

The Advantage Business Exchange (ABX) Agent Agreement Updated 2017

This agreement (this "Agreement") dated as of this ___ day of _____, 2017 (the "Effective Date") by and between Advantage Business Exchange LLC, a New York limited liability company doing business as ABX with a principal office located at P.O. Box 490, Williamsville, New York, 14231 ("ABX") and _____, (the "Referring Party"). ABX and Referring Party shall hereinafter individually be referred to as a "Party" and collectively as the "Parties."

WHEREAS, ABX is engaged in sourcing and vetting expert sales agents:

WHEREAS, Referring Party desires to refer new clients and new placements to ABX (each, a "Referral"), and ABX desires to reward the Referring Party for such Referrals by paying a commission (each a "Commission") to Referring Party pursuant to the Commission schedule attached hereto as Exhibit A (as may be amended from time to time) subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. Eligibility

- a. In order to be eligible for the payment of any Commission hereunder for a Referral provided to ABX, the open job order being referred may not be for the placement of an individual with any current or former client or customer of ABX, not originally referred by the Referring Party. ABX management shall verify and approve, in writing, within seven (7) days of the receipt of any Referral whether such proffered Referral is eligible for a Commission hereunder.
- b. ABX reserves, in its sole and absolute discretion, the ability to accept or reject any proffered Referral, and the Parties hereby acknowledge that ABX shall only accept those Referrals where placement services can be reasonably and successfully provided. In the event that ABX rejects any Referral, Referring Party may be permitted to fill such open job order itself or offer the same to a third-party.

2. Payments

- a. ABX shall pay to the Referring Party a Commission as set forth in the ABX Agent Commission Plan **Exhibit A** hereto for the successful placement of a candidate to an open job order, subject to the terms of the placement agreement by and between ABX and the referred client for such open job order. Each Referral shall entitle the Referring Party to a Commission under only one of the three commissions schedules set forth on **Exhibit A** as determined by ABX.
- b. Any Commission paid hereunder shall be paid at the end of the quarter after the successful placement of an individual in the Referral job opening, as well as any requirements on ABX set forth in the placement agreement by and between ABX and the referred client.
- c. Referring Party hereby acknowledges that ABX offers all of its clients a ninety (90) day guarantee on any placement, and as a result, the payment of any Commission hereunder shall comply with this guarantee and may either be made in installments or only partially as a result of any client dissatisfaction with the placed individual.
- d. **Commissions shall be paid within ten (10) business days from the end of the calendar quarter closing for which the placement is successfully completed and paid for in full.**
- e. Referring Party hereby waives any claim to interest or penalty, for any reason whatsoever, as a result of the late payment of any Commission due hereunder.
- f. the Commission schedule attached hereto as Exhibit A may be amended from time to time, but in no event shall the schedule be any worse than the Commission schedule offered to others by ABX.

g. Payments for all commissions described herein shall be exclusive of any and all withholding and payroll taxes, and ABX will issue to Referring Party a 1099 in connection with any commission paid hereunder. **This agreement shall not in any way create any employment relationship between the Parties.** Referring Party shall not be eligible for, and shall not participate in, any employee pension, health, welfare, or other fringe benefit plan, of ABX. No workers' compensation insurance or insurance of any kind shall be obtained by ABX covering Referring Party.

3. Confidentiality

- a. All ABX clients and their product and service offerings are confidential
- b. Except as set forth in this Agreement, Referring Party agrees not to refer any Referral sent to ABX to any third-party or in any manner refer the same open job listing to both ABX and a competitor of ABX for the term of this agreement.
- c. Referring Party acknowledges that it may be provided with and or come into contact with Confidential Information of ABX. For the purposes hereof, "Confidential Information" means information, not generally known to the public and proprietary to ABX, including, without limitation, nonpublic information concerning ABX' business and operations; and sales, marketing and strategic plans of ABX, or any other confidential information or proprietary aspects of the business of ABX. Accordingly, the Referring Party agrees:
 - i. that it shall keep all Confidential Information in strict confidence, using such degree of care as is appropriate to avoid unauthorized use or disclosure (but in no event shall the Referring Party use less than all diligent and good faith efforts to safeguard the confidentiality of Confidential Information);
 - ii. that it shall not, directly or indirectly, disclose any ABX Confidential Information to anyone outside of ABX, except with ABX' prior written consent in each instance;
 - iii. **that it shall not make use of any ABX Confidential Information for its own purposes (except as necessary to fulfill its obligations under this Agreement) or for the benefit of anyone other than ABX;**
 - iv. that (A) upon the expiration or termination of this Agreement; or (B) at any earlier time ABX may so request, the Referring Party will deliver promptly to ABX, or, at ABX' option, the Referring Party shall destroy all memoranda, notes, records, reports, media and other documents and materials (and all copies thereof) regarding or including any ABX Confidential Information that the Referring Party may then possess or have under its control, except for information stored solely in computer back-up form.
 - v. The Referring Party further agrees that it shall comply with such policies and procedures relating to the storage, safeguarding, retention and destruction of customer or other data as may be communicated by ABX from time to time. The confidentiality restrictions contained herein shall survive indefinitely.

4. **Indemnification.** Each Party agrees to indemnify, hold harmless and defend the other Party, its officers, members, directors, managers, shareholders, employees and agents (each an "Indemnified Party") from and against any and all claims, actions, fees, expenses, costs, damages, losses and liabilities (including reasonable attorneys' fees, expert witness fees, costs of court and other legal expenses) (hereafter taken together and referred to as "Claims") for: (i) a breach of this Agreement; (ii) any unauthorized disclosure of Confidential Information by its employees, agents or representatives; or (iii) the gross negligence or willful misconduct of its employees, agents or representatives.

5. **Limitation of Liability.** EXCEPT AS SPECIFICALLY PROVIDED HEREIN, IN NO EVENT SHALL ABX BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE OR TORT DAMAGES OF ANY NATURE OR KIND, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL THEORY IN CONNECTION WITH OR ARISING OUT OF ANY ADMINISTRATIVE SERVICES, EVEN IF ABX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL ABX BE

LIABLE TO REFERRING PARTY UNDER THIS AGREEMENT WITH RESPECT TO DAMAGES ARISING UNDER ANY CLAIMS OR AGGREGATE OF CLAIMS IN ANY AMOUNT WHICH EXCEEDS THE AGGREGATE AMOUNT OF ANY COMMISSION(S) PAID UNDER THIS AGREEMENT DURING THE PREVIOUS CALENDAR YEAR.

6. **Miscellaneous**

- a. Term. The Term of this Agreement shall be one (1) year. Either Party may terminate this Agreement at any time for any reason upon thirty (30) days written notice to the other Party. In no event shall a cancellation of this Agreement affect any Commissions due or accruing at the time of such cancellation.
- b. No Relationship. **It is understood that the Parties are independent contractors engaged in the operation of their own respective businesses.**
- i. Neither Party is, or is to be considered as, the agent, representative, or employee of the other Party for any purposes whatsoever, and no agency, partnership, joint venture, or employee-employer relationship is intended or created by this Agreement.
- ii. Neither Party has authority to bind the other Party or assume any obligations for or on behalf of the other Party or to make any warranties or representations for or on behalf of the other Party.
- iii. This Agreement does not create an exclusive relationship between the Parties. Neither Party shall look to the other under any circumstances whatsoever for workers' compensation, disability, health, or any other employment or insurance benefit.
- c. Governing Law and Venue. This Agreement shall be governed and construed in accordance with the laws of the State of New York without regard to its choice of law provisions. Any dispute, action, or claim arising out of this Agreement shall be adjudicated in a court of competent jurisdiction located with Erie County, New York.
- d. Counterparts. This Agreement may be executed in any number of counterparts. It is not necessary that both Parties sign all or any one of the counterparts, but each Party must sign at least one counterpart for this Agreement to be effective.
- e. Entire Agreement. This Agreement constitutes the entire Agreement between the Parties regarding the subject matter contained herein and supersedes all prior and contemporaneous undertakings and assignments of the Parties, whether written or oral, with respect to the subject matter herein.
- f. Amendment. This Agreement shall not be amended except by a writing executed by both Parties.
- g. Waiver. No waiver of any provision of this Agreement or any breach thereunder shall be deemed a waiver of any other provision or subsequent breach hereof, nor shall any such waiver constitute a continuing waiver. Delay or failure of either Party to insist on strict performance or observance of any provision of this Agreement or to exercise any rights or remedies hereunder, shall not be deemed a waiver. No Party may waive any of its rights or any obligation of the other Parties or any provision of this Agreement except by an instrument in writing signed by that Party.
- h. Assignment. This Agreement, and the rights and obligations of Referring Party hereunder, may not be assigned or delegated without the prior written consent of the ABX. Any other attempt to assign this Agreement, or any rights or obligations hereunder, in contravention of this Agreement shall be null and void.
- i. Severability. If any provision of this Agreement or the application of any such provision in any person or circumstance is held invalid, the remainder of this Agreement, and the application of such provision other than to the extent it is held invalid, shall not be invalidated or affected thereby.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date set forth above.
REFERRING PARTY

[insert name]

ABX LLC

By: _____

Name

Title:

Exhibit A

ABX Agent Commission Plan for ABX

1. Single Event Commission Schedule

- a. For each single event ABX successfully satisfies as a result of a Referral from Referring Party, a Commission shall be is paid to the Referring Party [ABX "Agent"] as set forth herein.
- b. **The Commission(s) due ABX Agent shall be calculated as a percentage of the total Gross Margin (as defined below) billed to Client for the successful sale.**
- c. For the single event ABX fills with a new Client as a result of ABX Agent's Referral, ABX Agent's, the Commission shall be is paid at a rate equal to < xx.x% > of the gross margin ABX receives from the Client for that single event order.
- d. For any subsequent single event orders ABX successfully fills with the Client referred by ABX Agent, ABX Agent's , the Commission shall be is paid at a rate equal to twenty-five percent (25%) of the Gross Margin ABX receives from the Client for each subsequent single event order, **provided that as long as the ABX Agent satisfies each of meets the ABX good standing criteria set forth below:**
 - i. The ABX Agent is active and in good standing with ABX.
 - ii. The ABX Agent has referred a new Client to ABX for which ABX has successfully filled and billed a single event order within one hundred eighty (180) days of the billing date for the last single event order ABX billed with that e original Client referred by ABX Agent. This means that the ABX Agent must continue keep referring additional job orders and business to ABX in order to continue receiving commissions on subsequent single event orders from that Client.
 - iii. In the event an ABX Agent has not referred delivered another single event order for that Client during the one hundred eighty (180) day period following their original Referral, ABX Agent they will not be eligible to collect any Commission(s) on subsequent single event orders and business of that original Client; however, if the ABX Agent resumes new single event orders and business Referral, ABX Agent will automatically be reinstated in good standing and be eligible for from any and all subsequent Commissions earned from previous Clients for the next one hundred eighty (180 days). Such reinstatement. This, however, is NOT retroactive for any lost commissions during the ABX Agent's period of ineligibility.