



## REFERRAL ENDORSER AGREEMENT - ADDITIONAL TERMS AND CONDITIONS

### 1. Definitions.

- a. **“Sales Lead Form”** shall mean the form provided by PAETEC on which Referral Endorser shall document prospective customer information and submit to PAETEC in accordance with this Agreement.
- b. **“Sales Lead”** shall mean the prospective customer information provided by Referral Endorser on a Sales Lead Form that, within 90 days after Referral Endorser’s submission to PAETEC, results in a sale by PAETEC of one or more circuit-based products sold by PAETEC for which the customer was not already a subscriber within thirty (30) days prior to receipt by PAETEC of the Sales Lead Form.
- c. **“Sales Lead Customer”** shall mean the customer resulting from a Sales Lead.
- d. **“Services”** shall mean those circuit-based products offered by PAETEC.
- e. **“Circuit-Based PAETEC Product”** shall mean any Digital T-1 access and above facilities.
- f. **“Eligible Net Revenue”** shall mean the monthly recurring revenue for PAETEC’s products and services available in the legacy McLeodUSA territory (defined as anywhere in the contiguous forty-eight (48) United States where legacy McLeodUSA is certified to do business and is currently providing business) from the Referral Endorser’s Sales Lead Customers, but shall not include: (a) any pass-through access/egress (or related) charges imposed by third parties; (b) any non-recurring charges imposed on or by PAETEC tariffs; (c) any pass through directory assistance charges; (d) any taxes or surcharges; and (e) any promotional or other credits granted by PAETEC. Eligible Net Revenue only applies when a customer has purchased at least one circuit-based PAETEC product.

**2. Term.** The initial term of this Agreement shall commence on the date the Agreement is executed on behalf of PAETEC (the **“Effective Date”**) and shall continue for a period of three years, unless earlier terminated as provided herein.

**3. Referral Endorser's Responsibilities.** Referral Endorser acknowledges and agrees that strict compliance with Referral Endorser’s obligations set forth in this Agreement and with the directions of PAETEC is a necessary pre-condition to payment of commissions to Referral Endorser under this Agreement. Referral Endorser shall, among other things, promptly fulfill the following responsibilities:

- a. Referral Endorser shall use its good-faith, commercially reasonable efforts to market and promote the Services to prospective customers in strict accordance with this Agreement and using only PAETEC pre-approved promotional and marketing materials.
- b. Referral Endorser shall promptly submit to PAETEC prospective Sales Lead lists and any Sales Lead Forms for Sales Lead registration and distribution to the appropriate PAETEC sales employees.
- c. Referral Endorser shall promote the sale of PAETEC Services so as to create the largest volume of profitable business for PAETEC.
- d. Referral Endorser shall participate in a meeting at least once every three (3) months with a designated PAETEC employee to review past and future Sale Leads.

### 4. PAETEC Responsibilities.

- a. PAETEC shall provide to Referral Endorser its customary literature regarding the Services and shall provide Referral Endorser with any training on the Services and PAETEC processes that PAETEC deems necessary.
- b. For all Sales Lead Customers (whose orders are accepted by PAETEC), PAETEC shall be responsible for all customer service.

**5. Orders for the Services.** Referral Endorser shall promptly submit to PAETEC all prospective Sales Lead lists and Sales Lead Forms, and once such information is assigned to a PAETEC sales employee, such PAETEC sales employee shall contact the prospective Sales Lead Customer(s). Each order submitted to PAETEC by a prospective Sales Lead Customer is subject to acceptance by PAETEC, and PAETEC may reject any order, in whole or in part, for any reason before or after acceptance, including without limitation, PAETEC network capacity or the potential Sales Lead Customer's creditworthiness. Upon acceptance by PAETEC of an order for the Services, PAETEC shall issue to the prospective customer its sales order form with the terms and conditions that will govern the sale of the Services.

**6. Commission Policy.** The parties hereto agree to the following with respect to commissions to be paid hereunder:

- a. Subject to the terms and conditions contained in this Agreement and during the term of this Agreement, PAETEC shall pay to Referral Endorser commissions based on the commission structure stated on this Agreement and generated by Referral Endorser's Sales Lead Customers who are either: (i) new customers who initiate service with PAETEC after the Effective Date of this Agreement and within 90 days after Referral Endorser's submission of the Sales Lead Form to PAETEC; or (ii) existing PAETEC customers who order new or additional Services within 90 days after Referral Endorser's submission of the Sales Lead Form to PAETEC.
- b. No commissions will be paid as a result of any revenue generated by Services for which the Sales Lead Customer was already a subscriber as of the Effective Date, including any renewal of such subscriptions.
- c. Any commissions earned by the Referral Endorser under this Agreement are scheduled to be paid monthly beginning approximately 60 days in arrears from the billing date (starting with the first full month's billing by PAETEC of Referral Endorser's Sales Lead Customer), and commission payments shall be made at the end of the appropriate calendar month. If, for any reason, PAETEC does not receive, within this 60 day arrearage period, any amount, or less than the billed amount, for Services it has sold to one of Referral Endorser's customers, then Referral Endorser shall not be paid any commission on that amount, whether or not PAETEC ultimately receives payment from the customer more than 60 days from the billing date. In the event that a commission has already been paid to Referral Endorser and Referral Endorser's customer cancels the Services before installation, such commission will be subject to a one hundred percent (100%) chargeback.
- d. Commissions will be paid only on revenue when a customer has purchased at least one circuit-based PAETEC product.
- e. PAETEC shall pay commissions only for the shorter time period of either (i) the period the customer remains a PAETEC customer in good standing or (ii) while the Referral Endorser is under a current Referral Endorser Agreement with PAETEC.
- f. **In the event that the commissions due to Referral Endorser total less than \$50.00 for any given payment period, PAETEC shall have the right to withhold payment of such commissions until the total reaches \$50.00, and then PAETEC shall pay to Referral Endorser such aggregated commissions in the next payment period.**
- g. Referral Endorser shall be solely responsible for the payment of any taxes or assessments in connection with its receipt of commission payments hereunder.
- h. Referral Endorser acknowledges and agrees that PAETEC shall have the right, but not the obligation, to offset against any commissions owed to Referral Endorser hereunder any amount Referral Endorser owes to PAETEC under this Agreement or any other agreement.
- i. In the event that Referral Endorser disputes the amount of any payment made by PAETEC hereunder, Referral Endorser must submit to PAETEC, within ninety (90) calendar days of such commission payment, documentation which details with specificity the grounds for such dispute. Referral Endorser and PAETEC shall then work in good faith to resolve such dispute. Referral Endorser agrees that failure to provide sufficiently detailed documentation within the required time period constitutes a waiver to any claim by Referral Endorser that the commission payment amount is erroneous for that period. Adjustments for commission payment errors will be limited to the 180 days prior to the date the commission payment error is discovered and brought to our attention by you unless otherwise required by law.
- j. Referral Endorser acknowledges and agrees that PAETEC has the sole discretion to modify the applicable commission structure when the PAETEC legacy plans are integrated, and such modifications will be binding on the Referral Endorser upon written notice from PAETEC to Referral Endorser.

k. The commission percentages are subject to change at PAETEC's discretion on ninety (90) days prior written notice to Referral Endorser.

l. PAETEC shall not be liable for payment of any commissions owed to Referral Endorser on any eligible account more than 180 days in arrears. For avoidance of any doubt, if PAETEC determines the Referral Endorser was eligible to, but did not, receive commissions on a particular account, PAETEC shall be required to pay any applicable commission up to a maximum 180 days in arrears.

**7. Standards of Conduct.** In performing its obligations under this Agreement, Referral Endorser represents and warrants that Referral Endorser and its employees will observe the highest standard of integrity, good faith, and fair dealing with all members of the public. Referral Endorser represents and warrants that it will do nothing which would tend to misrepresent, discredit, dishonor, reflect adversely upon, or in any manner injure the reputation of PAETEC, the determination of which shall be within the sole discretion of PAETEC.

**8. No Partnership or General Agency.**

a. The relationship contemplated by the parties to this Agreement is that of independent contractors and is in no way or event intended to establish a general agency, joint venture, partnership, employment relationship, dealership or franchise of any kind between them.

b. PAETEC and Referral Endorser each agree and acknowledge that, in connection with Referral Endorser's performance hereunder, Referral Endorser is acting and will act as an independent contractor and not as an employee of PAETEC for any purpose whatsoever. Any personnel acting on behalf of Referral Endorser in relation to this Agreement shall at all times be under Referral Endorser's exclusive control and shall not be deemed employees of PAETEC for any purpose. Referral Endorser assumes full responsibility for the acts of its employees and for their supervision, daily direction and control. Moreover, Referral Endorser acknowledges and agrees that it will be solely responsible for workers' compensation, disability benefits, unemployment insurance, withholding taxes, social security and all other taxes and benefits for Referral Endorser's employees, and that PAETEC will not be responsible or liable therefore.

c. Referral Endorser shall identify itself as a business wholly independent of PAETEC. Referral Endorser agrees that neither Referral Endorser nor personnel of Referral Endorser shall be an agent of PAETEC, except for the very limited authority to engage in the activities described in this Agreement; nor will Referral Endorser or its personnel represent or hold itself out as having any authority to bind PAETEC or to incur any obligations whatsoever on behalf of PAETEC. Neither Referral Endorser nor its employees shall make any representations or warranties relating to the Services or policies and procedures of PAETEC, except as expressly set forth in sales literature pre-approved in writing by PAETEC, or as set forth in materials provided to Referral Endorser by PAETEC for the express purpose of sharing with prospective customers.

**9. Termination.**

a. During the term of this Agreement, either party may terminate this Agreement for convenience upon 90-days prior written notice to the other party.

b. In addition, PAETEC may terminate this Agreement for cause: (i) except as expressly set forth otherwise herein, immediately in the event Referral Endorser fails to perform or observe any of its covenants or obligations under this Agreement, and such failure continues for more than 10 calendar days after the date of notice by PAETEC to Referral Endorser of such failure; or (ii) immediately upon written notice to Referral Endorser if Referral Endorser breaches its representations, warranties or obligations set forth in Sections 7, 8(c), 12, 13, 14, 17 or 24 of this Agreement; or (iii) immediately upon written notice if Referral Endorser commits any act of fraud or dishonesty or other misrepresentation in connection with Referral Endorser's performance under this Agreement; or (iv) immediately upon written notice to Referral Endorser if Referral Endorser commits any act of whatever nature which, in the sole discretion of PAETEC, would or may have the effect of harming the PAETEC name or business reputation.

c. In the event that PAETEC terminates this Agreement for convenience as set forth in Section 9(a) above, PAETEC shall continue to pay Referral Endorser all commissions earned by Referral Endorser under this Agreement, until either the expiration or termination of the original term of Sales Lead Customer's PAETEC Service Agreement or while the Referral Endorser is under a current Referral Endorser Agreement with PAETEC, whichever time period is shorter.

d. In the event that Referral Endorser terminates this Agreement for convenience as set forth in Section 9(a) above, or PAETEC terminates this Agreement for cause as set forth in Section 9(b) above, PAETEC shall pay only those commissions

actually earned by Referral Endorser as of the date of termination and all other commission payment obligations hereunder shall cease immediately as of the date of termination.

e. For purposes of this Agreement, a commission will be deemed to have been actually earned by Referral Endorser if the Sales Lead Customer's order for the Services has been submitted to, and accepted by, PAETEC, and PAETEC has commenced provision of the Services to such Sales Lead Customer prior to the date of termination, and PAETEC has received full payment within 60 days of service pursuant to Section 6(c).

**10. Indemnification.** Referral Endorser agrees to indemnify and hold PAETEC harmless from and against any claims, losses, costs, damages, liabilities, penalties, fines or expenses (including court costs, costs of appeal and reasonable fees of attorneys and other professionals) arising out of: (i) Referral Endorser's negligent act or omission or willful misconduct; (ii) Referral Endorser's breach of its representations, warranties and obligations hereunder; and (iii) any act or omission of Referral Endorser in marketing or promoting the Services, including without limitation, misrepresenting to prospective customers the Services or the terms under which the Services are made available by PAETEC.

**11. Assignment.** This Agreement is binding upon and shall inure to the benefit of the successors and assigns of PAETEC and may be assigned by PAETEC at any time without the consent of Referral Endorser. This Agreement may not be assigned by Referral Endorser without the prior, written consent of PAETEC which consent shall be within the sole discretion of PAETEC. Neither the whole nor any part of the interest of Referral Endorser in this Agreement shall be transferred or assigned by operation of law.

**12. Confidential Information.** The parties hereto acknowledge and agree to maintain the confidentiality of all Confidential Information acquired or accessed during the term of this Agreement or otherwise, directly or indirectly, as a result of the relationship between PAETEC and Referral Endorser hereunder. Without limiting the generality of the foregoing, the parties hereby expressly acknowledge and agree that the following constitute Confidential Information of PAETEC: (i) the terms and conditions of this Referral Endorser Agreement; and (ii) all information contained in PAETEC databases that is not publicly available, including without limitation product, pricing and network information.

**13. Compliance with Laws.**

a. At its sole cost and expense, Referral Endorser shall maintain in full force and effect all licenses and permits required for its performance under this Agreement.

b. Referral Endorser shall immediately notify PAETEC of the commencement or threatened commencement of any action, suit or proceeding, or of the issuance or threatened issuance of any order, writ, injunction, award or decree of any court, agency or other governmental instrumentality involving Referral Endorser or its activities under this Agreement or which may affect Referral Endorser's ability to perform its obligations hereunder.

c. Referral Endorser represents and warrants that it is currently in compliance, and that it will comply, with all applicable local, county, state and federal laws, ordinances and regulations of any description, and Referral Endorser shall immediately remedy any breach of such laws, ordinances and regulations and notify PAETEC of such breach.

d. Notwithstanding Referral Endorser's obligations under this Section 13, Referral Endorser acknowledges and agrees that, in addition to all other remedies available to PAETEC at law or in equity, PAETEC shall have the right to terminate this Agreement immediately upon notice to Referral Endorser in the event of: (i) the occurrence of one or more of the events specified in Section 13(b) above; or (ii) Referral Endorser's breach of its obligations, representations or warranties set forth in Section 13(a) or 13(c).

**14. Proprietary Rights.** Referral Endorser acknowledges the sole and exclusive ownership and right to exercise control by PAETEC over the nature, quality and use of the PAETEC name, logos, trademarks, service marks, copyright rights and other proprietary marks (the "**PAETEC Marks**"). Referral Endorser shall not acquire, or authorize or permit anyone to acquire, any right with respect to the PAETEC Marks. Referral Endorser shall have no right to use any PAETEC Marks without the prior, written approval by PAETEC of each such use, which approval may be granted or withheld in the sole discretion of PAETEC. Notwithstanding the foregoing, during the term of this Agreement and subject to the terms and conditions set forth herein, Referral Endorser shall have the right to disseminate non-confidential promotional and marketing materials prepared and distributed to Referral Endorser by PAETEC for the express purpose of sharing with prospective customers. Upon termination or expiration of this Agreement, Referral Endorser agrees promptly to remove and return to PAETEC or destroy wherever necessary all signs, insignias and other promotional materials which, in any way, display the PAETEC Marks or reference PAETEC or the Services, and Referral Endorser shall immediately discontinue all use of the PAETEC Marks and shall cease to represent itself as a Referral Endorser of PAETEC. Without limiting the generality of the foregoing, Referral Endorser acknowledges and agrees that, with respect to this Agreement or the subject matter contained herein, Referral Endorser will not engage in any: advertising; press release or other public

communications; web site or internet marketing; electronic mail solicitation or marketing; or direct mail or facsimile transmission or telemarketing campaigns without the prior, written approval of PAETEC of each such use.

**15. Notice.** All notices to the parties shall be in writing and shall be deemed sufficiently given when deposited in the United States' mail to be sent first-class certified or registered with proper postage prepaid, or when deposited with a national next-business-day courier service for delivery, to the party's address set forth on page one hereof, or to such other address of which the other party has been notified. Notices to PAETEC shall be sent to the attention of Legal Department c/o William H. Courter, PAETEC Legal Department, One Martha's Way, Hiawatha, IA 52233.

**16. Limitation of Liability.**

a. Neither party shall be liable to the other party, or any third party, for any indirect, special, incidental, punitive or consequential loss or damage of any kind, including without limitation, lost profits (whether or not such damages are foreseeable or the party has been advised of the possibility of such loss or damage) by reason of any act or omission in such party's performance under this Agreement.

b. Referral Endorser acknowledges and agrees that PAETEC shall not be liable for any commissions that Referral Endorser might have earned hereunder but for: (i) the inability or failure of PAETEC to provide Services to any prospective customer, Sales Lead, or any entity for whom Referral Endorser submitted a Sales Lead Form; or (ii) the discontinuation or modification of the Services by PAETEC; or (iii) failure by PAETEC to pursue or accept any Sales Lead Forms submitted by Referral Endorser.

c. Referral Endorser acknowledges and agrees that PAETEC, directly or through other sales representatives or agents, may offer Services and that Referral Endorser will be entitled to no commission or other compensation for sales made through such other channels. In the event that PAETEC receives conflicting orders or Sales Leads for the Services from Referral Endorser and a sales representative, agent or PAETEC employee, PAETEC shall have the right to resolve such conflict and determine, in its sole discretion, who will receive credit for such order.

**17. Insurance.** During the term of this Agreement, Referral Endorser shall maintain in full force and effect all necessary insurance coverage including without limitation automobile insurance, general comprehensive liability insurance, contracts liability insurance, workers' compensation insurance, and unemployment insurance, all in such coverage amounts as: (i) required by law; and (ii) necessary to cover Referral Endorser's potential liability to PAETEC or third parties under this Agreement.

**18. Force Majeure.** Neither party will be liable to the other party for any loss or damage or will be deemed to be in breach of this Agreement to the extent that such party's failure to perform, or delay in performance of, its obligations results from: (a) compliance with any applicable law, ordinance, regulation, rule, order or requirement of any government, department, agency or court of competent jurisdiction; (b) an act of God, fire; (c) acts or omissions of the other party; (d) fires, strikes, war, insurrections, riots, work stoppages, or other catastrophes, electrical, computer or mechanical failure; or (e) any other cause beyond such party's reasonable control.

**19. Severability.** Each provision of this Agreement shall be considered severable, and if for any reason any provision or provisions of this Agreement are determined to be invalid, such invalidity shall not impair the operation or affect the portions of this Agreement which are valid.

**20. No Waiver.** Except as expressly set forth herein, any failure of a party to take action in response to any breach of this Agreement by the other party shall not constitute a waiver of such breach or of performance required by the other party; and no waiver of any provision of this Agreement shall constitute a waiver of any other provision (whether or not similar), nor shall such waiver constitute a continuing waiver unless expressly provided herein.

**21. Entire Agreement; Amendment.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous representations, promises, agreements and understandings, whether oral or written, between the parties concerning the subject matter hereof. This Agreement may not be modified, amended, terminated or waived, in whole or in part, except by a written instrument signed by each of the parties hereto.

**22. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa, without regard to conflict of laws principles.

**23. Survivability.** All confidentiality and indemnification obligations provided for herein shall survive the termination or expiration of this Agreement.

**24. No Solicitation, Hire or Retention.** During the term of this Agreement and for a period of 12 months following expiration or termination hereof, Referral Endorser shall not, directly or indirectly: solicit; hire; or otherwise retain or engage any employee of PAETEC, without the prior written consent of PAETEC, which consent shall be within the sole discretion of PAETEC.

**25. Modifications.** Referral Endorser agrees that PAETEC may amend without notice these additional Terms and Conditions, and such modifications will be binding on the Referral Endorser and effective upon posting at <http://www.paetec.com/PoliciesAndNotices>.

**26. No Conflict.** In the event of any conflict between the terms and conditions set forth in the body of this Agreement and the provisions contained in any Amendment attached hereto and made a part hereof, the terms and conditions set forth in the body of the Agreement shall control. In addition, notwithstanding anything to the contrary contained herein, in the event of a conflict between the terms and conditions of this Agreement and any PAETEC tariff provision(s), including without limitation, any tariff provision(s) necessary to accommodate commission payments hereunder, the terms of the applicable PAETEC tariff(s) shall control.