



TELEHOUSE America

Cooperative Business Exchange Program

This Agreement is effective as of _____, _____ (“Commencement Date”), by and between TELEHOUSE International Corporation of America (“TELEHOUSE”), having an office at 7 Teleport Drive, Staten Island, New York 10311, and _____ [Company Name] (“Participant”), a _____ [State of Incorporation] corporation, having an office at _____ [Address].

WHEREAS, TELEHOUSE owns, controls, or holds leasehold interests in certain office and storage space within commercial and/or industrial buildings throughout the United States, which may be suitable for the placement and operation of computer, switching, and/or telecommunications equipment, and periodically enters into agreements (each, an “agreement”) offering access to such facilities to certain parties so that such parties may install computer and/or telecommunications equipment and cabling;

WHEREAS, Participant offers products or services that may be beneficial to companies in the computer, financial, telecommunications, or other high technology industries; and

WHEREAS, TELEHOUSE and Participant believe it would be advantageous to enter into an Agreement whereby TELEHOUSE will compensate Participant for all companies referred (“Sales Leads”) that execute an agreement with TELEHOUSE, and whereby Participant will compensate TELEHOUSE for all Sales Leads that execute an agreement with Participant;

WHEREAS, the party who receives a referral for a Sales Lead shall herein be referred to as the “Receiver”, and the party who refers a Sales Lead shall herein be referred to as the “Provider”.

NOW THEREFORE, In consideration of the mutual promises and covenants hereinafter contained and for other good and valuable consideration, TELEHOUSE and Participant hereby agree as follows:

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1. Term and Termination.

a) Term. Subject to earlier termination, as provided herein, the term of this Agreement shall be for a period of one (1) year from the effective Commencement Date, and shall automatically extend thereafter for successive terms of one (1) year each.

b) Termination. Either party may terminate this Agreement upon thirty (30) days prior written notice to the other party.

c) Effect of Termination. Upon termination of this Agreement, either party's only obligations shall be to adhere to the terms and conditions of the Mutual Non-Disclosure Agreement (Exhibit A). In addition, both parties shall be obligated to pay Referral Fees due under Section 4 for any Sales Leads that were introduced prior to the effective date of termination.

2. Confidential Information. Each party, during the term of this Agreement, may develop Confidential Information for the other party and may learn of Confidential Information developed or owned by the other party or entrusted to it by others. **Exhibit A** shall govern the rights and obligations of the parties concerning confidential information provided by the parties because of, or relating to, this Agreement.

3. Relationship Between the Parties. This Agreement does not create, constitute, or make a joint venture between TELEHOUSE and Participant. In entering into this Agreement, TELEHOUSE is not an employee or agent of Participant, nor is Participant an employee or agent of TELEHOUSE. Both parties understand that the referral relationship set forth in this Agreement is in no way exclusive. Notwithstanding the provisions and obligations under this Agreement, neither party shall have the right or power of authority in any way to negotiate on behalf of, or to bind the other party to the fulfillment of any condition, contract or obligation, or create any binding liability.

Both parties understand that upon referring a Sales Lead, all negotiations for the provision of the Receiver's products or services to the Sales Lead shall be conducted between the Receiver and the Sales Lead. The Provider will not act as the Sales Lead's agent or negotiator with the Receiver and agrees to allow the Receiver and the Sales Lead to negotiate independently of the Provider.

4. Referral Fees. The Provider shall receive a fee ("Referral Fee") from the Receiver for all Registered Referrals of Sales Leads, as defined below, that are accepted by the Receiver, where the Receiver enters into an agreement with the Sales Lead. A "Registered

Referral" shall be considered any referral where the Provider submits a Lead Referral Form to the Receiver and the Receiver accepts or rejects the referred Sales Lead, subject to the general conditions set forth in **Exhibit B**. If the Sales Lead which is the subject of a Lead Referral Form is affiliated with an entity which has multiple divisions, departments, subsidiaries, parents, or other discrete operating business units, such Sales Lead must be identified in the Lead Referral Form narrowly and specifically to the appropriate business unit which is the immediate Sales Lead, including any geographic limitations. Referral fees will be paid for initial agreements, but not for any extensions or renewals of agreements.

All Referral Fees shall be paid in accordance with the Referral Fee Schedule attached hereto as **Exhibit B**. The Receiver agrees to supply the Provider with a description of the agreement terms between the Receiver and Sales Lead that are applicable to the calculation of any related Referral Fees due to the Provider. Actual pages of agreements between the Receiver and Sales Lead will not be provided to the Provider due to confidentiality issues.

In the event that the Provider is a current customer of the Receiver, any Referral Fees due to the Provider will appear as credit(s) to their next scheduled invoice(s). However, if the Provider's account with the Receiver is past due, the Receiver reserves the right to credit any Referral Fees to the Provider's past due invoices or withhold Referral Fees if the Provider is no longer a customer of the Receiver.

5. Assignment. This Agreement shall not be assigned by either party without prior written consent of the other party. Any assignment of Referral Fees so authorized shall be subject to any and all obligations, liabilities, and indebtedness due to either party. Either party's prior written consent can be withheld in such party's absolute discretion.

6. Right to Reject Prospective Parties. Sales Leads may be rejected by the Receiver if a) the Sales Lead is a current customer of the Receiver b) the Receiver is actively pursuing the same Sales Lead before acceptance of the Lead Referral Form. The Provider expressly waives any claims, rights, or actions against the Receiver, now or in the future, arising in any way from the refusal of the Receiver to enter an agreement with any Sales Lead.

7. Notices. Any notices, or other communications under this Agreement, with the exception of completed Referral Forms, shall be sufficiently given if given in writing and delivered by U.S. Regular Mail to the address of such party set forth in **Exhibit B** of this

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Agreement. Either party may designate a different address by giving notice of change of address in the manner provided above.

8. Waiver. No delay or omission by either party in exercising any right under this Agreement will operate as a waiver of that or any other right. Either party may waive the requirements of any specific provision of this Agreement without waiving any other provisions of this Agreement. A waiver of consent given by either party on any one occasion is effective only in that instance and will not be construed as a waiver of any right on any other occasion.

9. Validity. In the event any provision of this Agreement shall, to any extent, be held to be invalid or unenforceable for any reason, such invalidity, or enforceability, shall attach only to such provision to the extent of such invalidity, and shall not affect or render invalid or unenforceable any other provision of this Agreement and in such event such provision shall be deemed to be modified to such extent as may be necessary to cause the geographic or business scope or duration thereof to be valid and enforceable to the maximum extent permitted by law.

10. Entire Agreement. This Agreement, including any Exhibits attached hereto, sets forth the entire understanding and agreement of the parties and supersedes any and all oral or written agreements or understandings between the parties as to the subject matter of this Agreement. This Agreement may be amended only by a writing signed by both parties. Neither party is relying upon any warranties, representations, assurances or inducements not expressly set forth herein.

11. Disputes.

(a) The parties agree that any dispute or controversy arising out of, relating to, or in connection with this Agreement or the termination thereof, or the interpretation, validity, construction, performance, breach, or termination thereof, shall be settled by expedited, binding arbitration to be held in New York, New York in accordance with the National Rules for the Resolution of Commercial Disputes then in effect of the American Arbitration Association (the "Rules"). The decision of the arbitrator shall be final, conclusive and binding on the parties to the arbitration. Judgment may be entered on the arbitrator's decision in any court having jurisdiction.

(b) The arbitrator(s) shall apply New York law to the merits of any dispute or claim, without reference to rules of conflicts of law. The arbitration proceedings shall be governed by federal arbitration law and by the Rules, without reference to state arbitration law.

12. Authority to Sign. Each party represents that the respective signatories of this Agreement presently have and shall have full authority to enter into this Agreement and to bind and obligate their respective organizations to the terms, rights, and obligations under this Agreement.

The Provider represents and warrants to the Receiver that he or she is not bound by any agreement or subject to any restriction, including any policy of his or her employer, which would interfere with or prevent his or her entering into or carrying out this Agreement and shall defend, indemnify and hold the Receiver harmless from any loss, liability, expense, cost or claim by any person in any way arising out of, relating to or in connection with this Section 12.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

_____ **[Participant]**

**TELEHOUSE International
Corporation of America**

Signature

Signature

Name

Name

Title

Title

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Date

Date

ATTACHMENTS:

Exhibit A: Mutual Non-Disclosure Agreement

Exhibit B: Referral Fee Schedule

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EXHIBIT A

Mutual Non-Disclosure Agreement

This Exhibit A, herein made part of the Cooperative Business Exchange Agreement between TELEHOUSE and Participant is for the purpose of protecting the confidential or proprietary nature of information to be disclosed by the parties to each other with respect to the Cooperative Business Exchange Agreement.

1. In connection with discussion and/or negotiations between the parties regarding this matter of mutual interest ("Subject Matter"), each party to this Agreement may wish to disclose its proprietary or trade secret information ("Confidential Information") to the other party on a confidential basis. The disclosing party may consider such Confidential Information proprietary under this Agreement either because it has developed the Confidential Information internally, or because it has received the Confidential Information subject to a continuing obligation to maintain the confidentiality of the Confidential Information, or because of other reasons. The disclosing party may consider such Confidential Information as a trade secret because such Confidential Information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertained by proper means by, other persons who can obtain economic value from its disclosure or use.
 - c. advise those persons to whom the Confidential Information was disclosed of their obligations with respect to the Confidential Information;
 - d. use the Confidential Information only in connection with continuing discussions by the parties concerning the Subject Matter, except as may otherwise be mutually agreed upon in writing; and
 - e. except for the purposes of evaluating the Subject Matter, not copy or distribute such Confidential Information or knowingly allow anyone else to copy or distribute such Confidential Information, and any and all copies shall bear the same notices or legends, if any, as the originals.
2. When Confidential Information deemed to be proprietary or trade secret is furnished in a tangible form, including electronic mail, the disclosing party shall clearly mark the Confidential Information in a manner to indicate that it is considered proprietary, confidential, trade secret or otherwise subject to limited distribution as provided herein. When Confidential Information deemed to be proprietary is provided orally, including Confidential Information conveyed to an answering machine, voice mail box or similar medium, the disclosing party shall, at the time of disclosure, clearly identify the Confidential Information as being proprietary or confidential or otherwise subject to limited distribution as provided herein. If the disclosing party fails to identify Confidential Information as confidential, such disclosing party may correct the omission by later notice consisting of a writing or statement, and the recipient shall only be liable for unauthorized disclosures of such Confidential Information made subsequent to said notice. In addition, the existence and terms of this Agreement, and the fact and substance of discussions and correspondence between the parties concerning goods or services, shall be deemed proprietary Confidential Information.
3. With respect to Confidential Information disclosed under this Agreement, the party receiving Confidential Information shall:
 - a. hold the Confidential Information in confidence, exercising a degree of care not less than the care used by receiving party to protect its own proprietary or Confidential Information that it does not wish to disclose;
 - b. restrict disclosure of the Confidential Information solely to those directors, officers, employees, affiliates, and/or agents/consultants with a need to know and not disclose it to any other person;
4. The Confidential Information shall be deemed the property of the disclosing party and, upon request, the other party will return all Confidential Information received in tangible form (and marked proprietary or confidential) to the disclosing party or will destroy or erase if such Confidential Information is recorded on an erasable storage medium, all such Confidential Information at the disclosing party's direction, and certify to the disclosing party the Confidential Information has been destroyed or erased. If either party loses or makes an unauthorized disclosure of the other party's Confidential Information, it shall notify such other party immediately and use reasonable efforts to retrieve the lost or wrongfully disclosed Confidential Information.
5. In the event a party or its affiliate(s) makes an unauthorized disclosure, such party shall indemnify the aggrieved party, including the aggrieved party's officers, directors, managers, agents and/or employees for any loss proximately arising from such disclosure.
6. The party to whom Confidential Information is disclosed shall have no obligation to preserve the proprietary nature of any Confidential Information which:
 - a. was previously known to such party free of any obligation to keep it confidential;
 - b. is or becomes publicly available by other than unauthorized disclosure;
 - c. is developed by or on behalf of such party independent of any Confidential Information furnished under this Agreement;

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d. is received from a third party whose disclosure does not violate any confidentiality obligation; or

e. is disclosed pursuant to the requirement or request of a duly empowered governmental agency or court of competent jurisdiction to the extent such disclosure is required by a valid law, regulation or court order, and sufficient notice is given by the recipient to the disclosing party of any such requirement or request to permit the disclosing party to seek an appropriate protective order or exemption from such requirement or request, unless such notice is prohibited by said order.

7. Neither this Agreement, nor the disclosure of Confidential Information under this Agreement, nor the ongoing discussions and correspondence between the parties, shall constitute or imply a commitment or binding obligation between the parties or their respective affiliated companies, if any, regarding the Subject Matter. If, in the future, the parties elect to enter into a binding commitment regarding the Subject Matter, such commitment will be explicitly stated in a separate written agreement executed by both parties, and the parties hereby affirm that they do not intend their discussions, correspondence, and other activities to be construed as forming a contract regarding the Subject Matter or any other transaction between them without execution of such separate written agreement.

8. This Agreement shall benefit and be binding upon the parties hereto and their respective successors and assigns.

9. This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to choice of law principles.

10. This Agreement shall become effective as of the Commencement Date of the Cooperative Business Exchange Agreement ("Effective Date"). Disclosures of Confidential Information between the parties under this Agreement (the "Information Disclosure Period") may take place for as long as the Cooperative Business Exchange Agreement remains in effect. The obligations of the parties contained in Paragraphs 3 and 4 shall survive and continue beyond the expiration of the Information Disclosure Period indefinitely with regard to Confidential Information designated as proprietary or trade secret by disclosing party. All other Confidential Information received that is subject to a continuing obligation to maintain the confidentiality of the Confidential Information shall be held confidential for as long as required by the continuing obligation.

a. All Sales Lead information submitted by Participant shall be treated as Confidential Information indefinitely.

11. The parties acknowledge that in the event of an unauthorized disclosure, the damages incurred by a non-disclosing party may be difficult if not impossible to ascertain, and that such non-disclosing party may seek injunctive relief as well as monetary damages against a party that breaches this Agreement.

12. This Agreement constitutes the entire understanding between the parties with respect to the Confidential Information

provided hereunder. No amendment or modification of this Agreement shall be valid or binding on the parties unless made in writing and executed on behalf of each party by its duly authorized representative.

13. Neither party:

a. is responsible or liable for any business decisions made or inferences drawn by the other party in reliance on this Agreement or in reliance on actions taken or disclosures made pursuant to this Agreement;

b. shall be liable to or through the other hereunder for amounts representing loss of profits, loss of business, or special, indirect, consequential, or punitive damages.

14. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, NEITHER DISCLOSING PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES OF ANY NATURE WHATSOEVER WITH RESPECT TO ANY CONFIDENTIAL INFORMATION DISCLOSED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR AGAINST INFRINGEMENT.

15. The parties acknowledge that this Agreement does not restrict the ability of the parties to engage in their respective businesses, nor does it limit either party's use or application of any Confidential Information or knowledge acquired independently of the other without a breach of this Agreement in the course of such party's business.

16. This Agreement is the entire agreement between the parties with respect to non-disclosure of Confidential Information pertaining to the matter of mutual interest stated above and supercedes all prior agreements and understandings with respect to this subject. This Agreement may be amended only by written agreement executed by both parties. This Agreement shall not be assigned or transferred by either party without the prior written consent of the other. This Agreement shall be binding on agents, successors, and permitted assigns of the parties.

17. Unless terminated or Amended earlier by written notice, this Agreement shall remain in effect until such time as the Cooperative Business Exchange Agreement executed by both parties is terminated.

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EXHIBIT B

Referral Fee Schedule

REFERRAL FEES:

The Receiver agrees to pay the Provider five percentage (5%) of (the "Referral Fee") the Monthly Recurring Revenue (MRC) to be realized from a Sales Lead during the duration of an initial term of an agreement entered into between the Sales Lead and the Receiver. If an initial agreement between the Sales Lead and the Receiver does not have a term associated with the services provided, the Referral Fee will equal five percentage (5%) of the MRC to be realized from the Sales Lead during the initial twelve month period of the agreement. The Referral Fee is paid for these MRCs for standard service specification. This means these MRCs shall exclude any charges for additional power or other miscellaneous services that the Receiver may contract to provide to the Sales Lead. The Receiver has sole responsibility to define its standard service specification.

TIMING OF PAYMENT:

The Receiver shall pay the Provider the Referral Fee every three (3) months, in arrears or, at Provider's sole option, a Lump Sum Referral Fee for ONE THOUSAND DOLLARS (\$1000.00), as specified above, within thirty (30) days after the Fee Commencement Date of the Receiver's executed agreement with the Sales Lead, provided that the Sales Lead has met all contractual obligations under the terms and conditions of the Receiver's agreement, including submission of any installation fees, insurance certificates, pre-payments, etc. per the agreement terms.

GENERAL CONDITIONS:

1. All agreements, licenses, or leases shall be between the Receiver and the Sales Lead, and shall not involve the Provider as a third party.
2. The Provider shall send the Receiver a completed Lead Referral Form (by mail, fax or email) for all referrals of Sales Leads. The Receiver shall sign and acknowledge receipt of the form upon receipt and return a copy to the Provider within three (3) business days indicating its receipt and acceptance or rejection of the Sales Lead referral. All information shall be forwarded to the following:
 - a) TELEHOUSE America:
7 Teleport Drive, Staten Island, NY 10311
Email: sales@telehouse.com
Fax: (718) 355-2517
Attn: Sales & Marketing
 - b) _____ [Participant] :
_____ [Address]
Email: _____
Fax: (_____) _____ - _____
Attn: _____
3. The designated mailing address, email address, or fax number may be changed upon written notice and acceptance of the changes by both parties.
4. In situations where the Receiver has been in previous discussions with a Sales Lead for a specific deal, prior to receiving the Sales Lead's information from the Provider for a potentially similar deal, the Receiver reserves the right to remove the Sales Lead from consideration in regard to the Provider's obligation for payment of Referral Fees to Participant.
5. If the Receiver accepts a Sales Lead, and the Sales Lead subsequently indicates to the Receiver that they are no longer interested in pursuing a contractual relationship, following a ten (10) business day waiting period, the Receiver will notify the Provider that the referral is being removed from consideration for any Referral Fees.
6. If the Receiver accepts a Sales Lead and the Sales Lead, at any time, does not respond to the Receiver within thirty (30) days of the Receiver's inquiry following the last contact with the Sales Lead, the Receiver will notify the Provider, that the referral is being removed from consideration for any Referral Fees.

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7. In the event that two different Provider's submit Lead Referral Forms for the same Sales Lead, only the form received and accepted earliest by the Receiver shall be considered eligible for any related Referral Fees, subject to the provisions above.
8. The Receiver agrees to disclose to the Provider when a deal has been closed with a Sales Lead resulting in an executed agreement, and the Receiver agrees to supply the Provider with a description of the agreement terms between the Receiver and the Sales Lead that are applicable to the calculation of any related Referral Fees due to the Provider. Actual pages of the agreement between the Receiver and the Sales Lead will not be provided to the Provider due to confidentiality issues.
9. All Referral Fees are made to the Provider in US Dollars only.

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