Sales Referral Agreement

This Sales Referral Agreement (this “Agreement”) is dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2020 (the “Effective Date”), by and between Turnkey Cybersecurity and Privacy Solutions, LLC., a Colorado company (“TCPS, LLC”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_(state) \_\_\_\_\_\_\_\_\_\_\_\_\_ (Corporation, LLC, Individual, etc.) (“\_\_\_\_\_\_”) the “Representative”. TCPS, LLC and the Representative may be referred to herein as a “Party” or the “Parties”.

Recitals

1. TCPS, LLC sells and/or licenses various cybersecurity and privacy programs, services, and products (collectively, the “Products”).
2. The Representative desires to become a referral agent for TCPS, LLC, and TCPS, LLC is willing to appoint the Representative as a referral agent, all in accordance with this Agreement.

Agreement

**Accordingly,** and in consideration for the promises herein, the Parties agree as follows:

# Sales Representative

## Appointment.

TCPS, LLC hereby appoints the Representative as a referral source for TCPS, LLC for the Term (see 3.01.). The Representative hereby accepts such appointment. This appointment is not exclusive to the Representative. The Representative is not an agent of TCPS, LLC and the Representative does not have the authority, and will not claim to have the authority, to bind TCPS, LLC to any contract or other obligation, including warranty obligations.

## Representative’s Duties.

During the Term, the Representative may make introductions between TCPS, LLC and prospective customers (each a “Prospect” and each a “Customer” if it becomes a customer) of the Products. The Representative shall not take any actions that are detrimental to TCPS, LLC or its goodwill.

**1.03.** Lead Registration. Representative must enter all prospective customers on the shared Google spreadsheet titled TCPS Lead Registration-xxxx, where xxxx is an identifier assigned by TCPS, LLC to the Representative. Representative should only enter those prospective customers whom he/she already has a relationship with and has discussed TCPS with. After entering prospective customers on the shared spreadsheet, Representative shall notify, TCPS, LLC of such entry. TCPS, LLC has 5 business days to approve or reject such entry. If the entry is approved, then the entry is considered a Registered Lead for Representative, and Representative has 60 days from the acceptance date to arrange a physical meeting, phone call, or video conference between the prospective customer and one or more TCPS, LLC members. If such a meeting occurs, then at any time thereafter if a Proposal and sale is made to the Registered Lead, Representative is entitled to compensation as described in this document. If such a meeting does not occur within 60 days of the accepted lead registration, then the lead registration lapses and Representative is not entitled to any further compensation with respect to that lead.

## Proposed Sales.

Once an introduction is made, TCPS, LLC will handle all marketing and sales of the Products, including any sales proposals to a Prospect (a “Proposal”). TCPS, LLC, in its sole discretion, reserves the right to approve, or to withhold approval for, any Proposal.

## Sales.

All sales shall be on terms and conditions directly agreed between TCPS, LLC and each customer. No proposed or purported contract between TCPS, LLC and any customer or other person will become binding on TCPS, LLC unless it is expressly accepted in writing by TCPS, LLC. TCPS, LLC reserves the right to accept or reject any proposed sales contract in its sole discretion.

## Communications to Prospects.

The Representative will not make any representations to Prospect regarding existing or future Products or regarding TCPS, LLC or its plans or activities. TCPS, LLC may provide the Representative with marketing materials and information concerning the Products or TCPS, LLC; the Representative may only distribute those materials and information to Prospects.

## Disclosure of Confidential Information.

The Representative shall not disclose any TCPS, LLC Confidential Information to any Prospect or other persons and shall not use any TCPS, LLC Confidential Information for any purpose other than performing this Agreement. “TCPS, LLC Confidential Information” means any nonpublic information concerning TCPS, LLC or its Products, plans, proposals, clients, prospects, invoices, or performance. TCPS, LLC will advise Representative when it is disclosing or delivering TCPS, LLC Confidential Information to Representative, either by express statement or by placing a *“Confidential”* or *“Private”* designation on the information. TCPS, LLC Confidential Information does not include any information that is generally known to the public, developed independently by Representative, acquired by Representative from third parties without restriction - in any of the foregoing cases without any wrongdoing on Representative’s part.

## Costs.

The Representative will bear all costs and expenses that it incurs in connection with performing this Agreement, including any commissions or compensation payable to the Representative’s salespersons or employees. As of the Effective Date, the Parties have not agreed to share marketing or sales expenses with respect to Products; *however*, the Parties may agree in writing to share such expenses at any time hereafter, on an *ad hoc* basis.

# Commissions

## When Commissions Arise.

If a Proposal to a Prospect results in a sales contract with that Prospect for any Products resulting in Gross Revenues to TCPS, LLC within six months of the Proposal, then TCPS, LLC shall notify Representative of such contract via email of such contract and any subsequent sale and pay a Commission to the Representative.

Determination of Commission Amount.

Commission amounts are calculated based upon which type of Products are sold. For purposes of Commissions, the Products would be:

1. TCPS Products: these are programs, products and/or services that TCPS is able to produce and deliver without any 3rd party expenses. This includes all Program costs excluding 3rd Party Product costs as described below.
2. 3rd Party Products: These are programs, products and/or services which are produced and delivered by 3rd parties. These are products for which TCPS, LLC is a licensed reseller. Examples of such products are KnowBe4, Carbonite, Crash Plan, Agile 1, Webroot, BitSight, and other external companies.
3. Gross Revenues.
4. “Gross Revenues” means the amounts actually received by TCPS, LLC in payment for those goods or services.
5. Net Revenues. “Net Revenues” means the amounts actually received by TCPS, LLC after TCPS, LLC pays the 3rd party product owner what is owed for the product or service that TCPS, LLC resells.

1) Commission paid for sale of TCPS Products means 20% (twenty percent) of all Gross Revenues received by TCPS, LLC from the Customer referred by Representative during the two-year period beginning on the date of the first sales contract with that Customer.

2) Commission paid for the sale of 3rd Party Products for which TCPS is a reseller means 10% (ten percent) of all Net Revenues received by TCPS, LLC from that 3rd Party product manufacturer related to the Customer referred by Representative during the two-year period beginning on the date of the first sales contract with that Customer. Representative understands that a typical reseller agreement between TCPS, LLC and a 3rd party results in TCPS, LLC being paid 5-20% of the gross sale. That means that under the terms of this Agreement, Representative would be paid 10% of the 5-20% that TCPS, LLC was paid.   
  
Timing of Payments.

All Commissions shall be paid within 30 days after the end of the calendar month in which Gross Revenues are actually received by TCPS, LLC. Commissions that remain unpaid after the relevant due date shall accrue interest at the rate of 1% per month. Commission payments will be paid to Representative for as long as payments are made to TCPS, LLC and according to 2.01 above, even if such payments exceed the Term of this Agreement.

## Record Keeping; Audit Right.

TCPS, LLC shall keep accurate books and records of all Gross and Net Revenues associated with this Sales Referral Agreement. The Representative shall have the right to appoint a certified public accountant reasonably acceptable to TCPS, LLC (the “Appointed CPA”), who shall be permitted to audit and inspect such books and records to verify the accuracy of the Commissions upon reasonable prior written notice during TCPS, LLC’s normal business hours. Such inspections shall not occur any more frequently than once per year. If, during the course of any such audit the Appointed CPA certifies that TCPS, LLC has underpaid the Commissions hereunder, TCPS, LLC shall promptly (a) pay to the Representative the amount of such underpayment with late payment interest of 6% *per annum,* accrued thereon from the original due date(s) until paid in full; and, (b) if the underpayment is in excess of 10% of the Commissions previously paid for the same Customer for the same period, reimburse the Representative for all reasonable out-of-pocket expenses the Representative incurred in connection with such audit, including the reasonable fees of the Appointed CPA. Only the Appointed CPA, and not the Representative or its employees or agents, may have access to TCPS, LLC’s books and records. The Appointed CPA shall be required to sign a confidentiality agreement with TCPS, LLC and shall agree to keep confidential and shall not disclose to anyone, including the Representative, the nature, address and any other information likely to identify any other Customer of TCPS, LLC; provided, however, that the Appointed CPA shall be entitled to disclose to the Representative the information relevant to the calculation of the Commissions owed by TCPS, LLC, without disclosing any information likely to identify any customer of TCPS, LLC. The Representative shall notify the Appointed CPA in writing of the above-mentioned obligations.

**2.04**. NO WITHHOLDINGS OR BENEFITS. As provided in Colorado Revised Statute § 8-40-202(2)(b)(IV) and 8-70-115(2), the Representative expressly agrees that, as an independent contractor, the Representative is not entitled to any employee benefits from TCPS, LLC, including, but not limited to, any employer withholdings or liability for: taxes, FICA, Medicare or Medicaid; medical or disability insurance; vacation or leave; pension; unemployment insurance; or worker's compensation insurance (collectively, "Employee Benefits"). The Representative is obligated to pay federal and state income tax on any monies paid pursuant to the Parties' contractual relationship.

## Representative’s Agents.

If the Representative wishes to engage any agents or contract sales persons, the Representative must first request permission from TCPS, LLC.

**2.06.** SALES BEFORE EFFECTIVE DATE.

No Commissions are or will be payable with respect to any sales of Products occurring before the Effective Date.

# Term and Termination

## Term.

The term of this Agreement shall commence on the Effective Date and will continue for five years thereafter (the “Term”), unless sooner terminated as provided for herein. If the Parties do not expressly agree to terminate or extend the initial five-year Term, it shall be deemed extended on a month-to-month basis at the end of the initial Term.

## Termination.

### Convenience.

Either Party may terminate this Agreement for convenience on 30 days’ written notice to the other Party.

### Breach.

Either Party may terminate this Agreement effective immediately if the other Party has committed a material breach of this Agreement and has failed to cure the breach within 5 days after the non-breaching Party has given written notice of the breach to the breaching Party.

## Effect of Termination.

Upon the termination of this Agreement as provided for in Section 3.02 (“Termination”), all authority granted to the Representative under this Agreement shall immediately terminate, the Representative shall cease marketing the Products, and each Party shall return to the other all property of the other Party in its possession or control. Termination will not affect any rights that have accrued prior to Termination, nor will it affect any provision of this Agreement necessary to give effect to the Parties’ intentions. Termination will not affect any Proposal that has not expired or terminated in accordance with its terms.

# Intellectual Property.

## Trademarks.

All uses of the trade names and trademarks of TCPS, LLC (the “Marks”) by the Representative will be subject to the direction and control of TCPS, LLC, which reserves the right, in its sole discretion, to grant, deny, or revoke permission to the Representative for any particular use or any particular Mark. All uses of Marks by the Representative will inure to the sole benefit of TCPS, LLC and will not result in the Representative having or receiving any rights of ownership or use, whether legal or equitable, with respect to any of the Marks. The Representative shall not use or adopt any trade names or trademarks that are similar to the Marks.

## Copyrights.

TCPS, LLC reserves all copyrights and other rights in and to its sales and other copyrightable materials, unless expressly granted in this Agreement or in a later written document. To the extent applicable, all copyrightable materials created by the Representative referring to TCPS, LLC will be works made for hire under U.S. copyright law. If any of such materials are not susceptible of treatment as works made for hire, then the Representative hereby assigns the Representative’s entire right, title, and interest in and to such materials to TCPS, LLC.

# Exclusions and Limitations

## Exclusion of Certain Damages

. In no event will either Party be liable to the other for any incidental, consequential, indirect, special, or punitive damages, including without limitation damages for lost revenue, lost profits, or diminution of goodwill, regardless of whether the Party in question has been advised of the possibility of such damages.

## Damages Limit

. The aggregate liability of either Party to the other arising out of or in connection with this agreement (including Commissions) will not exceed $10,000. The limitation stated in the preceding sentence applies to any and all claims between the parties relating to this agreement, on any theory of law, including breach of contract, negligence, violation of a duty imposed by statute, tort, or strict liability. The foregoing limitation will not apply to any cross-claims between the parties, *e.g.*, for indemnification or contribution, in an action in which both Parties are parties.

## Warranty Disclaimer

. TCPS, LLC will extend its then-standard warranties to each Customer, subject to TCPS, LLC’s standard warranty disclaimers and limitations. Because Representative is not a Customer, TCPS, LLC makes no warranty, express or implied, to Representative regarding any Product, including, without limitation, the implied warranties of merchantability and fitness for a particular purpose.

# Independent Contractors

## Status.

The Parties are independent contractors in all matters concerning this Agreement. Nothing in this Agreement creates a joint venture, partnership, or employment relationship between the Parties. Neither Party will be liable for the debts, liabilities, or obligations of the other. Except as otherwise provided for herein, neither Party is acting as the agent or partner of the other and neither Party will hold itself out to the public as either an agent or partner of the other. Neither party has the authority to bind the other party to any contract, term, commitment or other legal obligation.

## Manner of Performance.

As an independent contractor, the Representative may perform under this Agreement in the manner that it considers appropriate. TCPS, LLC does not have the right to dictate the Representative’s manner of performance, the specific hours during which it will perform, the specific Prospects it will contact, or the manner of contacting and communicating with Prospects.

## Taxes.

As an independent contractor, the Representative is solely responsible for payment of the state and federal taxes applicable to its performance under this Agreement, including FICA, Social Security, Medicare, and self-employment taxes, as well as any requirements for unemployment insurance and workers compensation.

## Employees.

The Representative is permitted to engage employees or contract salespersons to assist in the performance of its obligations under this Agreement. Any such employees or contract salespersons will be required to observe this Agreement to the same extent as the Representative, as applicable, and the Representative will be responsible for any breaches of this Agreement committed by such employees or contract salespersons. TCPS, LLC will have no direct obligation to any such employee or contract salesperson and will have no right to dictate or approve the terms of their compensation.

# General Provisions

## Governing Law.

This Agreement shall be governed by and construed in accordance with the internal laws of the State of Colorado, exclusive of conflict or choice of law rules.

**7.02.** DISPUTES. The Parties agree that any and all claims, controversies, breaches or disputes arising from or related to this Agreement, including those pertaining to the formation, construction, performance, applicability, interpretation, or enforceability of this Agreement, or any claim or assertion that all or part of this Agreement is void or voidable, shall be settled by binding arbitration via a single arbitrator of Judicial, Arbitration, and Mediation Services (JAMS). The Colorado Uniform Arbitration Act, and Colorado law shall govern the interpretation, enforcement and proceedings pursuant to the arbitration clause in this Agreement.  Throughout the arbitration, the Parties shall split the costs of the arbitration proceedings (excluding the costs of their own attorneys and advisors). The arbitrator may consider the testimony and evidence presented by the Parties through any or all of the following types of hearings: documentary hearing, teleconference hearing, or through a standard scheduled hearing physically attended by the Parties and legal counsel, if any.  Any arbitration hearing that requires the Parties’ physical presence shall be held in Denver, Colorado. The Parties also agree that any award tendered by the arbitrator may be entered as a judgment in the United States court in and for the district within which such award was made and enforceable as an order of said court, and the Parties hereby submit to the venue and jurisdiction of that court for purposes of enforcement of any arbitration award.

Prior to initiating an arbitration, the Parties agree to attempt to resolve their dispute in mediation. The dispute shall be mediated in Denver, Colorado using a mediator of JAMS. If mediation is unsuccessful, then the parties may proceed with the arbitration.

**7.03**. ADVERTISEMENT AND TITLE. Representative grants permission to TCPS, LLC and its affiliates to use his/her/its image and biographical description on its web sites and to present Representative as part of TCPS, LLC’s business team and include Representative in its advertising and marketing efforts. TCPS, LLC agrees to only present information and images approved by Representative and agrees to remove such information if requested by Representative.

## Notices.

Any notices provided for in this Agreement shall be directed to the contact information listed below each Party’s signature.

## Further Assurances.

Each Party shall execute all further documents and take all further acts reasonably necessary or appropriate to carrying out the intent of this Agreement.

## Transfer and Assignment.

Neither this Agreement nor any right or obligation hereunder may be assigned or otherwise transferred (whether voluntarily, by operation of law or otherwise), without the prior express written consent of the other Party; *provided, however,* that either Party, without such consent, may assign this Agreement and the assignor’s rights and obligations hereunder in connection with any of the following transactions: (a) the transfer or sale of all or substantially all of the assignor’s business or assets; (b) the sale, spin-off, or creation of a subsidiary or affiliated entity of the assignor; or (c) a merger, consolidation, change in control or similar transaction to which the assignor is a party. Any permitted assignee will be deemed to have assumed all the obligations of the assignor under this Agreement.

## Force Majeure.

Neither Party will be considered in default under this Agreement to the extent that such Party’s performance is delayed or prevented by fire, flood, hurricane, tornado, earthquake, other natural disasters, pandemics, riot, war, terrorism, labor disputes, or civil strife.

## Entire Agreement.

This Agreement states the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes and replaces all previous discussions, negotiations and agreements.

## Amendments.

Any amendment or addition to this Agreement will be effective only if in writing and signed by both Parties.

## Waiver.

The failure of any Party to insist upon the performance of any provision of this Agreement or to exercise any right or privilege granted to such Party under this Agreement will not be construed as waiving such provision or any other provision of this Agreement.

## Severability.

If any provision of this Agreement is held invalid or unenforceable, the invalidity or unenforceability will not invalidate the remaining provisions of this Agreement.

## Authority.

Each of the individuals signing this Agreement represents and warrants that he or she has the full right, power and authority to bind his or her principal to the terms of this Agreement.

## Counterparts.

This Agreement may be executed and delivered in counterparts (including by means of electronic signatures), all of which taken together will constitute one and the same

[signature page follows]

The Parties are executing this Agreement to signify their acceptance of all the terms and conditions stated above, to be effective as of the Effective Date, regardless of the date of actual signature.

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| Turnkey Cybersecurity and Privacy Solutions, LLC Inc. | ……………………………………… |
| By: | By: |
| Raymond Hutchins, Managing Member |  |
|  |  |
| Date: | Date: |
| **Contact Information** | **Contact Information** |
| Address: P.O. Box 270072 | Address: |
| Littleton, CO 80127 |  |
|  |  |
| Phone:303-997-5506 | Phone: |
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| Other: | Other: |
|  |  |
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