



BONDILABS

Referral Partner Agreement

1st November 2018

Welcome to Bondi Labs!

Effective: 1st November 2018

This Referral Agreement is between the Bondi Labs' entity (as Licensor) ("**Bondi Labs**", "**we**", "**our**" or "**us**") and you ("**Referral Partner**" or "**you**") as listed in this agreement.

WHEREAS:

- A. Bondi Labs is in the business of developing application software for people-centric intelligent visual technologies that enhances human decision-making in the global supply chain industry;
- B. Bondi Labs is an authorised licensor to market, distribute and sell the Software Services;
- C. The Referral Partner wishes to be appointed by Bondi Labs as a non- exclusive service provider for the Partner Territory; and
- D. This Referral Agreement is a separate agreement from the agreement that Bondi Labs has with its end users at <https://www.bondilabs.com/legal> (as may be modified by Bondi Labs from time to time, "Bondi Labs Legal Notice". For convenience and consistency, however, the definitions of certain terms related to our products and services (namely Authorised Users and Authorised Licence Manager) will be the same as those in the Bondi Labs Legal Notice.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. DEFINITIONS

1.1 In this Referral Agreement:

"**Affiliate**" means any other person or entity controlling, controlled by, or under common control by ownership, contract or otherwise with the entity in question.

"**Bondi Labs Legal Notice**" means the legal notice that governs access and use of the Software Service that is posted at www.bondilabs.com/legal from time to time or agreed between Bondi Labs and our end users;

"**Confidential Information**" means in relation to a party ("**Disclosing Party**") any information of whatever kind disclosed or revealed by the Disclosing Party to the other party ("**Receiving Party**"), or otherwise relating to the Disclosing Party and obtained by the Receiving Party, under or in relation to this Referral Agreement that is by its nature confidential, is designated by the Disclosing Party as confidential or the Receiving Party knows or ought to know is confidential, but does not include information which is or becomes, without a breach of confidentiality, public knowledge;

"**Customer**" means an Approved Lead that enters into an agreement with Bondi Labs to become an end user of the Software Service and pays Subscription Fees;

"**Documentation**" shall mean user help files, user instructions and other written materials provided by Bondi Labs that relate to the Software Service;

"**Effective Date**" means the date Bondi Labs executes this Referral Agreement;

“Intellectual Property Rights” means any and all intellectual and industrial property rights throughout the world, including:

- (a) copyright, patents, know-how confidential information, database rights, moral rights and rights in trademarks and designs (whether registered or unregistered);
- (b) applications for registration and the right to apply for registration, for any of the above; and
- (c) all other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world, whether created before or after the date of this Referral Agreement and whether existing in Australia or otherwise.

“Laws” means any applicable statute or regulation in force from time to time in the relevant jurisdiction(s) as detailed in Schedule 1;

“Parties” means the parties to this Referral Agreement, being Bondi Labs and Referral Partner;

“Partner Territory” means the geographical or industry sector as per Schedule 1;

“Prospect” means a potential Customer referred to Bondi Labs by the Referral Partner;

“Referral Agreement” means this agreement, fully executed by the Parties, or as amended by written agreement between the Parties from time to time;

“Referral Fee” means the payment to the Referral Partner for Services in accordance with Schedule 1;

“Services” means referring Prospects to Bondi Labs in the Partner Territory;

“Software Service” means Bondi Labs’ products and services as per Schedule 1; and

“Subscription Fees” means, pursuant to the Bondi Labs Legal Notice entered into by a Customer, the financial payment received by Bondi Labs associated with a Customer’s access and use of the on-line hosted service of the Software Service, but excludes any financial payment received by Bondi Labs associated with end user training or customisation of the Software Service.

1.2 References herein to Clauses or Schedules are to Clauses of or Schedules to, this Referral Agreement.

1.3 In this Referral Agreement unless the context otherwise requires words in the singular include the plural and vice versa and words importing any gender include all genders.

1.4 The Schedules form an integral part of this Referral Agreement and references to this Referral Agreement include the Schedules to this Referral Agreement.

1.5 The headings are for convenience only and do not affect the interpretation of this Referral Agreement.

1.6 References in this Referral Agreement to a "person" shall include any person, partnership, firm, company or organisation.

2. SERVICES

- 2.1 The Referral Partner agrees to provide to Bondi Labs in a form agreed by the Parties the following (“Lead”):
- (a) the full legal name of the Prospect;
 - (b) name and related contact details of appropriate contact person within the Prospect; and
 - (c) which Software Service the Prospect may be interested in.
- 2.2 Following the provision of Services, Bondi Labs agrees to notify you within five (5) business days if it chooses to accept the Lead, at which time the Lead will become an Approved Lead. You acknowledge and agree that the determination as to whether a Lead becomes an Approved Lead will be made by us in our sole discretion.

3. LIMITED RIGHTS TO REFER

- 3.1 Subject to this Referral Agreement, we grant you a one-time, non-exclusive, non-transferable right to market and refer the Software Service, solely for use by Authorised Users in accordance with the Bondi Labs Legal Notice. This right to market and refer does not apply to any other Software Service.

4. ENFORCEMENT OF BONDI LABS LEGAL NOTICE

- 4.1 **Authorised User Terms.** All use of the Software Service by Authorised Users is subject to the Bondi Labs Legal Notice, and you may not purport to impose any other terms pertaining to their use of the Software Service. You are responsible for ensuring that each Prospect is aware of the requirements to the Bondi Labs Legal Notice (which includes all limitations on Authorised Users and other quantity restrictions applicable to a Customer’s order) in a manner that is legally binding upon the Customer.
- 4.2 **Enforcement Cooperation.** You agree to immediately notify us of any known or suspected breach of the Bondi Labs Legal Notice or other unauthorised use of the Software Service and to assist us in the enforcement of the terms of the Bondi Labs Legal Notice.

5. PAYMENT

- 5.1 **Referral Fee.** In circumstances where the Approved Lead becomes a Customer within six (6) months of becoming an Approved Lead, Bondi Labs agrees to pay the Referral Fee.
- 5.2 **Taxes.** Payments made by us under this Referral Agreement include any taxes or duties payable in respect of the Services in the jurisdiction where the payment is either made or received. To the extent that any such taxes or duties are payable by Bondi Labs, you must pay the amount of such taxes or duties to the relevant authority on behalf of Bondi Labs from the Referral Fee. Notwithstanding the foregoing, you may have obtained an exemption from relevant taxes or duties as of the time such taxes or duties are levied or assessed. In

that case, you will have the right to provide to Bondi Labs any such exemption information, and Bondi Labs will use reasonable efforts to provide such invoicing documents as may enable you to obtain a refund or credit for the amount so paid from any relevant revenue authority if such a refund or credit is available.

6. FEEDBACK

- 6.1 If you provide any feedback, comments, suggestions, ideas, description of processes, or other information to us about or in connection with the Software Service or our Referral Partner programme, including without limitation any ideas, concepts, know-how or techniques contained therein ("Feedback"), then you grant us a worldwide, royalty-free, non-exclusive, perpetual and irrevocable licence to use, copy, modify and otherwise exploit the Feedback for any purpose, without any compensation to you or any restriction or obligation on account of intellectual property rights or otherwise. For clarity, no Feedback will be deemed your Confidential Information, and nothing in this Referral Agreement (including without limitation Section 15 (Confidentiality)) limits Bondi Labs' right to independently use, develop, evaluate, or market products, whether incorporating Feedback or otherwise.

7. SEPARATE BONDI LABS PARTNER PROGRAMME

- 7.1 Entering into this Referral Agreement does not qualify you as a Bondi Labs Reseller Partner or grant you any related rights. If you are interested in our separate Bondi Labs Reseller Partner programme, please contact us at info@bondilabs.com.

8. NO USE RIGHTS, BONDI LABS RESERVED RIGHTS

- 8.1 Only the Customer of the Software Service (and its Authorised Users) may use the Software Service. You are not permitted to use any Software Service under this Referral Agreement for your own benefit. To the extent that you nevertheless gain any access to the Software Service, all licence restrictions in the Bondi Labs Legal Notice apply to you. Notwithstanding anything to the contrary contained in this Referral Agreement, except for the limited refer right in Section 3 above, Bondi Labs and its suppliers have and will retain all rights, title and interest (including without limitation all patent, copyright, trademark, trade secret and other intellectual property rights) in and to all the Software Service, service descriptions, documentation, and underlying technology ("Bondi Labs Technology"), and all copies, modifications and derivative works thereof, including without limitation as may incorporate Feedback. You acknowledge that you are obtaining only a limited right to refer the Software Service and that irrespective of any use of the words "purchase", "sale" or like terms hereunder no ownership rights are being conveyed to you under this Referral Agreement or otherwise.

9. RECORDS AND AUDIT

- 9.1 Both Parties shall maintain and make available for inspection during the Term and for three

(3) years following the Termination of this Referral Agreement, all books, records, contracts and accounts relating to the Referral Fee and this Referral Agreement.

9.2 A Party may, at its sole expense, upon thirty (30) days' prior written notice to the other Party and at the location of the Party to be audited during normal business hours, audit that Party's records relating to the Referral Fee and this Referral Agreement.

10. OBLIGATIONS AND RIGHTS OF BONDI LABS

10.1 Bondi Labs shall:

- (a) provide Bondi Labs branded sales and marketing information and literature applicable to the Software Service, as available from time to time for the Referral Partner's use in connection with its promotional and marketing activities;
- (b) use all reasonable efforts to follow up on all Leads and shall, on no less than a bi-monthly basis, review progress with Referral Partner;
- (c) appoint a Key Relationship Manager as per Schedule 1; and
- (d) make the Referral Fee payments when due.

11. OBLIGATIONS AND RIGHTS OF THE REFERRAL PARTNER

11.1 The Referral Partner shall:

- (a) be fully responsible for its own acts and those of its employees;
- (b) at all times act in good faith;
- (c) utilise the Bondi Labs sales administration processes as advised by Bondi Labs from time- to-time;
- (d) comply with all Laws and otherwise impacting on the promotion, supply, licensing and use of the Software Service and will regularly advise Bondi Labs in this regard;
- (e) promptly inform Bondi Labs of any complaints made in relation to the Software Service and supply Bondi Labs with copies of all correspondence and communications relating thereto;
- (f) ensure, whether by act or omission, that it does not damage the goodwill or reputation of Bondi Labs or the Software Service;
- (g) use commercially reasonable endeavours to promote and extend sales of the Software Service; and
- (h) appoint a Key Relationship Manager as per Schedule 1.

11.2 The Referral Partner shall be entitled to describe itself as a Bondi Labs "Authorised Referral Partner" for the Software Service.

11.3 **Customer Relationships; Business Practices.** You agree that Bondi Labs will have primary

control over any end user communication regarding the Software Services once you submit a Lead. You will not make any representations regarding Bondi Labs, on Bondi Labs' behalf, or about any Software Service. You agree not to engage in any deceptive, misleading, illegal, or unethical practices that may be detrimental to Bondi Labs or its products and agree to comply with all applicable federal, state and local laws and regulations while operating under this Referral Agreement, including without limitation the U.S. Foreign Corrupt Practices Act and any similar laws or regulations in any applicable jurisdiction. You further agree to comply with all applicable export and import laws and regulations, including U.S. embargo and sanctions regulations and prohibitions on export for certain end uses or to certain users.

11.4 **Indemnity.** You are fully responsible for all liabilities and expenses of any type whatsoever that may arise because of your Lead. You will indemnify, hold harmless and (at Bondi Labs' option) defend Bondi Labs from and against any claim, loss, cost, liability or damage, including attorneys' fees, for which Bondi Labs becomes liable arising from or relating to: (a) any breach or alleged by you of any term of this Referral Agreement, (b) the issuance by you of any warranty or representation regarding Bondi Labs or its products or services not specified in the Bondi Labs Legal Notice, or (c) any of your other acts or omissions in connection with the marketing or promotion of the Software Service under this Referral Agreement.

12. RESTRICTIONS

12.1 The Referral Partner shall not, and shall ensure its Affiliates or any other entity Referral Partner has an interest in, do not, directly or indirectly:

- (a) develop, promote, market, sell or represent in any form whatsoever any products or services of any competitors of Bondi Labs without the prior written approval of Bondi Labs;
- (b) remove or deface, or allow the removal or the defacement of, any markings of Bondi Labs ownership of Intellectual Property Rights in respect of the Software Service and related marketing materials;
- (c) give any warranties or make any representations in respect of the Software Service and any related marketing materials without Bondi Labs' prior written consent;
- (d) sub-contract any of its obligations contained in this Referral Agreement without prior written consent of Bondi Labs;
- (e) sub-licence any of its rights contained in this Referral Agreement without the prior written consent of Bondi Labs;
- (f) represent itself as the agent, employee or legal representative of Bondi Labs for any purpose whatsoever and not assume or create obligations of any kind on behalf of Bondi Labs so as to bind Bondi Labs in any respect whatsoever or incur any liability on behalf of Bondi Labs; and

- (g) use the Software Service in a manner not permitted or necessary for the performance of its obligations under this Referral Agreement, and without limiting the generality of the preceding, it must not reproduce, adapt or reverse engineer the Software Service.

13. PUBLICITY AND PROMOTION

13.1 The Referral Partner grants Bondi Labs the right to:

- (a) refer to Referral Partner in proposals or other similar submissions made to prospective customers and other promotional and marketing activities; and
- (b) use free of charge Referral Partner's logos, trademarks and registered trademarks solely for the promotion of the Software Service.

13.2 You agree that you are not entitled to and shall not receive any compensation for the rights granted to Bondi Labs nor for the fulfilment of its obligations pursuant to this Clause.

13.3 You agree to undertake the promotional and marketing activities as per Schedule 1.

14. INTELLECTUAL PROPERTY

14.1 Each Party authorises the other to use the Party's trade marks (including logos) in accordance with guidelines provided for the purposes of exercising the Party's rights and performance of its obligations under this Referral Agreement and the using Party shall not use any of these trade marks in any way which might confuse or mislead the public or prejudice their distinctiveness, validity or the goodwill or to be adverse to the best interests of the owning Party.

14.2 The Referral Partner agrees that:

- (a) as at the date hereof and during the full Term of this Referral Agreement, all Intellectual Property Rights in and to the Software Service and any related marketing materials are the sole and absolute property of Bondi Labs for the full term of such Intellectual Property Rights, throughout the world;
- (b) after the date of this Referral Agreement, all Intellectual Property Rights in and to the Software Service and any related marketing materials, will be the sole and absolute property of Bondi Labs for the full term of such Intellectual Property Rights throughout the world.

14.3 For the purposes of Clause 14.2, you hereby:

- (a) assigns to Bondi Labs any right, title and interest that it may have in the Intellectual Property Rights referred to in Clause 14.2, subject to such Intellectual Property Rights coming into existence; and
- (b) warrants that it has and will at all relevant times have the right, power and entitlement to assign such Intellectual Property Rights.

15. CONFIDENTIALITY

15.1 The Parties shall at all times during the continuance of this Referral Agreement:

- (a) use their best endeavours to keep all Confidential Information confidential and accordingly not disclose any Confidential Information to any other person; and
- (b) not use any Confidential Information for any purpose other than the performance of its obligations under this Referral Agreement.

15.2 Any Confidential Information may be disclosed by the Parties to:

- (a) any governmental or other authority or regulatory body; or
- (b) any employees of Referral Partner or of any of the aforementioned persons;

to such extent only as is necessary for the purposes contemplated by this Referral Agreement, or as is required by law and subject in each case to the Party using its best endeavours to ensure that the person in question keeps the same confidential and does not use the same except for the purposes for which the disclosure is made.

16. WARRANTIES

16.1 Bondi Labs represents and warrants to Referral Partner that:

- (a) it has the right and authority to enter into this Referral Agreement;
- (b) the obligations under the Referral Agreement are valid and legally binding on it; and
- (c) it will comply with all applicable Laws.

16.2 The Referral Partner represents and warrants to Bondi Labs that:

- (a) it has all approvals and authorisations that may be required to permit it to enter into this Referral Agreement and to perform its obligations under this Referral Agreement in accordance with its terms and conditions;
- (b) the obligations under this Referral Agreement are valid and legally binding on it;
- (c) it will comply with all the terms and conditions of this Referral Agreement;
- (d) entering into, and performance of its obligations under this Referral Agreement does not and will not violate, and is not inconsistent with, any agreements between Referral Partner and any third parties or any applicable Laws; and
- (e) it will comply with all applicable Laws.

17. DISCLAIMER & LIMITATION OF LIABILITY

17.1 For the avoidance of doubt, any and all commitments, indemnities and other terms and conditions offered by Bondi Labs with respect to access and use of the Software Service are made directly by Bondi Labs to the end user in accordance with the Bondi Labs Legal

Notice and do not extend to you as a Referral Partner.

- 17.2 The warranties set out in Clause 16.1 are the only warranties provided by Bondi Labs. Bondi Labs specifically disclaims all other warranties, express, statutory, implied or otherwise, including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose to the extent permitted by Law.
- 17.3 Neither Party will be liable to the other Party for any indirect, incidental, special or consequential loss or damage arising in relation to this Referral Agreement or its subject matter, howsoever arising, whether in contract, tort (including negligence), statute, or otherwise, or for any loss of revenue, profits, savings, goodwill, business opportunity or data.
- 17.4 The Referral Partner is under a duty to mitigate any losses howsoever caused.
- 17.5 Save as otherwise provided by this Section 17, any other liability (whether for breach of this Referral Agreement, negligence or otherwise) of Bondi Labs shall be limited in respect of each series of connected events to a sum equal to the aggregate amount of the Referral Fee that was received or was receivable by Referral Partner in the three (3) months prior to the date of any claim by Referral Partner and not exceeding \$5,000 (Australian Dollars) in total.
- 17.6 Neither Party limits its liability (if any) in respect of fraud, the death of or personal injury to, any person caused by its negligence.

18. APPOINTMENT, TERM & TERMINATION

- 18.1 Bondi Labs appoints the Referral Partner and you accept the appointment as a non-exclusive partner for the marketing, promotion and lead generation of the Software Service for the Term in the Partner Territory on the terms and conditions set out in this Referral Agreement. Referral Partner acknowledges that Bondi Labs at its absolute and sole discretion may appoint other persons as partners, agents, distributors or franchisees to market, promote, distribute or sell the Software Service on such terms as Bondi Labs thinks fit.
- 18.2 Bondi Labs is entitled to market, promote, distribute and sell the Software Service directly to customers rather than having to refer them to Referral Partner.
- 18.3 This Referral Agreement shall come into effect on the Effective Date and shall continue until terminated by either Party ("**Term**") giving two (2) months written notice in the first year and one (1) months written notice in the second year and any subsequent years, or by either Party as permitted herein.
- 18.4 Either Party shall be entitled to terminate this Referral Agreement forthwith by notice to the other Party if:
- (a) any action or proceedings under insolvency law is taken against the other Party or the other Party makes any arrangement or compromise with its creditors, or ceases to carry on business or suffers any execution or distress over its assets, or is the subject of a voluntary or compulsory liquidation (other than for the purpose of

reconstruction or amalgamation); or

- (b) the other Party commits a material breach of the provisions of this Referral Agreement and, in the case of a material breach of any of the provisions which is capable of remedy, fails to remedy the same within thirty (30) days after receipt of a notice in writing from the first Party giving particulars of the breach and requiring it to be remedied.

18.5 The right to terminate this Referral Agreement shall not prejudice any other right or remedy of the relevant Party in respect of any breach or any rights, obligations or liabilities accrued prior to termination.

18.6 The obligations of the Parties under Clauses which are of a continuing nature and capable of surviving expiry or termination of this Referral Agreement shall continue in full force and effect notwithstanding such expiry or termination.

19. CONSEQUENCES OF TERMINATION

19.1 On the termination of this Referral Agreement you shall:

- (a) within 7 (seven) days of the date of termination, cease using and return to Bondi Labs or otherwise dispose of as Bondi Labs may instruct all marketing and other materials relating to the Software Service or to the business of Bondi Labs which Referral Partner may have in its possession or under its control;
- (b) cease to represent itself as an Approved Referral Partner of Bondi Labs and remove all such references from its published marketing material, in whatever form;
- (c) not do (or omit to do) anything which may adversely affect the reputation or goodwill of Bondi Labs;

19.2 The Referral Fee shall be payable in respect of Subscription Fees that are received by Bondi Labs in the three (3) months following the termination date, provided that the sale took place prior to termination, save that the Referral Fee from the date of termination is forfeited if this Referral Agreement is terminated by Referral Partner;

19.3 In the event of termination by Referral Partner pursuant to Clause 18.3 above, it shall, save for outstanding Referral Fees owing to the Referral Partner, have no claim against Bondi Labs for compensation for loss of the Referral Partner rights, loss of goodwill or any similar loss;

19.4 The termination of this Referral Agreement shall be without prejudice to any other rights or remedies which either Party may be entitled to under this Referral Agreement or at law and shall not affect any rights or liabilities which have already accrued to either of the Parties under this Referral Agreement.

20. GENERAL

20.1 Assignment

- (a) Neither Party shall assign or delegate all or any of its rights or obligations under this Referral Agreement (apart from on a solvent amalgamation or reorganisation), except to an Affiliate, without the prior written agreement of the other Party which is not to be unreasonably withheld or delayed.

20.2 Entire Referral Agreement

- (a) This Referral Agreement constitutes the entire Referral Agreement between the Parties relating to the subject matter of this Referral Agreement and supersedes any previous agreements and representations made between the Parties; and
- (b) No amendment or variation of this Referral Agreement shall be effective unless in writing and signed by a duly authorised representative of each of the Parties.

20.3 Severability & Invalidity

- (a) If any part of this Referral Agreement is found by a court of competent jurisdiction or other competent authority to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the other provisions of this Referral Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect; and
- (b) The Parties agree to substitute for any invalid or unenforceable provision a valid or enforceable provision that achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.

20.4 Relationship of the Parties

- (a) Each Party is acting as an independent contractor and not as an employee, agent or partner with the other Party for any purpose. Except as provided in this Referral Agreement, neither Party shall have any right, power, or authority to act or to create any obligation, express or implied, on behalf of the other.

20.5 Waiver & Variation

- (a) A provision or a right under this Referral Agreement may not be waived except in writing signed by the Party granting the waiver or varied except in writing signed by the Parties.

20.6 No Third-Party Beneficiaries

- (a) This Referral Agreement shall inure to the benefit of, and be binding upon, each of the Parties and their respective successors and permitted assignees, subject to the provisions of this Referral Agreement, but shall not inure to the benefit of any third party.

20.7 Execution of counterparts

- (a) This Referral Agreement may be executed in any number of counterparts each of which when executed and delivered is an original, but all the counterparts together constitute the same document.

20.8 Force Majeure

- (a) If, due to strikes, industrial action short of a strike, war, accidents, fire, flood, natural catastrophes or other obstacles over which neither Party has any control (an event of Force Majeure), either Party fails to perform any of its obligations under the Referral Agreement, neither Party shall be held responsible for any loss or damage which may be incurred as a result of such failure. Should the event of Force Majeure continue for longer than four weeks, either Party shall have the option of terminating this Referral Agreement immediately without further liability other than such liabilities as have already accrued when this Referral Agreement ends.

20.9 Execution Authority

- (a) Each of Bondi Labs and the Referral Partner executing this Referral Agreement on behalf of any entity hereby represents and warrants that it, he or she is duly authorised and has full authority to execute and deliver this Referral Agreement and that the Referral Agreement is enforceable against it. Each of Bondi Labs and the Referral Partner consents to the other's use of electronic signatures on this Referral Agreement. Neither Party may object to the legal effect or enforceability because of such electronic signature, which will be considered to be an original binding signature. Each of Bondi Labs and Referral Partner certifies by its undersigned authorised representatives, who have read this Referral Agreement, which they agree to be bound by its terms and conditions.

21. NOTICES

Any notice required to be given pursuant to this Referral Agreement shall be provided in writing, including by email, to the address of the relevant Party as set out in this agreement or such other address as may be notified from time to time. Such notices will be deemed delivered when transmitted if by email or two (2) days after posting if sent by first class post.