



REFERRAL PARTNER ENROLLMENT FORM

VIZICALL, LLC**Address:**

1 Meadowlands Plaza
Suite 200
East Rutherford, NJ, 07073

Principal Contact:

Spencer Peller

Phone: (646) 421-6106

Fax: (646) 421-6106

Email: info@vizicall.com

Referral Partner Name:

Address:

City:

State:

Zip Code:

Principal Contact:

Phone:

Fax:

Email:

This YesTrak Referral Partner Agreement (this "**Agreement**") consists of (a) this Referral Partner Enrollment Form and (b) the accompanying Referral Partner Terms and Conditions which are hereby incorporated herein in their entirety. This Agreement governs the enrollment and participation of _____ (the "**Referral Partner**") in the YesTrak Referral Partner Program (the "**Program**"). Referral Partner acknowledges that it must accept this Agreement before it can participate in the Program.

The undersigned individual signing on behalf of Referral Partner represents that he/she has read and understands all of the provisions of this Agreement. If Referral Partner is an entity, the undersigned represents that he/she is authorized to sign this Agreement on Referral Partner's behalf.

IN WITNESS WHEREOF, ViziCall, LLC and Referral Partner have caused their names to be signed hereto by their respective officers thereunto duly authorized as of _____.

Date

VIZICALL, LLC

By: _____

Signature: _____

Title: _____

(Referral Partner Name)

By: _____

Signature: _____

Title: _____

This YesTrak Referral Partner Agreement (this “Agreement”) governs the enrollment and participation in the YesTrak Referral Partner Program (the “Program”). By signing the Referral Partner Enrollment Form (via an online application or submission of an original executed hardcopy thereof), the person reviewing and accepting on behalf of Referral Partner represents (a) that he/she has read and understands all of the provisions of this Agreement and (b) if Referral Partner is an entity, he/she is authorized to accept this Agreement on Referral Partner’s behalf.

1. Definitions.

- 1.1. “**Effective Date**” means the date on which Referral Partner has submitted a completed Referral Partner Enrollment Form and ViziCall has accepted such Referral Partner Enrollment Form by sending an electronic confirmation thereof to Referral Partner.
- 1.2. “**Marketing Materials**” means the marketing materials with respect to the YesTrak products and services provided by ViziCall, or made available through one or more ViziCall websites, to Referral Partner, or any other marketing materials relating to the YesTrak services that have been pre-approved by ViziCall in writing.
- 1.3. “**New Customer**” means a customer that enters into a Service Contract with ViziCall for the YesTrak products and services, who (a) has never utilized ViziCall’s or any of its affiliates’ services and (b) has not been in contact with any representative of ViziCall or any of its affiliates during the 12 month period ending on the date such Service Contract is entered into, in each case as determined by ViziCall in its sole discretion.
- 1.4. “**Referral Partner Enrollment Form**” means the referral partner enrollment form submitted by Referral Partner to ViziCall (via an online application or submission of an original executed hardcopy thereof) which includes Referral Partner’s name, contact information, acceptance of these Referral Partner Terms and Conditions and such other information as may be requested by ViziCall from time to time.
- 1.5. “**Referral Partner**” means the partner designated on the Referral Partner Enrollment Form.
- 1.6. “**Service Contract**” means a contract pursuant to which ViziCall provides the YesTrak products and services, which consist of call routing, answering, tracking, and recording services to a customer.
- 1.7. “**ViziCall**” means ViziCall, LLC, a Delaware limited liability company.

2. Program Overview; Referrals.

- 2.1. On the Effective Date, ViziCall shall assign unique digital identifiers, which may include unique coupon codes, customized landing pages with trackable contact forms (i.e. yestrak.com/partners/NAMEOFPARTNER), web links, and button graphics (collectively known as “**Digital Identifiers**”) to Referral Partner via email.
- 2.2. A “**Referral**” occurs when ViziCall enters into an initial Service Contract with a New Customer referred to ViziCall by Referral Partner.
- 2.3. Referral Partner shall inform ViziCall of any prospective New Customer in advance of such New Customer entering into an initial Service Contract, or otherwise direct any prospective New Customer to utilize such Referral Partner’s Digital Identifiers when it enters into a Service Contract with ViziCall. Referral Partner shall not be entitled to Referral Fees (as defined below) or a Buyout Fee (as defined below) for any Referral in connection with which a New Customer has not been identified by Referral Partner in advance, or such New Customer has not provided or utilized one of Referral Partner’s Digital Identifiers at the time the initial Service Contract is signed by such New Customer.
- 2.4. Subject to Sections 2.3, 2.5 and 2.6 hereof, ViziCall shall pay Referral Partner (a) a one-time fee equal to one hundred dollars (\$100) for each Referral made by Referral Partner, so long as the related New Customer remains on the service and hasn’t cancelled the related Service Contract for at least one hundred (100) days and is in good standing without any past due balances after such initial one hundred (100) day period (the “**Per Referral Fee**”), and (b) a one-time bonus equal to one thousand dollars (\$1,000) for every ten (10) Referrals made by Referral Partner, so long as the related ten (10) New customers have each remained on the service and haven’t cancelled the related Service Contract for at least one hundred (100) days and are in good standing without any past due balances after such initial one hundred (100) day periods (the “**10 Referral Bonus**” and together with the Per Referral Fee, the “**Referral Fees**”).
- 2.5. Referral Fees shall be paid as follows: (a) the Per Referral Fee with respect to any New Customer that is referred by Referral Partner shall be made within thirty (30) days following one hundred (100) days of service by such New Customer, and (b) the 10 Referral Bonus after ten (10) New Customers have been referred by Referral Partner shall be made within thirty (30) days following one hundred (100) days of service by the tenth (10th) New Customer referred by Referral Partner; **provided, however**, that all Referral Fees shall be subject to the Clawback (as defined in Section 2.6 below).

- 2.6. With respect to any Referral Fees already paid to Referral Partner relating to any New Customer, Referral Partner shall return such Referral Fees (the “**Clawback**”) to ViziCall within thirty (30) days of written notice of any refund of fees awarded to the related New Customer relating to such New Customer’s first thirty six (36) months of service (which shall include supporting documentation). ViziCall may also deduct the amount of any such Clawback from other current or future Referral Fees owed to Referral Partner.
- 2.7. Referral Partner shall not be entitled to any compensation in respect of a Referral other than the Referral Fees provided for herein. Referral Partner shall not (i) charge any prospective or actual New Customer any fees or expenses of any kind in connection with any Referral, or (ii) request, demand, accept or collect any payment of any kind on behalf of ViziCall. For the avoidance of doubt, nothing in this Agreement is intended to prohibit Referral Partner from providing products or services on Referral Partner’s own behalf to any prospective or actual New Customer; **provided, however**, that the provision of any such products or services shall be subject to the terms and conditions of this Agreement.
- 2.8. During the Term, Referral Partner agrees to engage in continued, active promotion of the products and services of ViziCall, subject to the terms and conditions of this Agreement.

3. Compliance with Applicable Laws.

- 3.1. Referral Partner shall comply, and shall ensure that any third parties performing sales or referral activities on its behalf comply, with all applicable foreign and domestic laws, governmental regulations, ordinances, and judicial administrative orders (collectively “Applicable Laws”) and shall not engage in any deceptive, misleading, illegal or unethical marketing activities, or activities that otherwise may be detrimental to ViziCall, its affiliates, its end users, or to the public. Referral Partner shall conduct its activities in a manner that is consistent with Applicable Laws. Referral Partner shall promptly inform ViziCall in writing upon becoming aware of any violations of Applicable Laws occurring in connection with this Agreement.

4. Licenses; Intellectual Property Rights.

- 4.1. Marketing License. During the Term, Referral Partner shall have a non-exclusive, non-transferable, revocable license to use the Marketing Materials (the “Marketing License”). The Marketing Materials shall be used by Referral Partner solely for the purpose of creating, executing and monitoring marketing campaigns for the promotion of ViziCall’s products and services. Any other use of the Marketing Materials by Referral Partner is expressly prohibited, and Referral Partner shall be responsible for any misuse of the Marketing Materials by any

third party using the Marketing Materials on Referral Partner's behalf. Referral Partner shall not use any materials other than the Marketing Materials to promote the products or services provided by ViziCall. ViziCall reserves the right to review and/or restrict the use of the Marketing Materials in its sole discretion.

- 4.2. Termination of Marketing License. At the end of the Term or such earlier date as may be designated by ViziCall in writing, the Marketing License shall terminate and Referral Partner shall return all Marketing Materials in its possession to ViziCall as promptly as practicable.
- 4.3. Intellectual Property Ownership. All intellectual property rights belonging to ViziCall and/or any of its affiliates are and will remain the exclusive property of ViziCall and/or its affiliates, as applicable. The Marketing License granted by ViziCall to Referral Partner pursuant to Section 4.1 hereof is subject to the terms and conditions of this Agreement and is being granted by ViziCall solely in furtherance of its objectives hereunder. Referral Partner's right to use the Marketing Materials is at the sole discretion of ViziCall and is subject to Referral Partner's compliance with the terms and conditions of this Agreement and with all applicable laws and regulations.

5. Relationship of the Parties.

- 5.1. ViziCall and Referral Partner intend to establish an independent contractor relationship through this Agreement, pursuant to which Referral Partner will perform the services described in this Agreement. The parties do not intend to create a relationship in which Referral Partner qualifies as an employee, agent, joint venturer or partner of ViziCall. Nothing in this Agreement shall be interpreted or construed as creating or establishing an employment relationship between ViziCall and Referral Partner or any employee or agent of Referral Partner or for any other purpose. Neither Referral Partner nor any employee or agent of Referral Partner shall have any right to participate in any benefits provided by ViziCall, including but not limited to health insurance, pension plans, vacation or paid time off, holiday pay, bonuses, or similar benefits that ViziCall may provide for its employees.

6. Term and Termination.

- 6.1. Term. This Agreement shall become effective as of the Effective Date and shall continue until terminated in accordance with Section 6.2 (the "Term").
- 6.2. Termination.
 - 6.2.1. Termination by Either Party. Either party shall have the right to terminate this Agreement (a) at any time for any reason or no reason at all upon giving 30 days' written notice to the other party of the intent to terminate or (b) in the event the

other party is in breach of this Agreement and does not cure such breach to the reasonable satisfaction of the non-breaching party within five days after receiving notice of such breach, upon giving written notice to the other party of the intent to terminate.

6.2.2. Termination by Referral Partner. Referral Partner shall have the right to terminate this Agreement by providing written notice of such intent to terminate to ViziCall if ViziCall proposes an amendment to this Agreement pursuant to Section 7.1 hereof and Referral Partner objects to such amendment.

6.3. Effect of Termination. Upon termination of this Agreement, Referral Partner's rights under this Agreement (including, without limitation, the Marketing License) shall terminate, and Referral Partner shall not be entitled to receive any Referral Fees or Buyout Fees other than those earned prior to such termination.

7. General.

7.1. Amendment. ViziCall may amend this Agreement from time to time, in its sole discretion, by providing written notice to Referral Partner. If Referral Partner objects to any such amendment, it may terminate this Agreement pursuant to Section 6.2.2 hereof. If Referral Partner fails to object to any such amendment within three business days of receipt of such notice or if it continues to participate in the Program following receipt of such notice, such amendment shall be deemed to be accepted by Referral Partner and shall be incorporated herein.

7.2. Assignment; Waiver. ViziCall may assign its rights and obligations under this Agreement without restriction. Referral Partner may not assign any of its rights or obligations under this Agreement without ViziCall's prior written consent. The waiver by either party of the breach of any provision of this Agreement must be in writing to be effective, and any such waiver shall not operate or be construed as a waiver of any other provision or other subsequent breach. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

7.3. Non-Disparagement. During and after the Term, Referral Partner shall not take any action that could reasonably be expected to damage the business, interests or reputation of ViziCall, and shall not make or publish, or allow to be made or published, any disparaging statements relating to ViziCall or any of its affiliates or representatives.

- 7.4. DISCLAIMER OF WARRANTY. VIZICALL MAKES NO WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND, AND VIZICALL EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES AND CONDITIONS RELATING TO THE PROGRAM (INCLUDING, WITHOUT LIMITATION, THE MARKETING MATERIALS), INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AVAILABILITY, SECURITY, TITLE AND/OR NON-INFRINGEMENT.
- 7.5. Limitation of Liability. None of ViziCall, its affiliates, or its or its affiliates' respective officers, employees, directors, advisors, agents or other representatives shall be liable to Referral Partner or any third party with respect to this Agreement for any economic loss (including, without limitation, loss of revenues, profits, contracts, business or anticipated savings), any loss of goodwill or reputation, or any other special, indirect, incidental, statutory, punitive or consequential losses or damages (including, without limitation, any losses or damages caused by interruption of operations). Without limiting the foregoing, in no event shall ViziCall's total liability to Referral Partner under this Agreement (or relating to the subject matter hereto) exceed \$100 for any and all claims for damages or losses of any kind. By entering into this Agreement, Referral Partner acknowledges and accepts such limitations on ViziCall's liability.
- 7.6. Indemnification. Referral Partner will indemnify, defend and hold ViziCall, its affiliates, and its and its affiliates' respective officers, employees, directors, advisors, agents and other representatives (the "ViziCall Indemnified Parties") harmless from and against any and all costs, liabilities, losses and expenses (including, without limitation, attorneys' fees) resulting from any claim, suit, action, demand or proceeding brought by any third party against the ViziCall Indemnified Parties arising from any of the following: (i) a breach of this Agreement by Referral Partner; (ii) the negligence, gross negligence or willful misconduct of Referral Partner or any of its employees, agents, contractors, representatives or any person or entity acting on its behalf; or (iii) a failure by Referral Partner or any of its employees, agents, contractors, representatives or any person or entity acting on its behalf to comply with Applicable Laws.
- 7.7. Confidential Information. Referral Partner acknowledges and agrees that any information provided to it by ViziCall in connection with the Program shall be considered "Confidential Information." Except as expressly provided for herein or to the extent reasonably necessary to the performance of its obligations hereunder, Referral Partner shall not (a) use any Confidential Information or (b) disclose any Confidential Information to any third party, except to the extent required by Applicable Laws. Notwithstanding the foregoing, Confidential Information shall not include any information that: (x) was in or entered the public domain through no fault of Referral Partner and not in violation of this Agreement; (y) is disclosed

to Referral Partner on a non-confidential basis by a third party legally entitled to make such disclosure without violation of any obligation of confidentiality; or (z) is independently developed by Referral Partner without reference to any Confidential Information. All right, title and interest in and to any Confidential Information will remain the exclusive property of ViziCall.

- 7.8. Entire Agreement. This Agreement constitutes the sole and entire agreement among the parties with respect to the subject matter contained herein, and supersedes by or among the parties, written or oral, which may have related to the subject matter hereof.
- 7.9. Severability. If any term or provision of this Agreement is found to be invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
- 7.10. Governing Law. This Agreement shall be governed by the laws of the State of New York, without giving effect to any principles of conflicts of law.
- 7.11. Binding Arbitration. It is understood and agreed between the parties hereto that any and all claims, grievances, demands, controversies, causes of action or disputes of any nature whatsoever (including, but not limited to, tort and contract claims, and claims upon any law, statute, order, or regulation) (hereinafter "Disputes"), arising out of, in connection with, or in relation to (a) this Agreement, or (b) questions of arbitrability under this Agreement, shall be resolved by final, binding, nonjudicial arbitration in accordance with the Federal Arbitration Act, 9 U.S.C. Section 1, et seq. pursuant to the following procedures:
- 7.11.1. Any party may send another party or parties written notice identifying the matter of the Dispute and invoking the procedures of this Section (the "Dispute Notice"). Within 14 days from delivery of the Dispute Notice, each party involved in the Dispute shall meet at a mutually agreed location in New York, New York, for the purpose of determining whether they can resolve the dispute themselves by written agreement, and, if not, whether they can agree upon an impartial third party arbitrator (the "Arbitrator") to whom to submit the dispute for final and binding arbitration.
- 7.11.2. If such parties fail to resolve the Dispute by written agreement or agree on the Arbitrator within the later of 14 days from any such initial meeting or within 30 days from the delivery of the Dispute Notice, any such party may make written application to the Judicial Arbitration and Mediation Services ("JAMS"), in New York, New York for the appointment of a single Arbitrator to resolve the dispute by

arbitration. At the request of JAMS the parties involved in the Dispute shall meet with JAMS at its offices within 10 calendar days of such request to discuss the Dispute and the qualifications and experience which each party respectively believes the Arbitrator should have; provided, however, that the selection of the Arbitrator shall be the exclusive decision of JAMS and shall be made within 30 days of the written application to JAMS.

- 7.11.3. Within 30 days of the selection of the Arbitrator, the parties involved in the Dispute shall meet in New York, New York with such Arbitrator at a place and time designated by such Arbitrator, after consultation with such parties, and present their respective positions on the Dispute. Each party shall have no longer than one day to present its position, the entire proceedings before the Arbitrator shall be no more than three consecutive days, and the decision of the Arbitrator shall be made in writing no more than 30 days following the end of the proceeding. Such an award shall be a final and binding determination of the Dispute and shall be fully enforceable as an arbitration decision in any court having jurisdiction and venue over such parties. The prevailing party or parties (as determined by the Arbitrator) shall in addition be awarded by the Arbitrator such party's or parties' own reasonable legal fees and expenses in connection with such proceeding. The non-prevailing party or parties (as determined by the Arbitrator) shall pay the Arbitrator's fees and expenses.

THIS BINDING ARBITRATION PROVISION SHALL NOT BE CONSTRUED TO ALLOW OR PERMIT THE CONSOLIDATION OR JOINDER OF OTHER CLAIMS OR CONTROVERSIES INVOLVING ANY OTHER PERSON, OR PERMIT SUCH CLAIMS OR CONTROVERSIES TO PROCEED AS A CLASS ACTION, COLLECTIVE ACTION, PRIVATE ATTORNEY GENERAL ACTION OR ANY SIMILAR REPRESENTATIVE ACTION. NO ARBITRATOR SHALL HAVE THE AUTHORITY UNDER THIS AGREEMENT TO ORDER ANY SUCH CLASS OR REPRESENTATIVE ACTION. BY ACCEPTING THIS AGREEMENT, REFERRAL PARTNER IS AGREEING TO WAIVE ANY SUBSTANTIVE OR PROCEDURAL RIGHTS THAT IT MAY HAVE TO BRING AN ACTION ON A CLASS, COLLECTIVE, PRIVATE ATTORNEY GENERAL, REPRESENTATIVE OR OTHER SIMILAR BASIS.

- 7.12. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement (including, with respect to Referral Partner, by clicking an "I Accept" button for execution).

- 7.13. Notice. All notices, requests and other communications made hereunder must be in writing and will be deemed to have been duly given only if delivered personally, by facsimile transmission, by certified mail, or by email to the other party at the address, email address or fax number, as applicable, with respect to Referral Partner, as set forth on the related Referral Partner Enrollment Form and with respect to ViziCall at 1 Meadowlands Plaza, Suite 200, East Rutherford, New Jersey 07073, Attention: Spencer Peller, Phone: (646) 421-6106, Fax: (646) 421-6106, Email: info@vizicall.com. Either party may change its address, facsimile number, or other information for notices, requests and other communications, from time to time, by giving notice specifying any such changes to the other party.
- 7.14. No Third Party Beneficiaries. Except as set forth in Section 7.6, this Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.
- 7.15. Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement. For purposes of this Agreement, (a) the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; and (c) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement as a whole.
- 7.16. Survival of Provisions. Sections 2.6, 4.2, 4.3, 5, 6.3, and 7.1 through 7.16 shall each survive any termination of this Agreement.