

# Referral Partner Terms and Conditions

These Terms and Conditions set out the terms which govern the agreement between MetrixData 360 Ltd., doing business as “MetrixData 360”, an Ontario corporation, having a place of business at Unit #10, 265 Hanlon Creek Blvd, N1C 0A1, Guelph, Ontario, Canada (“**MetrixData 360**”) and the organization identified on the MetrixData 360 Referral Partner Application (“**Partner**”). By clicking “I Agree,” Partner hereby agrees to all Terms and Conditions set out in herein, effective immediately (the “**Effective Date**”).

## 1. DEFINITIONS

For the purposes of this Agreement, in addition to the capitalized terms defined elsewhere in this Agreement, the following terms shall have the meanings ascribed to them as follows:


“**Affiliate**” of a party means any corporation or other legal entity that such party directly or indirectly controls, is controlled by, or is under common control with. In this context, a party “controls” a corporation or other entity if it or any combination of it and/or its Affiliates owns more than fifty percent (50%) of the voting rights for the board of directors or other mechanism of control for such corporation or other entity;

“**Agreement**” means these Terms and Conditions together with the Referral Partner Authorization Letter and the MetrixData 360 Referral Program Guide;

“**Commission**” has the meaning set out in 3(a);

“**Commissionable Customers**” shall mean any new Customer with which MetrixData 360 enters into a Customer Agreement as a direct result of Partner’s referral and meets any other criteria set out in this Agreement or the Program Guide;

“**Confidential Information**” means any business, marketing, technical, scientific or other information disclosed by either party (including their Affiliates) which, at the time of disclosure is designated as confidential (or like designation), is disclosed in circumstances of confidence, or would be understood by the parties (or their Affiliates), exercising reasonable business judgment, to be confidential;



“**Customer**” means any company who enters into an agreement with Reseller for the elements of MetrixData 360s as outlined in the Statement of Work;

“**Customer Agreement**” means a written or electronic agreement entered into between MetrixData 360 and a Customer under which MetrixData 360 will provide to Customer any Services;

“**Initial Term**” has the meaning given in Section 4(a);

“**Intellectual Property**” means all rights in any invention, discovery, improvement, utility model, patent, copyright, trademark, industrial design or mask work right, and all rights of whatsoever nature in computer software and data, Confidential Information, trade secrets or know-how, and all intangible rights or privileges of a nature similar to any of the foregoing, in every case in any part of the world whether or not registered, and will include all rights in any applications and granted registrations for any of the foregoing rights;

“**Net Revenue**” has the meaning set out in the MetrixData 360 Referral Program Guide;

“**Offering**” refers to the entirety of MetrixData 360’s Professional Services, Software, Third-Party Software and Third-Party Licenses.

“**Payment Term**” means the period for which Partner will receive the Commission, as set out in the Referral Opportunity Approved Letter;

“**Professional Services**” means any data conversion, configuration, implementation, training, consulting, or custom software development services to be performed for a Customer in accordance with a Customer Agreement;

“**Referral Opportunity Approved Letter**” has the meaning set out in the Referral Program Guide;

“**Referral Partner Authorization Letter**” means the letter sent by MetrixData 360 to Partner confirming Partner’s enrollment in the Referral Program;

“**Referral Program**” means the MetrixData 360 Referral Program as described in the Referral Program Guide, which may be updated by MetrixData 360 from time to time;

**“Referral Program Guide”** means the Referral Program documentation provided by MetrixData 360 to Partner and amended by MetrixData 360 from time to time;

**“Renewal Term”** has the meaning given in Section 4(a) of this Agreement;

**“Services”** mean any and all services that MetrixData 360 provides to a Customer, including access to the Software, Third Party Software, Third Party Licenses, Professional Services and any applicable Deliverables, in accordance with a Customer Agreement;

**“Software”** means MetrixData 360’s proprietary MetrixData 360 platform of tools and process, including any upgrades, new releases, new features or related products released by MetrixData 360;

**“Term”** has the meaning given in Section 4(a) of this Agreement; and

**“Territory”** shall have the meaning set out in Referral Partner Authorization Letter.

**“Third Party Licences”** refers to any third-party licence(s) in respect of any Third-Party Software.

**“Third Party Software”** refers to any software programs proprietary to third parties which are to be used by MetrixData 360 to provide the Offering

## 2. REFERRAL APPOINTMENT

(a) **Appointment.** Subject to the terms and conditions of this Agreement, MetrixData 360 hereby grants to Partner the non-exclusive, non-transferable, non-sublicenseable right to promote the Services in the Territory to potential Customers of MetrixData 360, provided that Partner will not make any representations and warranties on behalf of MetrixData 360 or bind or commit MetrixData 360 in any way. Partner agrees to comply with all applicable laws and not make any misleading or false claims about MetrixData 360 or its Services.

(b) **Eligibility.** Partner’s participation in the Referral Program is prohibited where void by applicable law or regulation. Partner represents and warrants to MetrixData 360 that (i) if Partner is an individual, it is the age of majority in its jurisdiction of residence; (ii) Partner is not an employee of MetrixData 360 Ltd. or an immediate family member or household member of an employee of MetrixData 360 Ltd.; (iii) Partner is legally able to accept the

Commission; and (iv) Partner's acceptance of the Commission does not violate any standards of business conduct policies to which Partner has agreed.

(c) **Referral Process.** Partner shall complete a registration form in respect of any prospective Customer to be Referred to MetrixData 360 as outlined in the MetrixData 360 Referral Program Guide.

(d) **Customer Subscriptions.** Partner acknowledges and agrees that all Services shall be purchased as direct transactions between Customers and MetrixData 360 or through an authorized MetrixData 360 Reselling Partner (with permission from both the Referrer and with agreement from the Customer). MetrixData 360 shall have sole discretion on the pricing of Services and whether or not to enter into a Customer Agreement with any prospective Customer referred by Partner.

(e) **Trademark License.** MetrixData 360 grants Partner a non-exclusive, revocable, limited, non-sublicenseable license, to copy, display and use the MetrixData 360 trademarks, names and logos ("**MetrixData 360 Marks**") to promote the Offering during the Term as further described in the MetrixData 360 Referral Program Guide. All use of MetrixData 360 Marks by Partner will enure to the benefit of MetrixData 360.

(f) **Program Changes.** MetrixData 360 reserves the right to modify, amend, cancel, or suspend the Referral Program at any time in its sole discretion.

(g) **Restrictions.** In participating in the Referral Program Partner shall (i) comply with all applicable laws, including privacy laws and anti-corruption laws; (ii) not send any unsolicited emails, junk or spam communications, or otherwise breach applicable anti-spam laws; and (iii) not use any bots, "web crawlers" or similar technologies to mine the Internet for personal information.

### 3. COMPENSATION

(a) **Commission.** MetrixData 360 agrees to pay Partner a commission ("**Commission**"), as described in the Referral Opportunity Approved Letter. MetrixData 360 shall only be required to pay the Commission upon receipt of full payment from the applicable Commissionable Customer under a Customer Agreement.

(b) **Payment.** Except as otherwise expressly provided in the MetrixData 360 Referral Program Guide, all amounts due under this Agreement will be paid quarterly in the month following the end of calendar quarters. E.g. January, April, July, October. Payments will be made in the currency of the applicable Net Revenue.

(c) **Taxes.** The Commission is inclusive of applicable federal, provincial, state, local or other governmental sales, goods and services, harmonized or other taxes, fees or charges imposed by a government authority (“**Taxes**”) only if taxes are being charged by Metrix-Data 360 to the Customer. Partner agrees and acknowledges that it is responsible for the report and remitting of all applicable Taxes that arise from the Commission. Notwithstanding the foregoing, MetrixData 360 may withhold from the Commission any amounts required to be withheld by the appropriate government authority, provided that MetrixData 360 remits such amounts to the appropriate government authority on behalf of the Partner and supplies Partner with evidence of such payment.

## 4. TERM AND TERMINATION

(a) **Term.** This Agreement will commence as of the Effective Date noted on the Referral Partner Authorization Letter and will continue in effect for an initial term of one (1) year (such initial term referred to in this Agreement as the “**Initial Term**”). Thereafter, the term of the Agreement will be automatically renewed annually on the anniversary of the Effective Date for additional one (1) year renewal terms (any such subsequent renewal terms referred to in this Agreement as a “**Renewal Term**”), unless either party gives written notice of non-renewal to the other party at least sixty (60) days prior to the end of the Initial Term or any Renewal Term hereof. Collectively, the Initial Term and any subsequent Renewal Terms shall constitute the “**Term**”.

(b) **Termination.** MetrixData 360 may terminate this Agreement at any time by providing 30 days’ written notice to Partner. Either party may terminate this Agreement by giving a written notice to the other party: (i) if the other party commits a material breach of this Agreement and fails to remedy such material breach within thirty (30) days after delivery of written notice by the non-breaching party of the occurrence or existence of such breach or such longer period as may be agreed to in writing by the non-breaching party; (ii) if the other party applies for or consents to the appointment of a receiver, trustee, or liquidator for all or substantially all of its assets or such a receiver, trustee, or liquidator is appointed; or such party has filed against it an involuntary petition of bankruptcy that has not been dismissed within sixty (60) days thereof, or files a voluntary petition of bankruptcy, or a petition or

answer seeking reorganization, or an arrangement with creditors, or seeks to take advantage of any other law relating to relief of debtors; or (iii) for convenience upon ninety (60) days' notice by the terminating party.

(c) **Effect of Termination and Survival.** Upon termination or expiration of the Agreement, Partner's appointment as a partner for MetrixData 360's Services shall immediately end. All rights and licenses granted pursuant to this Agreement will expire immediately upon termination or expiration. Termination or expiration will not release MetrixData 360 from its obligation to pay Partner any fees accruing prior to the date of the termination or expiration.

(d) **Survival.** Sections 1, 3, 4, 5, 6, 7, 8 and 9 of this Agreement shall survive termination or expiration. Upon termination or expiration of the Agreement, Partner shall immediately destroy or return, at MetrixData 360's option, MetrixData 360's Confidential Information and all copies thereof.

## 5. WARRANTIES AND DISCLAIMER

(a) **Mutual Warranties.** Each party represents and warrants to the other that: (i) it has full power and authority to enter into this Agreement, and to perform its obligations under this Agreement; (ii) this Agreement has been duly authorized, executed and delivered by the party and constitutes a legally enforceable agreement of the party; and (iii) this Agreement is not limited or restricted by, and is not in conflict with, any commercial arrangements, obligations, contract, agreement or other instrument to which the representing party is either bound or subject.

(b) **Disclaimer.** THE LIMITED WARRANTIES CONTAINED IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER REPRESENTATIONS, WARRANTIES, CONDITIONS, UNDERTAKINGS OR TERMS OF ANY KIND, EXPRESS OR IMPLIED, WRITTEN OR ORAL, ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING, USAGE OF TRADE, OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OR CONDITIONS OF MERCHANTABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, DURABILITY, LACK OF VIRUSES, NON-INFRINGEMENT, ACCURACY OR COMPLETENESS OF RESPONSES, RESULTS, LACK OF NEGLIGENCE AND/OR LACK OF WORKMANLIKE EFFORT, AND METRIXDATA 360 HEREBY DISCLAIMS ANY SUCH IMPLIED REPRESENTATIONS, WARRANTIES AND/OR CONDITIONS. NO METRIXDATA 360 AGENT, REPRESENTATIVE OR DEALER IS AUTHORIZED TO MODIFY, EXTEND OR ADD TO ANY WARRANTY PROVIDED BY METRIXDATA 360 PURSUANT TO THIS AGREEMENT.

## 6. LIMITATION OF LIABILITY

(a) IN NO EVENT SHALL METRIXDATA 360 (INCLUDING ITS AFFILIATES, SUBCONTRACTORS, AGENTS, LICENSORS, SUPPLIERS, DIRECTORS OR EMPLOYEES) BE LIABLE TO PARTNER FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, INDIRECT, RELIANCE OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA, LOST SAVINGS OR OTHER SIMILAR PECUNIARY LOSS) WHETHER ARISING FROM CONTRACT (INCLUDING FUNDAMENTAL BREACH), TORT (INCLUDING NEGLIGENCE) OR ANY OTHER THEORY OF LIABILITY.

(b) IN NO EVENT SHALL METRIXDATA 360'S (INCLUDING ITS AFFILIATES, SUBCONTRACTORS, AGENTS, LICENSORS, SUPPLIERS, DIRECTORS OR EMPLOYEES) LIABILITY UNDER THIS AGREEMENT, REGARDLESS OF THE BASIS OF LIABILITY OR THE FORM OF ACTION (INCLUDING FUNDAMENTAL BREACH, TORT, NEGLIGENCE, MISREPRESENTATION, OR OTHER CONTRACTUAL OR TORT CLAIM), EXCEED TOTAL PAYMENTS MADE BY METRIXDATA 360 TO PARTNER IN THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE EVENT OR EVENTS GIVING RISE TO THE LIABILITY.

## 7. INDEMNITY

(a) **MetrixData 360 Indemnity.** If any actions, suits or proceedings are brought against Partner by a third party alleging that the Services or MetrixData 360 Marks infringed upon the Intellectual Property rights of a third party, MetrixData 360 shall defend Partner, at MetrixData 360 expense, and shall pay any settlement amounts MetrixData 360 authorizes and all damages, costs and attorneys' fees finally awarded against Partner in any such actions, suits or proceedings up to a maximum amount equivalent to the revenue generated by the business partner in the prior six (6) months. Notwithstanding the foregoing, MetrixData 360 shall have no indemnity obligation under this Agreement, or for any claim to the extent based on (i) the use of other than the latest release of the Software, (ii) the use or combination of the Software with software, hardware, or other materials not provided or otherwise specifically authorized by MetrixData 360, (iii) unauthorized modification of the Software, or (iv) Partner's breach of any of the terms and conditions of this Agreement. This Section 7.1 states the entire liability of MetrixData 360 under this Agreement with respect to indemnification or liability for infringement of third party patents, copyrights, or other proprietary right by the Software or associated documentation or any part thereof or by their use or operation.

(b) **Partner Indemnity.** If any actions, suits or proceedings are brought against MetrixData 360 by a third party arising from or relating to (i) any representations or warranties made by Partner in respect to the Program(s) that were not authorized in writing by MetrixData 360, or (ii) any breach by Partner of any applicable laws or of the terms or conditions of this Agreement, Partner shall defend MetrixData 360, at Partner's expense, and shall pay any settlement amounts Partner authorizes and all damages, costs and attorneys' fees finally awarded against MetrixData 360 in any such actions, suits or proceedings.

(c) **Procedure.** Each party's indemnity obligations hereunder are contingent upon: (i) the indemnifying party promptly being notified in writing of such claim, (ii) the indemnifying party having the sole control of the defense and/or settlement thereof, (iii) the indemnified party furnishing to the indemnifying party on request any information in the indemnified party's possession or control for such defense, (iv) the indemnified party not admitting any such claim and/or making any payments with respect to such claim without the prior written consent of the indemnifying party, and (v) the indemnified party, at the indemnifying Party's expense, cooperating with, and providing such assistance to the indemnifying party in the defense of such claims as reasonably requested by the indemnifying Party.

## 8. CONFIDENTIALITY AND INTELLECTUAL PROPERTY

(a) **Protection of Confidential Information.** Partner acknowledges that the Services (and any information incorporated therein or provided in respect thereto, including pricing, customer lists, and partners) and this Agreement is the Confidential Information of MetrixData 360. Each party shall maintain in confidence all Confidential Information of the other party and shall use such Confidential Information only for the purpose of exercising its rights and fulfilling its obligations under this Agreement, and shall not disclose any Confidential Information of the other party to any third party except as expressly permitted hereunder or make any unauthorized use thereof. Each party shall treat Confidential Information of the other party with the same degree of care against disclosure or unauthorized use as it affords to its own information of a similar nature, or a reasonable degree of care, whichever is greater. Each party further agrees not to remove or destroy any proprietary or confidential legends or markings placed upon any documents or other materials containing Confidential Information of the other party. Each party shall be entitled to provide Confidential Information to contractors of that party that have agreed to confidentiality obligations at least as protective as those contained herein. The obligations of confidence set forth in this Agreement shall extend to any Affiliates that have received Confidential Information and shall also cover Confidential Information disclosed by any Affiliate.




(b) **Exemptions.** Neither party shall be bound by obligations restricting disclosure and use set forth in this Agreement with respect to Confidential Information, or any part thereof, which: (i) was lawfully known or received by the receiving party prior to disclosure without any obligation of confidentiality; (ii) was lawfully generally publicly known prior to its disclosure, or becomes generally publicly known other than through a breach of this Agreement; (iii) was disclosed to the receiving party by a third party, provided such third party, or any other party from whom such third party receives such information, is not in breach of any confidentiality obligation in respect of such information; or (iv) is independently designed and developed by the receiving party without any violation of any Intellectual Property or other rights of the other party.

(c) **Compelled Disclosure.** If a receiving party is compelled pursuant to legal, judicial, or administrative proceedings, or otherwise required by law, to disclose Confidential Information of a disclosing party, the receiving party shall use reasonable efforts to (i) seek confidential treatment for such Confidential Information, and (ii) provide prior written notice to the disclosing party to allow the disclosing party to seek protective or other court orders.

(d) **Reservation of Rights.** The rights and licenses granted under this Agreement are only as expressly set forth herein and in specific schedules. No other license or right is or will be deemed to be granted, whether by implication, estoppel, inference or otherwise, by or as a result of this Agreement or any conduct of either party under this Agreement. Partner shall not disassemble, reverse translate, decompile or in any other manner decode the Software except to the extent that the foregoing restriction is expressly prohibited by applicable law notwithstanding a contractual obligation to the contrary. MetrixData 360 and its licensors shall retain all right, title, and interest (including all Intellectual Property rights) in, to, and under the Services. Except as explicitly permitted in this Agreement, Partner shall not distribute, lease, rent, grant a security interest in, assign, or otherwise transfer the Software. Partner shall not modify or create any derivatives of the Software or merge all or any part of the Software with another program. Partner shall identify the Software as proprietary to MetrixData 360, and not remove from the Software any copyright, trademark, confidentiality, or other proprietary notices of MetrixData 360 or its licensors. In addition, Partner shall follow good proprietary rights practices and procedures to protect MetrixData 360's and its licensor's rights, including those practices and procedures that may be reasonably required by MetrixData 360 or its licensors and suppliers.

## 9. GENERAL

(a) **Relationship.** The obligations of each party under this Agreement shall be in every case several and shall not be, or be construed to be, either joint or joint and several. Nothing contained in this Agreement shall be deemed to constitute either party or any of its



representatives the partner, agent, franchisee, or legal representative of the other party or to create any fiduciary relationship for any purpose whatsoever. Any use of the term ‘partner’ or ‘partnering’ or similar termination does not mean or refer to a legal partnership, but instead means or refers to a co-operative business or contractual relationship. Except as otherwise specifically provided in this Agreement, nothing in this Agreement shall confer on either party or any of its representatives any authority to act for, bind, or create or assume any obligation or responsibility on behalf of the other party. Nothing contained in this Agreement will prohibit either party from entering into a similar arrangement with a third party.

(b) **Assignment.** Partner may not assign this Agreement, any interest herein or any rights hereunder without the prior written consent of the MetrixData 360. Subject to the foregoing limits on assignment, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and permitted assigns.

(c) **Governing Law.** This Agreement shall be governed by the laws of the Province of Ontario, without regard to its conflict of law principles. Partner shall only be entitled to bring any action or proceeding arising out of or relating to this Agreement in a court in Toronto, Ontario, Canada. No choice of laws rules of any jurisdiction shall apply to this Agreement. The application of the United Nations Convention on Contracts for the International Sale of Goods to this Agreement is expressly excluded.

(d) **Force Majeure.** Neither party shall be responsible for its failure to perform to the extent due to unforeseen circumstances or causes beyond its control, including but not limited to acts of God, wars, terrorism, riots, embargoes, acts of civil or military authorities, fires, floods, accidents, or strikes (each a “Force Majeure Event”), provided that such party gives the other party prompt written notice of the failure to perform and the reason therefore and uses its reasonable efforts to limit the resulting delay in its performance. MetrixData 360 shall have the right to terminate this Agreement in the event that Partner is unable to fulfill its obligations herein for a period of at least sixty (60) calendar days due to a Force Majeure Event.

(e) **Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law. If the application of any provision of this Agreement to any particular facts or circumstances is held to be invalid or unenforceable by an arbitrator or court of competent jurisdiction, then (i) the validity and enforceability of such provision as applied to any other particular facts or circumstances and


the validity of other provisions of this Agreement shall not in any way be affected or impaired thereby, and (ii) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

(f) **Amendments; Waivers.** This Agreement may be amended, and the taking of any action required hereunder may be waived, by the written consent of each party at the time such amendment or waiver is sought. No such waiver will operate as a waiver of, or estoppel with respect to, any other action. No failure to exercise, and no delay in exercising, any right, remedy, or power hereunder will operate as a waiver thereof, nor will single or partial exercise of any right, remedy, or power hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, or power provided herein or by law or at equity. The waiver of the time for performance of any act or condition hereunder does not constitute a waiver of the act or condition itself.

(g) **Interpretation.** Any agreement or schedule referred to herein means such agreement or Referral Partner Agreements amended, supplemented and modified from time to time to the extent permitted by the applicable provisions thereof and by this Agreement. References to any statute or regulation means such statute or regulation as amended at the time and includes any successor statute or regulation. Unless otherwise stated, references to recitals, articles, sections, paragraphs, schedules and exhibits will be references to recitals, articles, sections, paragraphs, schedules and exhibits of this Agreement. The parties agree that this Agreement will be fairly interpreted in accordance with its terms without any strict construction in favor of or against either party and that ambiguities will not be interpreted against the party that drafted the relevant language.

(h) **Notice.** In any case where any notice or other communication is required or permitted to be given by one party to the other party hereunder, such notice or communication shall be in writing and (i) personally delivered, (ii) sent by international air courier service with confirmation of delivery requested, or (iii) transmitted by email.

(i) **Entire Agreement.** This Agreement, including the documents incorporated by reference into this Agreement and/or executed by both parties constitute the entire agreement between the parties on the subject matter hereof and supersedes all prior agreements, communications and understandings of any nature whatsoever, oral or written. No preprinted terms or conditions of any purchase order submitted by Partner to MetrixData 360 shall be of any contractual effect between the parties. This Agreement may not be modified or waived orally and may only be modified in a writing signed by duly authorized representatives of each party. To the extent any terms and conditions of this Agreement conflict with the terms of any other form or any other document, the documents shall control in the following order: (i) Referral Opportunity Approval Letter with the latest



date(s); (ii) Referral Program Guide; (iii) Referral Program Authorization Letter; (iv) this Agreement; and, (v) any other documents expressly incorporated herein by reference.

(j) **Rights and Remedies.** Except as specifically provided in this Agreement, the rights and remedies provided herein and all other rights and remedies available to either party at law or in equity are, to the extent permitted by law, cumulative and not exclusive of any other right or remedy now or hereafter available at law or in equity, neither asserting a right nor employing a remedy shall preclude the concurrent assertion of any other right or employment of any other remedy.

(k) **Publicity.** Partner consents to publication of its name by MetrixData 360 as a referral partner or reseller (as applicable) in a factual listing of MetrixData 360 customers/partners to be published within presentations, on trade show signs, and on its website. MetrixData 360 will seek Partner's prior written authorization for use of Partner's name for promotional activities beyond the above-mentioned, which may include press releases and brochures.

(l) **Counterparts; Signatures.** The parties agree to accept digital signatures as valid and binding in the execution of this Agreement. This Agreement may be executed in counterparts each of which shall be deemed an original but all of which together shall constitute one and the same instrument.