

**GCPAY REFERRAL AGREEMENT**

This GCPay Referral Agreement (“Agreement”) is entered into by Hart Business Solutions, LLC, with a registered office address at 405 E Laburnum Ave, Ste 3 PMB 53, Richmond VA 23222 (“GCPay”), and Referring Party (“Referrer”).

This Agreement governs Referrer participation in the GCPay Referral Program.

Upon Referrer’s acceptance of the terms and conditions of this Agreement, including the Program Documentation (as defined below), GCPay will review Referrer’s submission and will have the right to approve or not approve at GCPay’s sole discretion. GCPay reserves the right to make Referrer member selection (including eligibility for certain benefits) decisions and to revoke GCPay Referral Program membership status or eligibility for certain benefits at any time and at its sole discretion. GCPay reserves the right to modify and make changes to the GCPay Referral Program with at least ten (10) business days’ notice.

This Agreement shall be effective as of the date of GCPay’s notification to Referrer of its acceptance into the GCPay Referral Program (the “Effective Date”).

**GCPAY REFERRAL PROGRAM TERMS AND CONDITIONS****1. DEFINITIONS**

**1.1** In this Agreement the following terms shall have the following meanings unless the context otherwise requires:

**“Authorization”** means the designation(s) given to Referrer by GCPay which corresponds to a particular group of Products as more fully described in the Program Documentation.

**“Autodesk”** means Autodesk Inc., a Delaware corporation with its principal place of business at The Landmark at One Market, Ste. 400 San Francisco, California 94105, United States. GCPay is a wholly owned subsidiary of Autodesk.

**“Closed Sale”** means a transaction originating from an Eligible Lead pursuant to which the End User has submitted an Order, and GCPay has billed End User for the Product/s.

**“Confidential Information”** means all non-public information and materials relating to GCPay or any products (including the Products) including without limitation, (a) the terms and conditions of this Agreement; (b) software, software-related Products, specification sheets and other technical materials and information relating to Products and/or other products; (c) business plans, marketing strategies, financial statements and other financial information; (d) any information regarding the business of GCPay and its license and distribution arrangements with other entities; and (e) information, materials and data relating to End-Users (including but not limited to End User Data).

**“Eligible Lead”** means a new sales opportunity, including the required information as specified in the Program Documentation, which Referrer has entered into GCPay’s deal registration intake form and which has been approved by GCPay for further action. An “Eligible Lead” does not include any lead referencing an End User who is ineligible for referrals according to the Program Documentation.

**“End User”** means corporate entities, partnerships or individuals in the Territory that acquire the Products for their internal purposes and not for transfer, resale or distribution.

**“End User Data”** means End User Records together with any information maintained by GCPay or any third party on GCPay’s behalf relating to a specific End User including Product registration information and data (which may be modified by GCPay in its sole discretion), customer satisfaction data, analytics and purchasing history.

**“End User Records”** means the records maintained by Referrer that show, at a minimum, the name and contact information (address, telephone number and e-mail) for each End User with respect to whom Referrer has submitted an Eligible Lead to GCPay, and the list of Products referenced in each Eligible Lead.

**Government Customer definition**

For purposes of the Agreement, the term Government Customer means:

Government Entity	National/Federal Government entity	Including agencies, departments, ministries, or a Tribal Entity
	State & Local Government entity	Including regional, state, provincial, local, and municipal agencies and departments
	Public International Organization & Supranational Organization	A Public International Organization (organizations formed by or whose members comprise countries, territories, or other public international organizations or that are identified by treaty or US executive order) or Supranational Organization (an organization that has a regulatory or legislative role across several national governments).
Gov't Owned Entity	For-profit corporations	For profit corporations that are at least 50% owned by government entities
	Non-profit organizations	Non-profit organizations that are at least 50% owned by government entities, including, but not limited to: Healthcare, Education
	An instrumentality of the government	Taking into account the government's ownership, control, and function (i.e., whether the entity performs a function the government treats as its own).

**“Terms of Use” or “TOU”** shall mean the then current GCPay standard terms and conditions or any subscription terms which GCPay may subsequently post in replacement thereof from time to time.

**“Orders”** means the Product orders, in the form and manner prescribed by GCPay from time to time, including, without limitation, a GCPay Sales Order Form or other electronic online means of subscribing to a GCPay Product.

**“Partner Code of Conduct”** means the rules of conduct and ethics which Autodesk requires all of its partners to observe, and any modifications thereto made by Autodesk in its sole discretion from time to time, that Autodesk or GCPay make available to Referrer, incorporated by reference in this Agreement.

**“Products”** means GCPay software, services, or subscriptions, as further identified or restricted from time to time in the Program Documentation.

**“Program”** means the GCPay Referral Partner Program to which this Agreement relates.

**“Program Documentation”** shall mean the then current GCPay Referral Partner Program Guide, any then current documents referenced therein, the then current Partner Code of Conduct, and any other then current documents which GCPay or Autodesk make available to Referrer from time to time in relation to the Program, collectively.

**“Referral Fee”** means the fee defined in the Program Documentation.

**“Term”** means the period referenced in Section **Error! Reference source not found..**

**“Territory”** means United States and Canada.

- 1.2** All Products however defined in this Agreement, are licensed, not sold, to the End User by GCPay. All references in this Agreement to the “sale” or “selling” of Products means the sale of a license or other right to access and to use the Products in accordance with the TOU. All references in this Agreement to the “purchase” of Products shall mean the purchase of a license or other right to access and to use the Products. Under no circumstances shall these terms constitute, or be construed to constitute, the sale or transfer of intellectual property.

## 2. REFERRAL AND FEES

- 2.1** Referrer may from time to time refer sales opportunities to GCPay. Except as otherwise approved by GCPay, this Agreement only governs referrals by Referrer in the Territory.
- 2.2** Subject to the terms and conditions of this Agreement and the Program Documentation, and except as provided otherwise therein, GCPay will pay Referrer a Referral Fee for every Eligible Lead referred to GCPay which results in a Closed Sale of Products corresponding to Referrer's Authorization.
- 2.3** Except as expressly stated otherwise in the Program Documentation, Referrer shall bear all costs and expenses Referrer incurs in exercising Referrer rights and performing Referrer obligations under this Agreement.

All fees under this Agreement are exclusive of any tax, levy or similar governmental charge that may be assessed by any jurisdiction, including, without limitation, any export, federal, state or local VAT, sales, use or goods and services taxes and business taxes, customs or excise duties. All payments to Referrer shall be made free and clear without deduction for any and all present and future taxes imposed by any taxing authority; provided however that in the event that GCPay is prohibited by law from making such payments unless GCPay deducts or withholds taxes therefrom and remits such taxes to the local taxing jurisdiction, then GCPay shall withhold and remit all such taxes. In such case, GCPay shall pay to Referrer the remaining net amount after such taxes have been withheld. Further, GCPay shall furnish Referrer with a copy of a tax receipt or other appropriate evidence of any taxes imposed on payments made under this Agreement, including taxes on any additional amounts paid.

- 2.4** GCPay reserves the right to: (a) enter into similar or other agreements with agents or other persons or entities for the license, promotion and distribution of Products; (b) license, promote or distribute any Products or other software products directly for its own account; (c) develop any other sales channel, direct or indirect, for the Products; (d) communicate, do business and otherwise deal with any and all End Users, without restriction of any kind; (e) modify, augment, or otherwise change the methods in which GCPay markets or distributes any Products; and (f) apportion Referral Fees among one or more referral or other partners at its discretion, if more than one referral or other partner was involved in the referral of a particular Eligible Lead or the solicitation of a related Order.

**3. OBLIGATIONS** Referrer shall:

- 3.1** conduct Referrer business through a corporation or other form of business organization recognized by the laws of the Territory and obtain and maintain at Referrer's own expense all permissions, consents, and licenses necessary to enable Referrer to submit Eligible Leads to GCPay.
- 3.2** conduct Referrer business in a manner that does not negatively affect the reputation, goodwill, products, or prospects of GCPay or the Products.
- 3.3** perform all of Referrer obligations under this Agreement with due skill, care, and diligence using competent and experienced staff as may be more fully described in the Program Documentation.
- 3.4** at all times comply with the terms of the Program Documentation.
- 3.5** use the referral portal provided by GCPay for the submission of any Eligible Leads, as may be more fully described in the Program Documentation.
- 3.6** obtain the consent of the End User (if the End User is an entity such consent must be obtained from an authorized representative of that entity) to the transfer of any information to GCPay when collecting such information from End Users (e.g. referral of leads, customer satisfaction or customer support surveys).
- 3.7** make no statements regarding the Products that are inconsistent with GCPay's published literature, sales strategies, company processes TOU or GCPay's terms and conditions governing the sales transaction.
- 3.8** procure any pricing which Referrer may be requested to provide, from GCPay and quote only those prices, charges, and terms with respect to the Products as determined by GCPay without modification or alteration.
- 3.9** ensure the End User is aware that Orders for Products shall be placed directly with GCPay by End User and that pricing and terms may change.
- 3.10** not appoint, directly or indirectly, any persons or parties who are not Referrer employees to assist Referrer in performing Referrer obligations or exercising Referrer rights under this Agreement without the prior written approval of GCPay. The use of subcontractors or sub-agents, including Referrer subsidiaries, is prohibited.
- 3.11** keep complete, accurate and current books and records concerning Referrer business relating to the Products and, during the Term of this Agreement and for one (1) year thereafter, allow GCPay or its authorized representatives to inspect and make copies of such books and records upon ten (10) days' prior notice. Inspection shall take place during Referrer normal business hours.

#### 4. COMPLIANCE

- 4.1.** Referrer shall comply at all times with all legal requirements in all applicable jurisdictions, including, without limitation, all applicable consumer protection, marketing, privacy, and data protection laws, regulations, rules and/or ordinances, in the conduct of Referrer business and in the promotion, marketing, support and solicitation of business.
- 4.2.** Referrer shall avoid deceptive, misleading, fraudulent, or unethical practices and comply with the Partner Code of Conduct.
- 4.3.** Referrer shall collect, store, transfer, share and/or process End User Data, End User Records and any other personal data (if any) available to Referrer under this Agreement only in accordance with Autodesk's current Privacy Policy available at <https://www.autodesk.com/company/legal-notices-trademarks/privacy-statement> and GCPay's written instructions. Further, Referrer shall not engage in any practice contrary to the Autodesk Privacy Statement and will ensure that Referrer's own privacy policy or notice complies with all applicable laws. In using End User Data made available by GCPay for the promotion of the Products, if any, Referrer shall: (i) comply with all applicable marketing and telemarketing laws, including anti-spam laws; and (ii) place a limitation on marketing contact with End Users to no more frequently than one time per calendar month (unless otherwise authorized by GCPay in writing).
- 4.4.** In processing End User Data pursuant to this Agreement, Referrer shall always:
- unless otherwise requested by GCPay, process personal data only to the extent, and in such manner, as is necessary for the provision of the services under this Agreement;
- (i) ensure that appropriate technical and organizational measures shall be taken against unauthorized or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data;
  - (ii) take the measures mentioned in 4.4(ii), having regard to the state of technological development and the cost of implementing the measures, so as to ensure a level of security appropriate to:
    - (1) the harm that may result from unauthorized or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data; and
    - (2) the nature of personal data to be protected.
- 4.5** Referrer shall not directly or indirectly lobby for GCPay. This prohibition includes efforts to influence the formation, adoption or modification of legislation, rulemaking, executive orders, ratemaking or other government policies or programs. In addition, Referrer shall not engage in any activities in Autodesk's or GCPay's name which constitute procurement lobbying. If Referrer is required to register under applicable statutes including as a GCPay lobbyist or equivalent, Referrer shall not do so without the prior written consent of GCPay.
- 4.6** Referrer acknowledges and agrees that the Products, any associated documentation or technical data, and any direct products of the Products or technical data (together, the "Controlled Materials"), are subject to the export control and trade sanctions laws, rules and regulations of the United States and may be subject to the export control and trade sanctions laws of other countries, including but not limited to countries where Referrer is located or operates. Together, these United States and other country laws, rules, and regulations are referred to as the "Export Control Laws." Referrer will comply with the Export Control Laws in all respects and will ensure that the Controlled Materials are not provided, directly or indirectly, to restricted countries or regions, to individuals or entities who appear on applicable government sanctions lists, or for use in connection with restricted end uses. Referrer acknowledges that

the applicable Export Control Laws may change over time and that Referrer is responsible for monitoring such changes. If Referrer learns that Controlled Materials have been provided to any person or entity in violation of the Export Control Laws, Referrer will notify GCPay immediately and, if GCPay determines that the violation should be disclosed to the applicable export control authority, provide such assistance and information as GCPay reasonably requests in connection with such disclosure. Referrer agrees to indemnify GCPay, to the fullest extent permitted by law, from and against any fines, penalties, attorneys' fees or other related costs that may arise as a result of Referrer's failure to comply with the Export Control Laws, and this indemnity obligation shall survive termination, expiration or cancellation of this Agreement.

**4.7** Referrer represents and agrees that Referrer shall not take any action which would cause Referrer to be in violation of the Foreign Corrupt Practices Act ("FCPA"), or any rules or regulations thereunder, all similar international or national applicable laws, and Autodesk's applicable Partner Code of Conduct (collectively referred to as "anti-corruption laws"). Referrer acknowledges and agrees that such action includes, but is not limited to, the use of any corporate funds for unlawful contributions, gifts, entertainment, or other expenses relating to political activity; making, attempting to make, offering, or authorizing any unlawful payment, thing of value, bribe, rebate, payoff, influence payment, kickback or other similar unlawful payment to a foreign or domestic government official, non-government partner or customer, for the purpose of influencing an act or decision (including a decision not to act) or inducing such a person to use his or her influence to affect any such governmental act or decision to obtain, retain, or direct any business. Referrer's failure to comply with anti-corruption laws and regulations shall be deemed a material breach of this Agreement, and Referrer shall notify GCPay immediately upon learning of any such failure to comply. Referrer agrees to indemnify GCPay, to the fullest extent permitted by law, from and against any fines, penalties, attorney's fees, or other related costs that may arise as a result of Referrer's failure to comply with such laws and regulations, and this indemnity obligation shall survive termination, expiration or cancellation of this Agreement. Referrer agrees to provide GCPay with access to Referrer's books and records for the purpose of ensuring compliance with anti-corruption laws and agreements.

**4.8** Referrer acknowledges and agrees that GCPay has relied and will rely upon all information Referrer provided during the application process, including but not limited to Referrer's responses to the following questions:

(1) Is the Referrer associated with or controlled by any Government-Owned or Government-Controlled entity?

(2) Is any individual who is employed by or affiliated with the Referrer a current or former Government Official?

(3) Does the Referrer intend to refer Autodesk or GCPay Products to a Government-Owned or Government Controlled Entity?

and any responses Referrer provided to follow-up inquiries related to these questions. Referrer warrants that all responses and information provided during the application process is truthful and accurate as of the date of this Agreement. During the Term, Referrer shall notify GCPay immediately if any information provided during the application process changes. Referrer

understands and agrees that any misrepresentations in the application or any failure to notify GCPay of any changes to such information during the Term shall constitute a material breach of this Agreement.

## **5. TRADEMARKS, MARKETING, AND INTELLECTUAL PROPERTY**

- 5.1** During the Term of this Agreement, and within the Territory, Referrer shall have a non-exclusive, non-transferable right to advertise the Products within the Territory under the trademarks, logos and slogans adopted by GCPay from time to time ("Trademarks"). Referrer's use of the Trademarks in any literature, promotion, or advertising shall be in accordance with GCPay's guidelines for such usage. All representations of GCPay Trademarks that Referrer intends to use shall be exact copies of those used by GCPay, or if otherwise, shall first be submitted to the appropriate GCPay personnel for written approval of design, color, and other details, and such approval shall not be unreasonably withheld. If any of the GCPay Trademarks are to be used in conjunction with another trademark on or in relation to Products, then the GCPay Trademarks shall be presented equally legibly, equally prominently, but nevertheless separated from the other so that each appears to be a trademark in its own right, distinct from the other mark. If Referrer makes use of Referrer's rights set forth in this section, Referrer will maintain a high-quality standard in representing the Products and in using the Trademarks. Upon five (5) business days' notice, GCPay shall have the right to review and approve in writing the quality of the copies of, and use of Trademarks with, the Products promoted by Referrer and accompanying promotional material, advertising, press releases and the like. GCPay will notify Referrer of its acceptance or rejection in writing. If such material does not conform to the requirements of this Agreement, Referrer will revise such material prior to its use or distribution. Pornographic, obscene, abusive, threatening, defamatory, libelous, or racially, sexually, or religiously offensive or objectionable use or any unlawful use of Trademarks or other materials in connection with the Products is strictly prohibited whether directly or in context with specific subject matter. Referrer may use advertising, marketing, promotion, public relations, or other similar materials provided by GCPay, alone or in combination with other materials Referrer creates (subject to the other provisions of this Agreement). GCPay may from time to time, at GCPay's discretion, make certain marketing and promotional material available without charge. Referrer shall be solely responsible for the content of Referrer's own promotional and advertising materials, if any, and for Referrer's distribution and use of all marketing materials, including any GCPay marketing material Referrer chooses to distribute or use.
- 5.2** Nothing contained in this Agreement shall be construed as conferring upon Referrer (by implication, operation of law or otherwise) any license to any right, title or interest in any Trademarks, logos, slogans, Products, GCPay marketing materials, or Autodesk marketing materials. Referrer shall not register or attempt to register any Trademark, trade name or domain name used or disclosed by GCPay or Autodesk, or which incorporates any GCPay, Autodesk or affiliated company product or service name, or any name which is confusingly similar to any product or service name, trademark, trade name or domain name of GCPay, Autodesk, or any affiliated companies. Any unauthorized use by Referrer of a Trademark, or any claim by Referrer to a mark confusingly similar to a Trademark, or any claim or use by Referrer of an Internet domain name that contains or is confusingly similar to a Trademark, shall be a material breach of this Agreement and cause for immediate termination.

- 5.3** Subject to applicable privacy laws, all End User Records, End User Data and Confidential Information, are and shall remain the sole and exclusive property of GCPay, Referrer shall have no right, title or interest in or to such End User Records or End User Data; however to avoid doubt, any End User information obtained by Referrer not in connection with the End User Records, End User Data or Confidential Information (all as described in this Agreement) shall be owned by Referrer. During the Term of this Agreement, Referrer may use the End User Records and End User Data solely to fulfill Referrerr obligations under this Agreement in connection with End Users and for no other purpose. GCPay may revoke this limited right to use End User Records and End User Data in the event of abuse of said data or breach of this Agreement. This limited right to use End User Records and End User Data shall not survive the termination or expiration of this Agreement. End User Records, End User Data and Confidential Information are not Referrer's assets capable of assignment, sale or any other form of alienation by Referrer. In addition all rights relating to (a) Products and any permitted configurations thereof; (b) GCPay marketing materials; (c) customer satisfaction surveys or other GCPay survey results, (e) any other GCPay website, materials or translations thereof, as well as any related intellectual property rights including patents, copyrights, trade secrets, Confidential Information, GCPay Trademarks and domain names pertaining to GCPay, are owned by and shall remain the valuable exclusive property of GCPay or its licensors. All rights not expressly granted by GCPay are reserved. Without limiting the foregoing, the restrictions described in this section are intended to apply to any and all uses of GCPay's rights described herein, including, without limitation on or through any social media. Referrer shall take all reasonable measures to protect GCPay's proprietary rights in the aforesaid intellectual property.
- 5.4** Referrer shall not disassemble, decompile, or reverse-engineer any Product or GCPay software, except as it may be specifically permitted by applicable law and then only for the limited purposes explicitly set forth in said law.
- 5.5** Referrer shall notify GCPay promptly in writing upon Referrer's discovery of any unauthorized use of the Trademarks, software or Products or infringement of GCPay's patent, copyright, trade secret, trademark, or other intellectual property rights. Referrer shall not alter any marketing materials, software or Products except as expressly authorized by GCPay as appropriate.
- 5.6** Any demonstration and evaluation Products made available by GCPay to Referrer hereunder shall be subject to their accompanying terms and conditions, only be used for demonstration purposes and may not be sold or otherwise made available under any circumstances for commercial use.

## **6. TERM AND TERMINATION**

- 6.1** This Agreement shall commence on the Effective Date and, subject to earlier termination pursuant to the terms of this Agreement, shall continue for a period of one (1) year ("Initial Term"). Unless terminated earlier in accordance with this clause 6, this Agreement shall automatically extend for a period of twelve (12) months ("Renewal Term") at the end of the Initial Term and at the end of each Renewal Term.
- 6.2** Either party may terminate this Agreement according to written notice given upon the breach by one party of any of its obligations under this Agreement and its failure to remedy the breach within thirty (30) days following written notice from the other party.

- 6.3** GCPay may terminate this Agreement according to written notice given upon any of the following events:
- (1) transfer or cessation by Referrer of any part of Referrer's business relating to Referrer's activities as a referring party for the Products or transfer by Referrer's owners or shareholders of a controlling interest in Referrer; or
  - (2) a receiver or similar officer is appointed for the benefit of Referrer's creditors, or if Referrer becomes the object of any proceedings for bankruptcy, insolvency, or the like; or
  - (3) breach by Referrer of any provision of this Agreement that cannot be remedied (including but not limited to breach of confidentiality, fraud, misconduct, or violation of GCPay's proprietary rights); or
  - (4) if Referrer contests GCPay's or any of its affiliates' intellectual property rights or attempt to register any domain name using an GCPay product or service name, trademark, trade name, logo or any designation communicated to Referrer by GCPay.
- 6.4** Notwithstanding the provisions of the preceding sections, either party may terminate this Agreement at any time, without cause and without judicial intervention, penalty, or further obligation, upon thirty (30) days prior written notice to the other party.
- 6.5** Upon any expiration or earlier termination of this Agreement, Referrer shall return to GCPay or destroy (at GCPay's option) all information and materials relating to the Products, and End Users in Referrer's possession, including, without limitation, all Confidential Information, GCPay marketing materials, product literature, advertising, promotional sales aids and other materials, if any, supplied to Referrer by GCPay during the term of this Agreement, or developed by Referrer in compliance with the terms of this Agreement. Referrer also shall cease all usage of GCPay Trademarks and shall remove all such Trademarks from Referrer's premises and working materials.
- 6.6** Upon termination or expiration of this Agreement, Referrer agrees not to make any statements or take any actions that might harm or interfere with GCPay's relationship with any End Users (including any End Users referred by Referrer). Referrer further agrees to cease immediately to represent that Referrer is a GCPay referring party and to stop identifying and submitting leads for Products. All rights and permissions granted by GCPay to Referrer hereunder shall cease.
- 6.7** Upon termination or expiration of this Agreement, all further activity on behalf of GCPay shall cease, but Referrer shall be entitled to Referral Fees for an additional thirty (30) days after the date of termination on all Closed Sales that were approved as Eligible Leads prior to such termination or expiration, provided that the related Orders were accepted and billed by GCPay prior to such termination or expiration.
- 6.8** No Referral Fees shall be due to Referrer for any Orders, including renewals, submitted to GCPay after the termination or expiration of this Agreement for any reason, regardless of whether or not they result in a Closed Sale.

## 7. AGENCY; TERMINATION LIABILITY

- 7.1** Both parties hereto acknowledge and agree that Referrer is not an agent of GCPay. Both parties waive any common law rights they may have in relation to being the principal and/or agent of the other and agree and acknowledge that neither shall be entitled to any payment on (or arising from) termination of this Agreement (including, without limitation, any common law right to payment on termination of this Agreement).
- 7.2** In the event of expiration or termination of this Agreement neither party shall be liable to the other because of such expiration or termination: (i) for compensation, reimbursement or damages for the loss of prospective profits or anticipated business; (ii) on account of any expenditures, investments, leases or commitments made by either party in connection with the goodwill or business of either party; or (iii) for any other damages, losses or expenses whatsoever based upon or arising out of such expiration or termination. The foregoing shall not limit the right of Autodesk to recover damages based upon any breach or default by Referrer under this Agreement which breach, or default arose prior to the expiration or termination of this Agreement.

## 8. SURVIVAL

Upon expiration or termination of this Agreement the rights and obligations of the parties under this Agreement shall terminate, except that, the rights and obligations of the parties under Sections 2.4, 3, 4, 5.3, 5.4, 6.5, 6.6, 6.7, 6.8, 7, 8, 9, 10, 11, 12, 13, and 15 will survive such expiration or termination.

## 9. NO MINIMUM BUSINESS GUARANTEE

Referrer acknowledge and agree that Referrer has no expectation that Referrer's business relationship with GCPay will continue for any minimum period of time or that Referrer shall obtain any anticipated amount of profits by virtue of this Agreement.

## 10. NON-DISCLOSURE

Referrer shall not directly or indirectly divulge, disclose, or communicate any Confidential Information to any third party at any time. Referrer shall keep Confidential Information in strictest confidence and may disclose it only to those of Referrer's employees with a need to know and then solely to permit Referrer to fulfill Referrer's obligations under this Agreement. Referrer shall inform Referrer's employees of Referrer's obligations under this Section 0. Referrer shall not use any Confidential Information except in connection with exercising Referrer's rights or performing Referrer's obligations under this Agreement. Referrer will take reasonable precautions to protect the confidentiality of the Confidential Information, which precautions will be at least equivalent to those taken by Referrer to protect Referrer's own confidential information.

## 11. DISCLAIMER OF WARRANTIES

- 11.1** ANY WARRANTIES PROVIDED BY GCPAY REGARDING PRODUCTS ARE TO END USERS ONLY AND NOT TO REFERRER. ANY WARRANTY FOR THE PRODUCTS SHALL BE FULFILLED DIRECTLY FROM GCPAY TO THE END USER, AND PURSUANT TO THE WARRANTY, IF APPLICABLE, THE END USER WILL RETURN ANY ALLEGEDLY DEFECTIVE PRODUCTS DIRECTLY TO GCPAY. REFERRER SHALL HAVE NO AUTHORITY TO ACCEPT ANY RETURNED PRODUCTS.
- 11.2** EXCEPT AS EXPRESSLY SET FORTH HEREIN, AND TO THE FULL EXTENT PERMITTED BY LAW, GCPAY EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, DESIGN, TITLE, NON-INFRINGEMENT, AND FITNESS FOR A

PARTICULAR PURPOSE. REFERRER UNDERSTAND AND AGREE THAT THE DISCLAIMER OF WARRANTIES IN THIS AGREEMENT IS A FUNDAMENTAL PART OF THIS AGREEMENT AND THAT GCPAY WOULD NOT AGREE TO ENTER THIS AGREEMENT WITHOUT SUCH DISCLAIMER.

**11.3** REFERRER SHALL NOT BE ENTITLED TO MAKE OR PASS THROUGH ANY WARRANTIES, GUARANTEES OR REPRESENTATIONS TO ANY THIRD PARTIES REGARDING THE PRODUCTS UNLESS SPECIFICALLY AUTHORIZED IN ADVANCE IN WRITING ON A CASE-BY-CASE BASIS BY GCPAY. REFERRER SHALL BE RESPONSIBLE FOR ANY AND ALL ADDITIONAL OR INCONSISTENT REPRESENTATIONS, GUARANTEES AND WARRANTIES REFERRER MAKE TO END USERS. REFERRER HEREBY INDEMNIFY AND HOLD GCPAY HARMLESS FROM AND AGAINST ANY AND ALL LIABILITIES, LOSSES, DAMAGES, COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES, INCURRED BY GCPAY RESULTING FROM ANY CLAIMS BASED ON OR RELATED TO ANY REPRESENTATION, GUARANTEE OR WARRANTY MADE BY REFERRER REGARDING THE PRODUCTS THAT WAS NOT SPECIFICALLY AUTHORIZED IN WRITING IN ADVANCE BY GCPAY.

## **12. INDEMNITY**

Referrer agrees to indemnify and hold GCPay and its affiliates, directors, officers, employees and representatives harmless from and against any and all losses, expenses (including reasonable attorney fees and costs) and damages of any kind incurred as a result of any breach of this Agreement by Referrer, Referrer's affiliates, directors, officers, employees, representatives, attorneys, successors and/or assigns including the failure to comply with applicable laws, the obligations of this Agreement or the provision of unauthorized warranties.

## **13. LIMITATION OF LIABILITY**

**13.1** SUBJECT TO SECTION 13.5, THE MAXIMUM CUMULATIVE AND AGGREGATE LIABILITY OF GCPAY AND ITS AFFILIATES, SUBSIDIARIES AND RELATED COMPANIES, AND THEIR EMPLOYEES, OFFICERS, DIRECTORS, AND REPRESENTATIVES, FOR ALL COSTS, LOSSES OR DAMAGES FROM CLAIMS ARISING UNDER OR RELATED IN ANY WAY TO THIS AGREEMENT, OR ANY BREACH OR NON PERFORMANCE OF IT NO MATTER HOW FUNDAMENTAL, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, IS LIMITED TO REFERRER'S DIRECT DAMAGES ONLY AND SHALL NOT EXCEED THE LESSER OF: (I) THE AMOUNTS PAID BY GCPAY TO REFERRER DURING THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE CLAIM, OR (II) US\$ 25,000 (TWENTY FIVE THOUSAND DOLLARS).

**13.2** IN NO EVENT SHALL GCPAY BE LIABLE TO THE REFERRER FOR ANY:

- (1) PUNITIVE OR EXEMPLARY DAMAGES, SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL LOSS;
- (2) LOSS OF PROFITS OR REVENUES;
- (3) LOSS OR CORRUPTION OF DATA;
- (4) LOSS OF USE, GOODWILL, BUSINESS INTERRUPTION, COST OF REPLACEMENT GOODS OR PRODUCTS, OR FAILURE TO REALIZE EXPECTED COST SAVINGS,

IN EACH CASE ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, OR ANY BREACH OR NON-PERFORMANCE OF IT, NO MATTER HOW FUNDAMENTAL, (INCLUDING BY REASON OF THAT PARTY'S NEGLIGENCE) EVEN IF REFERRER HAD

BEEN ADVISED OF THE POSSIBILITY OF SAME OR SAME WERE REASONABLY FORESEEABLE.

**13.3** NOTWITHSTANDING ANY CONTRARY PROVISION IN THIS AGREEMENT, NEITHER PARTY LIMITS OR EXCLUDES ITS LIABILITY IN RESPECT OF:

- (1) ANY DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE;
- (2) ANY FRAUD ;
- (3) ITS WILFUL DEFAULT OR WILFUL ABANDONMENT OF THIS AGREEMENT OR ANY PART OF IT ; OR
- (4) ANY OTHER STATUTORY OR OTHER LIABILITY WHICH CANNOT BE EXCLUDED UNDER APPLICABLE LAW.

**13.4** THE PARTIES AGREE THAT EACH OF CLAUSES 13.1, 13.2 AND 13.3 ARE SEPARATE AND INDEPENDENT TERMS OF THIS AGREEMENT.

**13.5** AS FAR AS PERMITTED BY LAW, THE FOREGOING LIMITATIONS OF LIABILITY SHALL APPLY NOTWITHSTANDING ANY FUNDAMENTAL BREACH, BREACH OF MATERIAL TERM OR FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

#### **14. Program Changes**

Referrer expressly agrees and acknowledges that GCPay may unilaterally amend, supplement, change or discontinue any: definition contained in this Agreement, Product(s), Program Documentation or any price list at any time following thirty (30) days' notice (or such other notice period expressly provided for in this Agreement) to Referrer of such action (hereinafter "Change Notification"). Within ten (10) days of receipt of such notice (hereinafter a "Change Notification"), Referrer may object, in writing, to any such amendment, supplement, change or discontinuation, in which case this Agreement shall automatically terminate on the date on which GCPay's Change Notification otherwise would have become effective. If Referrer does not object, in writing, to any Change Notification, the amendment, supplement, change or discontinuation so notified shall be deemed unconditionally agreed and accepted by Referrer.

#### **15. MISCELLANEOUS**

**15.1** GCPay and Referrer are independent contractors with respect to each other, and nothing contained in this Agreement shall be deemed or construed to create, and the parties do not intend to create a contract of employment or a joint venture, partnership, agency, fiduciary, franchise or other form of legal relationship between the parties. Referrer is not authorized and shall not have any authority to make any representation, contract, or commitment on behalf of GCPay, or otherwise bind GCPay in any respect whatsoever. Referrer (and Referrer's employees) shall not be entitled to any of the benefits that GCPay may make available to its employees, including, but not limited to stock, group insurance, profit-sharing or retirement benefits. Referrer shall be solely responsible for all tax returns, (income tax or otherwise), interest, penalties and payments required to be filed with or made to any federal, state, provincial or local tax authority with respect to Referrer's performance of services and receipt of Referral Fees under this Agreement. GCPay shall not withhold or make payments for social security, make unemployment insurance or disability insurance contributions, or obtain worker's compensation insurance on Referrer's (or Referrer's employees') behalf. Referrer shall comply with, and agree to accept exclusive liability for non-compliance with, all applicable state and federal laws, rules and regulations, including, without limitation, obligations such as payment of all taxes, social security, disability and other

contributions based on Referral Fees paid to Referrer under this Agreement. Referrer hereby agrees to indemnify, hold harmless and defend GCPay against any and all such liability, taxes or contributions, including, without limitation, penalties and interest.

- 15.2** Referrer shall have full control over the time, place, and method by which Referrer's work under this Agreement is accomplished, subject to the terms of this Agreement.
- 15.3** Notices under this Agreement shall be in writing, sent by registered post or delivered by hand, or in the case of notice by GCPay or Autodesk also by regular mail, fax, or email (each of which shall constitute notice in writing for the purpose of this Agreement), where applicable to the addresses stated above or to such other addresses as may be notified hereunder, and shall be effective when sent or posted, respectively.
- 15.4** Referrer may not assign Referrer's rights or delegate Referrer's duties without the prior written consent of GCPay or Autodesk. GCPay or Autodesk may assign its rights and delegate its duties to any successor in interest.
- 15.5** This Agreement and the Program Documentation contain the entire understanding of the parties with respect to the subject matter of this Agreement and supersede all prior and contemporaneous agreements and understandings between the parties, whether oral or written, with respect to the subject matter of this Agreement. No failure or delay in exercising any right shall operate as a waiver of that right. Any waiver, modification, or amendment of any provision of this Agreement will be effective only if in writing and signed by the authorized representatives of both parties. This Agreement is independent of any other agreement between the parties with respect to separate subject matter and, save as expressly provided otherwise in this Agreement, is not dependent upon the existence, continuation, or termination of such other agreements.
- 15.6** The various section headings are inserted for convenience of reference only and shall not affect the meaning or interpretation of this Agreement.
- 15.7** If any term, provision, covenant or condition of this Agreement is held by a court or arbitral panel of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated.
- 15.8** This Agreement shall be deemed to have been drafted by all parties, and, in the event of a dispute, no party hereto shall be entitled to claim that any provision should be construed against any other party by reason of the fact that it was drafted by one particular party.
- 15.9** This Agreement may be executed with an electronic signature by either or both parties and in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.
- 15.10** This Agreement shall be governed in all respects by the laws of the State of California except with respect to its rules regarding conflicts of law. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement. All disputes arising under this Agreement, all disputes arising under this Agreement which cannot be settled amicably by the parties shall be submitted to the non-exclusive jurisdiction of the courts in San Francisco County, California, or the United States Districts Court for the Northern District of California.