and effect. Each party will give notice to the other party by written communication sent by first class mail, overnight courier or pre-paid post to such other party’s address set forth in the signature blocks below. This Agreement may be executed in counterparts (including fax or PDF), which will constitute one agreement.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be signed by their duly designated and authorized representatives.

**REFERRAL PARTNER**

**ELEMENT ANALYTICS, INC.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**Address for Notice:**

**Address for Notice:**

Attn:

Attn:



## **EXHIBIT A**

### **BUSINESS DETAILS**

“Services” means Element’s Element Unify software product.

“Referral Fees” means 10% of the first year base subscription fees paid by each Opportunity referred by Referral Partner to Element that enters into a Client Agreement with Element, excluding any taxes or fees for implementation, professional services and/or support. The Referral Fees to be paid within thirty (30) days after the Element receives full payment from the Opportunity.