

# Checkfront Referral Partner Agreement

This Checkfront Referral Partner Agreement was last updated on May 1, 2019.

This Checkfront Referral Partner Agreement is an agreement between the partner agreeing to these terms (the “Partner”) and Checkfront, Inc., a British Columbia company with corporate offices in Victoria, British Columbia (“Checkfront”, and together with Partner, the “Parties” and each, a “Party”), and is entered into the date Partner agrees to be bound by this Agreement (the “Effective Date”).

## **Background**

Checkfront is the owner and operator of Checkfront®, a unique booking platform and service that promotes effective, interactive transactions among Checkfront customers and their customer base (the “Checkfront Service”). Partner wishes to promote, market and advertise the Checkfront Service to potential Checkfront customers (“Referrals”) through its website(s) and other marketing channels, in accordance with Checkfront’s partner program described in this Agreement (the “Program”).

## **The Parties agree as follows:**

BY PARTICIPATING IN THE PROGRAM, PARTNER ACKNOWLEDGES THAT PARTNER HAS READ, ACCEPTS AND AGREES TO BE BOUND BY AND COMPLY WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT, AS AMENDED FROM TIME TO TIME IN ACCORDANCE WITH SECTION 6.1. PARTNER REPRESENTS AND WARRANTS TO CHECKFRONT THAT PARTNER HAS THE CAPACITY TO ENTER INTO THIS LEGALLY BINDING AGREEMENT. IF PARTNER IS COMPLETING THE ORDER FORM ON BEHALF OF ANOTHER PERSON OR ENTITY, PARTNER HEREBY REPRESENTS AND WARRANTS TO CHECKFRONT THAT PARTNER HAS THE AUTHORITY TO BIND SUCH PERSON OR ENTITY TO THIS AGREEMENT.

## 1. LICENSE

1. Subject to this Agreement and its terms, Checkfront hereby grants to Partner a free, non-exclusive, non-transferable and revocable license (“License”): (a) to market and promote the Checkfront Service to Referrals; (b) to use the Checkfront trademarks, logos and URLs provided by Checkfront and listed in Checkfront’s Trademark Usage Guidelines (“Guidelines”) (which can be found at [Media Guidelines, www.checkfront.com/media](#), as updated from time to time by Checkfront at its sole discretion) (“Licensed Marks”); and (c) to use the materials, language and code (collectively, “Marketing Materials”) provided by Checkfront; for the sole purpose of promoting the Checkfront Service.
2. The license to use the Licensed Marks granted herein is subject to the Guidelines, which are incorporated here by reference. Checkfront may revoke the License at any time by giving Partner a written notice (including via email).

## 2. PROGRAM COMMITMENTS

1. The Program. To participate in the Program, Partner must complete the online application (the “Application”) for participation in the Program found on Checkfront’s website (“Site”). Checkfront may accept or reject any Application at its sole discretion.
2. Legal Agreements. The terms and conditions included or otherwise referenced in the Application are incorporated into this Agreement by reference. As part of its participation in the Program and in acting as Checkfront’s referral partner, Partner hereby agrees and consents to any other requests and rules set by Checkfront from time to time, in its reasonable discretion, in connection with Partner’s ongoing participation in the Program and promotion of the Checkfront Service to Referrals. In all its activities under this Agreement, and specifically such activities relating to Partner’s promotion of the Checkfront Service, Partner shall cooperate with Checkfront and act in good faith. Partner acknowledges and recognizes the terms and conditions in Checkfront’s Terms of Service (“Terms” - found at [www.checkfront.com/terms](#)) and Checkfront’s Privacy Policy (“Privacy Policy,” found at [www.checkfront.com/privacy](#)) apply to Checkfront’s provision of the Checkfront Service to Referrals. Partner represents and warrants that Partner has obtained all consents required to provide information about Referrals’ to Checkfront pursuant to the Program.
3. Promotion, Referral Activities. Partner agrees to engage in continued, active promotion of the Checkfront Service in various marketing channels using the Licensed Marks, Marketing Materials and Partner Materials (as defined below), and to do so in compliance with the terms of this Agreement.
4. Prohibited Activities. Partner agrees not to associate Marketing Materials with content that is unlawful in any manner, or which is otherwise harmful, threatening, defamatory, obscene, offensive, harassing, sexually explicit, violent, discriminatory, or otherwise objectionable in Checkfront’s sole discretion. Partner agrees not to send unsolicited electronic messages to multiple unrelated

recipients in promoting the Checkfront Service, or otherwise to engage in any other form of mass electronic communications prohibited by law in connection with activities contemplated under this Agreement.

5. Permissible Use of Licensed Marks.
  1. Partner expressly agrees to comply with all the terms herein (including Section 2.5.3) in using the Licensed Marks and in creating any materials for use in promoting the Checkfront Service (“Partner Materials”).
  2. Through the Guidelines and otherwise, Checkfront shall provide specifications and other instructions from time to time as to Partner’s permissible use of the Licensed Marks in creating Partner Materials and promoting the Checkfront Service. Partner further agrees to comply with all such specifications and instructions.
  3. Partner shall ensure that all Licensed Marks appearing on its Partner Materials are in the form approved by Checkfront in the Guidelines or otherwise, shall not modify any Licensed Marks or otherwise substantially modify other Marketing Materials contrary to reasonable instructions provided by Checkfront, and shall further comply with reasonable instructions from Checkfront as to the form, content and display of Marketing Materials and Partner Materials. Upon termination of this Agreement for any reason whatsoever, or upon written request by Checkfront, the License granted herein shall expire and Partner shall immediately cease all its activities under this Agreement.
6. Liabilities. Partner shall be solely responsible for its operations in acting under this Agreement, including, without limitation, the legality of Partner’s operations and materials, created and used in connection with this Agreement. Except for a claim alleging that a Licensed Mark violates a third party’s trademark rights, Checkfront is not responsible for the development, operation or content of Partner Materials and Partner agrees to defend, indemnify and hold Checkfront harmless against any and all claims, losses actions, causes of action, damages, or expenses (including attorney fees) relating to Partner’s performance under this Agreement and the development, operation, content and maintenance of Partner Materials.
7. Customer Relations. During and after the Term, Checkfront shall be the exclusive owner of all relations created via Partner among Checkfront and Referrals with respect to the Checkfront Service, including any and all information identifying Referrals who contract with Checkfront for the use of the Checkfront Service. The Terms of Service, Privacy Policy, and Checkfront’s rules and procedures for the Checkfront Service will apply to these Referrals and may be changed by Checkfront without prior notice to Partner, and Partner agrees to convey to Referrals the nature of their relations with Checkfront under the Terms of Service.
8. Additional Restrictions. Partner will not: (a) make any representations, warranties or guarantees, whether publicly or to anyone, with respect to the specifications,

features or capabilities of any Checkfront Services that are deceptive, misleading or otherwise inconsistent with the Marketing Materials or any other materials that are made publicly available by Checkfront; or (b) do anything that suggests Checkfront Services belong to Partner or anyone other than Checkfront.

### 3. QUALIFIED REFERRALS, COMMISSIONS

1. "Qualified Referrals" mean Registered Referrals (as defined in Section 3.2 below): (a) referred by Partner to Checkfront and who complete the sign-up procedure in accordance with the procedure described in Section 3.2 below; (b) of whom Checkfront has no record in connection with the Checkfront Service, or who are not, at the time referred to Checkfront by Partner, in any contractual relations or ongoing negotiations with Checkfront in connection with the Checkfront Service; and (c) who accept the Terms of Service within ninety (90) days of being referred to Checkfront by Partner, at a Referral's own discretion and without receiving any monetary or other incentive from Partner, who are not rejected by Checkfront, and make at least one payment to receive the Checkfront Service. All Referrals will be deemed rejected by Checkfront if they do not become a Qualified Referral within ninety (90) days of first being submitted to Checkfront by Partner. On a case by case basis, the Parties may mutually agree in writing (email sufficing) to waive or extend the ninety (90) day time limit for a particular Referral.
2. Referral Procedure. Each Referral shall be referred to Checkfront by Partner through one of the two following options: a trial sign up via link provided by Checkfront to Partner, or a direct handoff via form or email which Partner shall fully complete and submit to Checkfront. Checkfront will review the Referrals submitted to identify any whether it has any pre-existing relationships with such Referrals and if any such pre-existing relationships exist, the Referral will not be registered. Upon receiving each Referral, to the extent Checkfront does not have a pre-existing relationship with such Referral, Checkfront shall send an email to the Referral's email address provided by Partner, detailing the steps to be taken towards registration to receive the Checkfront Service and become a "Registered" Referral. Checkfront shall be responsible for the sales process to all Registered Referrals, subject to the Parties' continued good-faith cooperation in promoting the sales process to Referral.
3. Commissions.
  1. Responsibilities. Checkfront shall collect all fees from Referrals for the Checkfront Service directly from Referrals.
  2. Referral Fees. Upon a Referral becoming a Qualified Referral, Checkfront shall pay Partner, in arrears, 20% of the total revenue received by Checkfront for Checkfront Services in the prior fiscal quarter that is and attributable to all Qualified Referrals pursuant to the Terms for such fiscal quarter, net of taxes, refunds or credits (such revenue, the "Referral

Fees”) paid by the Qualified Referral under the Terms (“Referral Fees”). Checkfront will pay Partner the Referral Fees within 60 days following each fiscal quarter in which the Referral Fees accrued. Notwithstanding anything to the contrary in this Agreement, Referral Fees only become payable and will be paid to Partner when a threshold of \$250 or greater in Referral Fees is owing. If a Qualified Referral terminates their subscription to the Checkfront Service within ninety (90) days after becoming a Qualified Referral, Partner will receive no Referral Fees for such Qualified Referral. Referral Fees will only be paid through the payment method indicated in the Application.

3. Associated charges. Partner shall be responsible for payment of all taxes, duties, governmental charges and other like charges levied on the Referral Fees, and Partner shall indemnify, defend and hold Checkfront harmless from and against any claims, losses, liabilities, damages, and costs arising out of or relating to all charges emanating from Checkfront’s payment of Referral Fees.

#### 4. TERM AND TERMINATION

1. Initial Term. This Agreement shall become effective as of the Effective Date and shall continue for twelve (12) months thereafter (“Initial Term”), unless Checkfront rejects Partner’s Application to participate in the Program.
2. Renewal Term. Following expiration of the Initial Term, this Agreement will automatically renew for additional consecutive terms of twelve (12) months (each, a “Renewal Term” and together with the Initial Term, the “Term”), unless a Party gives written notice of termination to the other Party at least thirty (30) days prior to the end of the Initial Term or any Renewal Term.
3. Early Termination.
  1. Without Cause. Checkfront shall have the right to terminate this Agreement at any time for any or no reason by giving ten (10) days’ prior written notice to Partner.
  2. For Cause. Either Party may terminate this Agreement at any time, effective immediately upon written notice to the other Party who has materially breached this Agreement, provided that prior to terminating this Agreement the terminating Party shall provide written notice of such material breach and thirty (30) days’ opportunity for the breaching Party to cure such breach.
4. Effect of Termination. From and following the date of termination of this Agreement Partner’s rights under this Agreement shall terminate, and Partner shall not be entitled to receive any Referral Fees or any other payments under this Agreement other than commissions or payments earned or accrued prior to termination of this Agreement.
5. Representations and Warranties; Disclaimer; Limitations of Liabilities; Indemnities

1. Limited Warranty. Both Parties warrant that at all times during the Term they will comply with all applicable laws, regulations, codes of practice, as well as this Agreement, the Privacy Policy and Guidelines. During the Term and after termination of this Agreement for any reason whatsoever, Partner expressly undertakes not to do anything that might reasonably be expected to damage the business, interests or reputation of Checkfront and will not make, publish or allow to be made or published any disparaging remarks concerning Checkfront, its representatives, or the Checkfront Service.
2. DISCLAIMER. CHECKFRONT'S SERVICES AND MARKETING MATERIALS ARE PROVIDED "AS IS" AND "AS AVAILABLE", WITH ALL FAULTS AND WITHOUT WARRANTIES, CONDITIONS, OR REPRESENTATIONS OF ANY KIND. OTHER THAN CHECKFRONT'S EXPRESS WARRANTY UNDER THE PREVIOUS SUBSECTION 5.5, CHECKFRONT MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND AND CHECKFRONT EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES AND CONDITIONS, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AVAILABILITY, SECURITY, TITLE, AND/OR NON-INFRINGEMENT OF THE SUBJECT MATTER OF THIS AGREEMENT.
3. CHECKFRONT'S TOTAL AGGREGATE LIABILITY TO PARTNER IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT, INCLUDING FOR ANY CLAIMS ARISING OUT OF BREACH OF CONTRACT, TORT OR ANY OTHER LEGAL THEORY, WILL BE LIMITED TO \$100. NOTWITHSTANDING THE FOREGOING, CHECKFRONT WILL NOT BE LIABLE FOR ANY CLAIMS FOR: (A) PUNITIVE, EXEMPLARY OR AGGRAVATED DAMAGES; (B) DAMAGES FOR LOSS OF PROFITS, GOODWILL OR REVENUE, OR FAILURE TO REALIZE EXPECTED SAVINGS; OR (C) INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES.
4. Indemnification. Partner will indemnify, defend and hold Checkfront and its subsidiaries, affiliates, shareholders, directors, officers and employees (the "Checkfront Indemnified Parties") harmless from and against any and all costs, liabilities, damages losses and expenses (including but not limited to reasonable attorneys' fees) which may arise as a result of or in relation to: (a) a breach of the Agreement by Partner; (b) the negligence, gross negligence or willful misconduct of Partner or its employees, agents or contractors; (c) a failure by Partner or its employees, agents, contractors or invitees to comply with the applicable laws; and (d) any misrepresentation made by Partner regarding Checkfront Services.

## 6. GENERAL

1. Modification of Agreement. Checkfront may modify this Agreement from time-to-time at its reasonable discretion by posting a change on the Site or notifying Partner via email. If Partner objects to any such change, Partner may

terminate this Agreement without cause by providing written notice to Checkfront. Partner's continued participation in the Program following receipt of notice about changes to this Agreement shall constitute binding acceptance of this Agreement as amended.

2. **Assignment.** Checkfront may assign this Agreement at any time. Partner may not assign or transfer this Agreement without Checkfront's prior written consent, such consent not to be unreasonably withheld.
3. **Intellectual Property Rights.** All intellectual property rights (such as but not limited to trademarks, trade names, logos, patents, copyrights, domain names and derivative rights) in Licensed Marks, the Checkfront Service and related content and technology around the world ("Checkfront IP Rights") are and will remain the exclusive property of Checkfront and its licensors. The License granted by Checkfront to Partner is granted solely under the terms of this Agreement and in furtherance of its objectives. Partner's right to use the Licensed Marks is at the discretion of Checkfront and is subject to Partner's compliance with the terms of this Agreement, Guidelines, and with all applicable laws and regulations. Partner agrees to (a) not use any Checkfront IP Rights in any manner reasonably likely to breach this Agreement; (b) not do anything contesting or impairing any Checkfront IP Rights; (c) not create or obtain any intellectual property rights (such as but not limited to trademarks, trade names, logos, patents, copyrights, domain names and derivative rights) that are substantially similar to any Checkfront IP Rights; (d) promptly notify Checkfront of any unauthorized use of any Checkfront IP Rights of which Partner has actual knowledge; and (e) always use the Licensed Marks and any other Licensed Marks in compliance with the Guidelines. Checkfront may perform periodic reviews of any Partner Materials, and shall have the exclusive authority and discretion to order the removal and/or amendment of any Partner Materials.
4. **No Waiver.** Either Party's failure to enforce the other Party's strict performance of any provision of this Agreement will not constitute a waiver of the first Party's right to subsequently enforce such provision or any other provision of this Agreement.
5. **Independent Contractors.** The Parties herein act on their own behalf as independent contractors. Nothing in this Agreement shall create any joint venture, agency, franchise, sales representative, employment or any other relationship between the Parties beyond the relations set out in this Agreement, and Partner is expressly precluded from acting on Checkfront's behalf. Partner's display of Licensed Marks under this Agreement, other content presented by Partner, or contact among Partner and third parties shall not misrepresent the relations described herein.
6. **Confidentiality Obligations.**
  1. For the purposes of this Agreement, a Party receiving Confidential Information (as defined below) will be the "Recipient" and the Party

disclosing such information will be the “Discloser” and “Confidential Information” means all information disclosed by Discloser to Recipient or otherwise coming into the possession of Recipient during the Term that is marked as “confidential” or “proprietary” or that a reasonable person would understand to be confidential or proprietary; provided, however, that Discloser’s Confidential Information does not include: (i) information already known or independently developed by Recipient outside the scope of this relationship without the benefit of any Confidential Information of Discloser; (ii) information that is publicly available through no wrongful act of Recipient; or (iii) information received by Recipient from a third party who was free to disclose it without confidentiality obligations. Notwithstanding the foregoing, all parts of Checkfront Offerings, whether marked as “confidential” or “proprietary” or not, will be considered Checkfront’s Confidential Information.

2. During the Term and at all times thereafter, Recipient will not: (a) disclose such Confidential Information of the Discloser to any person or entity, except to its own personnel, affiliates or contractors having a “need to know” and that have entered into written agreements no less protective of such Confidential Information than this Agreement, and to such other recipients as the Discloser may approve in writing; (b) use Confidential Information of the Discloser except to exercise its license rights or perform its obligations under this Agreement; or (c) alter or remove from any Confidential Information of the Discloser, any proprietary legend. Recipient will use at least the same degree of care in safeguarding the Confidential Information of the Discloser as it uses in safeguarding its own confidential and proprietary information of a similar nature, but in no event will less than due diligence and reasonable care be exercised. Recipient will be deemed to have fulfilled its confidentiality obligations under this Section 6 if it affords the other Party’s Confidential Information at least the same degree of care it takes in protecting its own confidential and proprietary information from unauthorized disclosure (but in no event using less than a reasonable degree of care).
3. Recipient will promptly notify the Discloser if it becomes aware that it has breached its obligations under this Section and take reasonable steps to remedy or mitigate (if remediation is not possible) such breach
4. Upon the earlier of Discloser’s written request or termination or expiration of this Agreement, and regardless of whether a dispute may exist, Recipient will return or destroy (as instructed by Discloser) all Confidential Information of Discloser in its possession or control and cease all further use thereof. Notwithstanding the foregoing, Recipient may disclose Discloser’s Confidential Information to the extent that such disclosure is necessary for the Recipient to enforce its rights under this Agreement or is required by law or by the order of a court or similar judicial or



administrative body, provided that the Recipient promptly notifies the Discloser in writing of such required disclosure and cooperates with the Discloser to seek an appropriate protective order.

5. Recipient acknowledges that violation of the provisions of this section would cause irreparable harm to Discloser not adequately compensable by monetary damages. In addition to other relief, it is agreed that injunctive relief will be available without necessity of posting bond to prevent any actual or threatened violation of such provisions.
7. Force Majeure. A Party shall not be obliged to perform any of its obligations herein if it is prevented from doing so by a situation of force majeure. "Force majeure" events shall include events beyond the reasonable control of the Parties, including acts of God, acts of government, acts of nature, strikes or riots, as well as improper performance by Checkfront's suppliers or defects in objects, materials or software of third parties. If a situation of force majeure lasts for more than thirty (30) days, either Party may terminate this agreement upon written notice to the other Party.
8. Entire Agreement; Severability. This Agreement and the terms incorporated herein by reference represent the entire agreement among the Parties regarding the subject matter thereof and the Parties' respective obligations and commitments herein. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.
9. Non-Disparagement. During the Term and for five (5) years thereafter, Partner agrees that it will not disparage Checkfront or any of its officers, directors or employees or otherwise take any action that could reasonably be expected to adversely affect Checkfront's reputation. For purposes of this Agreement, "disparage" shall mean any negative statement, whether written or oral, about Checkfront or any of its officers, directors or employees. The Parties agree and acknowledge that this non-disparagement provision is a material term of this Agreement, the absence of which would have resulted in Checkfront refusing to enter into this Agreement.
10. Parties' Expenses. The Parties shall each carry and pay all their respective costs, charges and expenses incurred by it in the performance of this Agreement, except as otherwise may be agreed-upon by the Parties in writing in advance.
11. Notices. All notices relating to this Agreement shall be delivered via email (with return receipt) or next-day mail to the addresses detailed in the Application.
12. Choice of Law; This Agreement and any action related thereto will be governed by and construed in accordance with the substantive laws of the Province of British Columbia and the federal laws of Canada applicable therein, without

regard to conflicts of law principles. The Parties will initiate any lawsuits in connection with this Agreement in Victoria, British Columbia, Canada, and irrevocably attorn to the exclusive personal jurisdiction and venue of the courts sitting therein. The U.N. Convention on Contracts for the International Sale of Goods will not apply to this Agreement. This choice of jurisdiction does not prevent Checkfront from seeking injunctive relief with respect to a violation of intellectual property rights or confidentiality obligations in any appropriate jurisdiction.