

ON HOLD:32

Referral Partner Program

Terms & Conditions

PLEASE READ THESE TERMS OF USE CAREFULLY BEFORE SUBMITTING A REFERRAL APPLICATION. BY SUBMITTING A REFERRAL APPLICATION OR A REFERRAL FORM TO ON HOLD:32 YOU ARE ACCEPTING THESE TERMS AND YOU AGREE TO ALL TERMS AND CONDITIONS SET FORTH BELOW.

1. Definitions. The following terms wherever used in this Agreement shall have the respective meanings as set forth below:

Referral Partner - Any entity or person who has completed and submitted the Referral Partner Application, and thereby confirmed their acceptance of the terms and conditions set forth in this Agreement.

Customer Referral - The completion, submission, receipt and acknowledgment by ON HOLD:32 of a properly completed Referral Form to ON HOLD:32. A Customer Referral occurs only upon the sending of a written acknowledgment by ON HOLD:32 to Referral Partner that the Referral Form has been received and is properly completed.

New Customer - Any entity or person that is properly identified under the ON HOLD:32 Customer Referral procedures by Referral Partner and who is not already known to ON HOLD:32 as a Customer or potential Customer, and which results in the sale of audio marketing services or products to the New Customer. A New Customer does not include (i) a prospective customer that is already discussing ON HOLD:32 services with an ON HOLD:32 representative, (ii) a person or entity that is already an ON HOLD:32 customer or was an ON HOLD:32 customer at any time within ninety (90) days prior to receipt of the Customer Referral or (iii) a person or entity who is an affiliate, employee or employer of the Referral Partner.

New Order - An initial order placed by a New Customer with ON HOLD:32 within three (3) months of the date of the Customer Referral.

2. Referral Fee. The Referral Fee will be calculated in accordance with the Referral Fee Schedule set forth at the end of this Agreement, and will be paid to the Referral Partner, as described in Paragraph 4. New Orders must be placed by a New Customer within three (3) months of the date of the Customer Referral in order to earn any fee on the referral. Referring Partner receives no Referral Fee for any orders placed with ON HOLD:32 outside the three (3) month period.

3. Fee Splitting - Referral Partner agrees not to engage in any kind of fee splitting by which part of the Referral Fee is given to the New Referral Customer for accepting service with ON HOLD:32. If a fee splitting violation occurs, ON HOLD:32 reserves the right to withhold the Referral Fee from the Referral Partner, and/or terminate this Agreement.

4. Payment of Referral Fee. The Referral Fee will be paid to the Referral Partner within thirty (30) days after ON HOLD:32 has received a qualified sale. Qualified sale is defined as services that have been sold and can be provisioned by ON HOLD:32. The maximum Referral Fee payment shall not exceed \$3,000 per New Customer. Payment of the Referral Fee is contingent upon the Referral Partner completing a W-9 for tax reporting purposes. The Referral Partner shall have sixty (60) days from the receipt of any Referral Fee to dispute in writing to ON HOLD:32 the accuracy of such payment, and any such payment not disputed within such sixty (60) day period shall be deemed to be final and binding on the Referral Partner. If a prospective or existing customer of ON HOLD:32 is referred by Referral Partner and also by either another independent authorized sales associate or another Referral Partner of ON HOLD:32.

ON HOLD:32 has the right, in its sole discretion, to determine which referral source to credit such order and Referral Partner agrees to abide by and be bound by ON HOLD:32's decision(s) in this regard.

5. Acceptance of Contract Terms and Referral Partner Program Terms. In exchange for submission of a Customer Referral, you agree to be bound by these terms and conditions and all of **ON HOLD:32's Referral Partner Program** policies and procedures, which may change from time to time, without prior notice, at the discretion of ON HOLD:32. You acknowledge that being a Referral Partner and receiving a Referral Fee does not in any way violate your place of employment's code of ethics policy regarding outside payment and referral fees, or violate any contract, covenant or agreement to which you are bound.

6. Submission of Customer Referral. Any information you send to ON HOLD:32, including all New Customer information, will be deemed to be NOT confidential. For any information sent, you agree that the information becomes the sole property of ON HOLD:32, and that it may utilize such information for sales and marketing of all of its products and services.

7. Consent to Jurisdiction. This Agreement shall be deemed to have been made in, and shall be construed pursuant to the laws of the State of North Carolina, without regard to conflicts of laws provisions thereof. The sole jurisdiction and venue for actions related to the subject matter hereof shall be the North Carolina state and federal courts located within Wake County, North Carolina and both parties consent to the jurisdiction and venue of such courts.

8. Complete Agreement; Attorney Fees. Except as expressly set forth herein, this Agreement, and the terms and conditions of the ON HOLD:32 Referral Partner Program, are a complete and exclusive statement of the mutual understanding of the parties and supersede, cancel and replace any previous written and oral agreements and communications relating to the subject matter of this Agreement. The prevailing party in any action to enforce this Agreement will be entitled to recover its attorney fees and costs from the non-prevailing party in connection with such action.

9. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the successors, assigns, and legal representatives of each party.

10. Severability. If any provisions to this Agreement or any application of this Agreement is adjudicated to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of this Agreement so long as the severed provisions do not substantially affect the rights of either party under this Agreement. If the severed provisions substantially affect the rights of either party to this Agreement, then the party whose rights are affected may terminate this Agreement upon thirty (30) days written notice.

11. Headings. The headings used herein are for ease of reference and convenience only and shall not be used for purposes of the construction of interpretation of the terms of this Agreement.

12. Waiver. Any waiver of a breach of any provision of this Agreement shall not be effective unless agreed upon in a writing executed by an authorized representative of the party against whom such waiver is asserted. Failure of either party to insist, at any one or more instances, on the performance of any of the terms, covenants or conditions of this Agreement will not be construed as a waiver or a relinquishment of any rights granted by it of the future performance of any such term, covenant or condition, and the obligations of the parties will continue in full force and effect.

13. Not a Partnership. You agree you are an independent contractor and this Agreement is not intended, and does not as a matter of law, form a partnership between you and ON HOLD:32, and ON HOLD:32 does not owe you a fiduciary duty.

14. Notice of Posted Information. You are deemed to be on notice of all information posted, as of the time of posting, on ON HOLD:32's web site: www.onhold32.com

15. Discretion to Refuse Customer Orders. ON HOLD:32, in its sole discretion, may refuse Customer Referrals for any reason, including but not limited to, the credit worthiness of the customer, and such refusal or decision to decline a New Customer Order, or decision to terminate a New Customer Order, regardless of the reason, will not impose any liability on ON HOLD:32 to the Referral Partner.

16. Independent Contractor. You agree your relationship with ON HOLD:32 is solely that of an independent contractor. Neither party shall be deemed to be the agent of the other and neither shall have the authority to act on behalf of the other party except in the manner and to the extent agreed upon in this Agreement or in writing signed by the President of ON HOLD:32.

17. Employees of Referral Partner. Referral Partner's employees shall not be or be deemed to be ON HOLD:32 employees, legal partners, or joint employees. Referral Partner assumes full responsibility for the acts of its employees and for their supervision, daily direction and control. ON HOLD:32 shall not be responsible for worker's compensation, disability benefits, unemployment insurance, withholding taxes, social security and any other taxes or benefits for Referral Partner or Referral Partner's employees. Referral Partner shall be solely responsible for the acts and omissions of its employees and agents and shall have sole responsibility for their supervision, direction and control.

18. Confidentiality. Referral Partner acknowledges and agrees that all information relating to the business and operations of ON HOLD:32 and its affiliates, customers, agents and consultants shall be considered the confidential information of ON HOLD:32 (collectively, Confidential Information) and shall be deemed the exclusive property of ON HOLD:32. Confidential Information shall include, without limitation, all technical, marketing and financial information, any information relating to the pricing, methods, process, financial data, lists, apparatus, statistics, programs, research, development or related information of ON HOLD:32, or any of ON HOLD:32's partners or clients in each instance concerning past, present or future business activities or operations of said entities. Referral partner forever agrees (a) not to disclose the Confidential Information or any part thereof to any other person or entity, and (b) not to use in any way or manner, reveal, divulge, make known, sell, exchange, lease or in any other way transfer any Confidential Information to any third party, or utilize such Confidential Information in direct or indirect competition with ON HOLD:32 or any of its other agents, except to the extent Referral Partner is required by law to disclose the Confidential Information (but only after written notice to ON HOLD:32, such that ON HOLD:32 has a reasonable opportunity to oppose or prevent a disclosure, and only to the extent so required). Referral Partner acknowledges and agrees that due to the unique nature of the Confidential Information, there can be no adequate remedy at law for any breach of its obligations, that any such breach may allow Referral Partner or third parties to unfairly compete with ON HOLD:32 resulting in irreparable harm to ON HOLD:32, and, therefore, that upon any breach of Confidential Information, or any threat thereof, ON HOLD:32 shall be entitled to (a) specific performance and other injunctive relief without the necessity of posting a bond, in addition to whatever remedies it might have at law, and (b) be indemnified by Referral Partner from any loss or harm, including, without limitation, attorney's fees, in connection with any breach or enforcement of Referral Partner's obligations hereunder or the unauthorized use of or release of any such Confidential Information. Referral Partner will notify ON HOLD:32 in writing immediately upon the occurrence of any such unauthorized release or other such breach.

19. No Solicitation. For the duration of this Agreement and for a period of one (1) year after termination or expiration of this Agreement, or the expiration of the last referred customer's contract expires, whichever is greater, Referral Partner shall not (i) directly or indirectly solicit any customer of ON HOLD:32 or its affiliates on behalf of a competitor of ON HOLD:32, or (ii) induce any customer of ON HOLD:32 or its affiliates to discontinue its relationship with ON HOLD:32, or (iii) sell or offer to sell to any customer of ON HOLD:32 any product or service identical or similar to any product or service sold or offered for sale by ON HOLD:32.

20. Tradenames and Trademarks. Referral Partner shall not use the name ON HOLD:32 or any other trademark, service mark, intellectual property or logo of ON HOLD:32 or symbol related to ON HOLD:32 without the prior, express written consent from ON HOLD:32, or advertise, market or provide information about ON HOLD:32's services or use ON HOLD:32's tradenames or trademarks on the Internet or on any print or electronic media, or make any statements regarding ON HOLD:32 which are in any way contrary to or inconsistent with the information contained on ON HOLD:32's website.

21. Indemnification. Referral Partner shall indemnify, defend and hold ON HOLD:32 (and all officers, directors, employees, agents and affiliates thereof) harmless from and against any and all claims, demand, actions, losses, damages, assessments, charges, liabilities, costs and expenses (including without limitation, interest, penalties, attorney's fees and disbursements) which may at any time be suffered or incurred by, or be asserted against, any and all of them, directly or indirectly, on account of or in connection with: (a) Referral Partner's default under any provision under this Agreement, breach of any warranty or representation under this Agreement, or failure in any way to perform any obligation under this Agreement; or (b) bodily injury or damage to property (including death) to any person (including without limitation, any employee of either party and any third person), and any damage to or loss of use of any property, arising out of or in any way relating to this Agreement; or (c) any claim, cause of action, judgment, liability or expense relating to or arising out of the acts or omissions of Referral Partner, its employees, contractors and agents.

22. Damages. To the maximum extent permitted by applicable laws, in no event shall ON HOLD:32 be liable for special, direct, indirect, incidental, or consequential damages, including loss of profits, arising from the relationship of the parties or the conduct of business contemplated in this Agreement or otherwise.

23. Direct Sales by ON HOLD:32. Nothing contained herein shall be deemed to limit ON HOLD:32's ability to market and to solicit sales of the Services directly, through other Referral Partners, associates, affiliates, distributors, agents or dealers, or through any other channel of distribution at any time in any areas, as ON HOLD:32 may determine in its sole discretion.

24. Assignment. Referral Partner may not assign this Agreement or any of its rights or obligations under this Agreement, by operation of law or otherwise, without the prior written consent of ON HOLD:32, which consent may be withheld for any or no reason.

25. Force Majeure. ON HOLD:32 shall not be liable for loss or damage and shall not be deemed to be in breach of this Agreement if its failure to perform its obligations results from (a) compliance with any law, ruling, order, regulation, or requirement of any federal, state, or municipal government, department, agency, or court of competent jurisdiction; (b) acts of God; (c) fires, strikes, war, insurrection, or riot; or (d) or any other cause beyond its reasonable control. Any delay resulting therefrom shall extend performance accordingly or excuse performance, in whole or in part, as may be reasonable.

26. Survival. All terms and provisions of this Agreement that should by their nature survive the termination or expiration of this Agreement shall so survive.

27. Amendment. ON HOLD:32 MAY CHANGE, MODIFY OR AMEND THIS AGREEMENT, INCLUDING THE EARNED REFERRAL FEE PAYOUT PLAN, AT ANYTIME BY PROVIDING NOTICE OF SUCH CHANGE, MODIFICATION OR AMENDMENT TO REFERRAL PARTNER IN WRITING OR VIA EMAIL AND SUCH CHANGE, MODIFICATION OR AMENDMENT SHALL BE EFFECTIVE AND BINDING ON REFERRAL PARTNER WITHOUT NEED FOR AN AMENDMENT TO THIS AGREEMENT EXECUTED BY BOTH PARTIES.

28. Representations. Referral Partner represents and warrants that it is not related to any ON HOLD:32 employee, is 18 years of age or older and a U.S. resident. Referral Partner further represents and warrants that it has full and unrestricted power and authority to execute and perform under this Agreement.

29. Termination. ON HOLD:32 may terminate this Agreement upon 10 days prior written notice to Referral Partner in the event of a breach of this Agreement by Referral Partner that is not cured within such 10 day period. In the absence of a breach, either party may terminate this Agreement upon 30 days prior written notice to the other party. No Referral Fee shall be earned or payable hereunder for any Customer Referral made after the effective date of termination.

ON
HOLD

:32