



MARKETING AFFILIATE AGREEMENT

This Marketing Affiliate Agreement (“**Agreement**”) is effective as of the Effective Date by and between **Bark Technologies, Inc.**, a Delaware corporation, with offices at 3423 Piedmont Rd NE, Suite 360, Atlanta, GA 30305 (“**Bark**”) and the entity executing or otherwise accepting this Agreement as a marketing affiliate of Bark (“**Marketing Affiliate**”). Capitalized terms used but not otherwise defined herein shall have the definitions set forth in Section 13 below.

1. Authorization; Marketing and Promotion.

- 1.1. **Authorization.** Subject to Marketing Affiliate’s compliance with this Agreement, Bark hereby grants to Marketing Affiliate a non-exclusive, non-transferable, and non-assignable right to promote and market the Services to prospective customers.
- 1.2. **Marketing and Promotion.** Marketing Affiliate will use commercially reasonable efforts to market and promote the Services to prospective customers during the Term. Any advertising materials to be used by Marketing Affiliate (other than the materials provided by Bark) shall be at its own cost and expense. Marketing Affiliate agrees to assist in Bark’s marketing efforts to a prospective customer referred by Marketing Affiliate and will provide commercially reasonable cooperation if so requested. Marketing Affiliate shall clearly and conspicuously disclose that it is being compensated by Bark for its promotion of the Services. In connection with its performance under this Agreement, Marketing Affiliate shall not represent itself as an agent of Bark for any purpose.
- 1.3. **Bark Marks.** All use by Marketing Affiliate of the trademarks, service marks, and trade names associated with Bark and/or the Services, whether registered or unregistered (the “**Bark Marks**”), including any goodwill associated therewith, shall inure to the benefit of, conform to the standards set by, and be under the control of, Bark. Marketing Affiliate’s use of any of the Bark Marks must comply with this Agreement and any trademark usage guidelines provided by Bark from time to time. Marketing Affiliate shall not use any of the Bark Marks in connection with any product or service or in any manner that is likely to cause confusion, and shall not copy, imitate, or use any such marks, in whole or in part, without the prior written permission of Bark. As between the parties, Bark will have the sole right and discretion to determine whether any use of the Bark Marks in connection with the promotional activities hereunder complies with the requirements of this Agreement.
- 1.4. **Customer Terms.** Marketing Affiliate will notify each prospective customer that its access to the Services will be subject to the TOS and such customer must accept the TOS prior to using the Services. Marketing Affiliate will not accept the TOS on behalf of its Referral Customers.

2. Referral Process. A prospective customer may become a Referral Customer through Marketing Affiliate’s submission and Bark’s acceptance of a Referral Notice per Section 2.1 below, or through Bark’s Affiliate Webpage per Section 2.2 below.

- 2.1. **Referral Notice.** Marketing Affiliate may submit a Referral Notice to Bark for each prospective customer referred by Marketing Affiliate to Bark. If Bark accepts the Referral Notice, the prospective customer referred thereby will be considered a Referral Customer. Bark may reject any Referral Notice if the prospective customer set forth in such Referral Notice is (a) a current customer of Bark, or (b) a prospective customer of Bark who, at the time the Referral Notice is submitted to Bark concerning such customer: (i) is being actively recruited by Bark or another partner of Bark, or (ii) has been actively recruited by Bark or another partner of Bark in the one hundred eighty (180) day period immediately preceding submission of such Referral Notice. If Bark fails to provide Marketing Affiliate with a written acceptance or rejection within thirty (30) days after submission of the Referral Notice, the Referral Notice will be considered rejected by Bark and Marketing Affiliate must resubmit a Referral Notice for such prospective customer to be reconsidered as a Referral Customer hereunder.
- 2.2. **Affiliate Code.** Marketing Affiliate may be assigned a referral code or URL that is specifically linked to Marketing Affiliate in conjunction with this Agreement (both referred to herein as an “**Affiliate Code**”). Marketing Affiliate may share its Affiliate Code with prospective customers and if a prospective customer uses the Affiliate Code during the Term when purchasing a subscription to the Services, and Bark accepts the Affiliate Code associated with the purchase, such prospective customer will be deemed a Referral Customer of Marketing Affiliate with respect to such purchase. Bark may reject any Affiliate Code related to a purchase if the prospective customer is (a) a current customer of Bark, or (b) has been

actively recruited by Bark or another partner of Bark in the one hundred eighty (180) day period immediately preceding the purchase.

3. **Pricing and Payment.** Bark is responsible for all account-related activities with the Referral Customers, including billing and collecting fees from all Referral Customers, and may communicate directly with the Referral Customers at any time. Bark is free to determine the prices that it will charge Referral Customers for the Services and will have the right to alter the Services, alter any prices for the Services, or reject or discontinue sales of the Services or any part thereof, with respect to any Referral Customer at any time or from time to time in its sole discretion.
4. **Referral Fee.** As consideration for any and all efforts by Marketing Affiliate to promote the Services hereunder, Bark will pay Marketing Affiliate a commission in the amount set forth in the applicable affiliate offer presented by Bark from time to time (via CAKE or such other affiliate platform that may be used by Bark) (the “**Referral Fee**”) for each Referral Customer who meets all of the requirements of such offer. The Referral Fee is payable within thirty (30) days after the end of the calendar quarter in which the applicable offer requirements are met. Marketing Affiliate will provide Bark with all appropriate tax identification information that Bark requires to ensure Bark’s compliance with applicable tax regulations.
5. **Intellectual Property Rights.** Except for the rights to use the Bark Marks and promote the Services as expressly granted herein, neither party will acquire any rights, title or interest in any of the Intellectual Property Rights belonging to the other party or the other party’s licensors. Nothing in this Agreement is intended to constitute a sale of any software or documentation associated with the Services or any derivations thereof. The Services constitute valuable proprietary and trade secret information and property of Bark. Title, ownership, and intellectual property rights, including without limitation all copyright rights, in and to the Services, and all derivatives thereof, shall remain with Bark and its licensors. Marketing Affiliate acknowledges the ownership and intellectual property rights of Bark in the Services, and will not take any action to jeopardize, limit or interfere in any manner with such ownership or other rights. Marketing Affiliate hereby grants Bark a non-exclusive, royalty-free, fully paid up, perpetual, irrevocable, transferable, unlimited, worldwide right to use and otherwise commercially exploit any feedback, ideas or other suggestions communicated by Marketing Affiliate to Bark.
6. **Confidentiality.** Each party will: (a) protect the other party’s Confidential Information with the same standard of care it uses to protect its own Confidential Information, but in no event less than reasonable care; and (b) not disclose the Confidential Information, except to affiliates, employees, agents and professional advisors who need to know it and who have agreed in writing (or in the case of professional advisors are otherwise bound) to keep it confidential. Each party (and any affiliates, employees and agents to whom it has disclosed Confidential Information) may use Confidential Information only to exercise rights and fulfill obligations under this Agreement, while using reasonable care to protect it. Each party is responsible for any actions of its affiliates, employees and agents in violation of this Section. Notwithstanding the foregoing, each party may disclose the other party’s Confidential Information when required by law, but only after it, if legally permissible: (a) uses commercially reasonable efforts to notify the other party; and (b) gives the other party the chance to challenge the disclosure.
7. **Publicity.** Marketing Affiliate will not issue any press release, public announcement, or public statement regarding the existence or content of this Agreement or issue any materials containing Bark’s name, trade names, trademarks, service marks, logos, domain names, or other distinctive brand features of Bark without Bark’s prior written approval.
8. **Agreement Term; Termination.**
 - 8.1. **Initial Term; Auto-Renewal.** This Agreement will commence on the Effective Date and will continue for an initial term of twelve (12) months (the “**Initial Term**”). Upon expiration of the Initial Term, and on each anniversary of such date, this Agreement will auto-renew for a renewal term of twelve (12) months (each a “**Renewal Term**”) unless either party notifies the other in writing of its intent to not renew the Agreement at least thirty (30) days prior to the end of the then-current Term.
 - 8.2. **Termination for Breach.** Notwithstanding anything to the contrary elsewhere in the Agreement, either party may suspend performance or terminate this Agreement if: (i) the other party is in material breach of the Agreement and fails to cure that breach within fifteen (15) days after receipt of written notice; (ii) the other party ceases its business operations or becomes subject to insolvency proceedings and the proceedings are not dismissed within ninety (90) days; (iii) the other party is in material breach of this Agreement more than two (2) times notwithstanding any cure of such breaches.
 - 8.3. **Termination for Convenience.** Notwithstanding anything to the contrary elsewhere in the Agreement, either party may terminate this Agreement for convenience upon sixty (60) days prior written notice to the other party.
 - 8.4. **Effect of Termination.** Upon any termination or expiration of this Agreement: (i) all rights and licenses granted by one party to the other will immediately cease; (ii) each party will promptly return to the other party, or destroy and certify the destruction of, all of the other party’s Confidential Information; (iii) Marketing Affiliate shall no longer market or promote the Services and will remove all references to Bark and/or the Services from its website; and (iv) Marketing Affiliate will, if Bark so requests, inform Referral Customers that its relationship with Bark has terminated. Termination or expiration of this

Agreement, in part or in whole, will not limit either party from pursuing other remedies available to it. In the event of non-renewal or termination of this Agreement, the Referral Fee for Referral Customers who have met the applicable offer requirement(s) prior to the effective date of termination or expiration will be paid as set forth herein.

8.5. **Acknowledgement.** Marketing Affiliate hereby waives any right, either express or implied by applicable law or otherwise, to renewal of this Agreement or to any damages or compensation for any expiration or termination of this Agreement as provided herein.

9. **Representations.** Marketing Affiliate represents and warrants that:

9.1. Marketing Affiliate will comply with the terms and conditions of this Agreement, all applicable laws and regulations (including, without limitation, Export Laws), and any policies related to the Services, as such policies may be modified by Bark from time to time, in its marketing and promotion of the Services;

9.2. Marketing Affiliate will not make any unauthorized, false, misleading, or illegal statements in connection with this Agreement or regarding the Services and will not make any representation or warranty that is inconsistent with this Agreement or Bark's written materials regarding the Services as provided by Bark to Marketing Affiliate or otherwise made publicly available by Bark. Marketing Affiliate will indemnify, defend, and hold harmless Bark from and against all liabilities, damages, and costs (including settlement costs and reasonable attorneys' fees) arising out of or related to any representations or warranties made by Marketing Affiliate regarding the Services that are inconsistent with this Agreement or the written materials regarding the Services provided by Bark;

9.3. Marketing Affiliate has obtained and will maintain all licenses, permits and approvals and will be responsible for satisfying all formalities as may be required to: (a) enter into this Agreement; (b) perform its obligations in accordance with this Agreement; and (c) comply with applicable laws, rules and regulations;

9.4. The execution and delivery of this Agreement, and the performance by Marketing Affiliate of its obligations hereunder, will not constitute a breach or default of or otherwise violate any agreement to which Marketing Affiliate or any of its affiliates are a party, or violate any rights of any third parties arising from those agreements, including without limitation any rights related to exclusivity; and

9.5. Marketing Affiliate and its directors, officers, employees and agents have not, and will not offer, pay, promise or authorize the payment, directly or indirectly through any other person or entity, of any monies or anything of value for the purpose of inducing or rewarding any favorable action or influencing any act or decision in connection with Bark's business to a candidate for public office, or to any of the following for the purpose of inducing or rewarding any favorable action or influencing any act or decision of such person or entity in connection with Bark's business: (a) any governmental official or employee of a government; (b) any official or employee of any government-controlled entity, public international organization or any political party; or (c) any candidate for political office.

10. **Disclaimer.** TO THE FULLEST EXTENT PERMITTED BY LAW, BARK, ITS LICENSORS AND SUPPLIERS MAKE NO WARRANTY, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WITH RESPECT TO THE SERVICES, AND EXPRESSLY DISCLAIM THE WARRANTIES OR CONDITIONS OF NONINFRINGEMENT, SATISFACTORY QUALITY, MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE. MARKETING AFFILIATE HEREBY WAIVES ANY RIGHTS THAT IT MIGHT OTHERWISE HAVE IN CONNECTION WITH THIS SECTION. BARK WILL NOT BE OBLIGATED UNDER THIS AGREEMENT TO TAKE ANY ACTION OR REFRAIN FROM TAKING ANY ACTION THAT IT BELIEVES, IN GOOD FAITH, WOULD CAUSE IT TO BE IN VIOLATION OF ANY LAWS OF THE TERRITORY OR ANY OTHER APPLICABLE JURISDICTION, INCLUDING, WITHOUT LIMITATION, THE UNITED STATES.

11. **Limitation of Liability.** IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED HERETO FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED AND WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITY AND EVEN IF DIRECT DAMAGES DO NOT SATISFY A REMEDY. IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNTS PAID BY BARK TO MARKETING AFFILIATE HEREUNDER IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY. THESE LIMITATIONS OF LIABILITY APPLY TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW BUT DO NOT APPLY TO A PARTY'S INDEMNIFICATION OBLIGATIONS, VIOLATIONS OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, OR BREACHES OF CONFIDENTIALITY OBLIGATIONS.

12. Miscellaneous.

- 12.1. Non-Exclusivity. Bark expressly reserves the right (on a worldwide basis) to promote, advertise, market, sell, license and distribute the Services either directly or indirectly through other partners, managed service providers, dealers, distributors, or other third parties, and reserves the right (on a worldwide basis) to promote, advertise, market, sell, license, and distribute the Services to any customer of Marketing Affiliate, subject to the confidentiality provisions of this Agreement. Nothing in this Agreement shall be deemed to preclude Bark from contacting Referral Customers directly.
- 12.2. Non-Disparagement. Each party agrees and covenants that it will not at any time make, publish, or communicate to any person or entity or in any public forum, including, without limitation, on any digital or online review sites or forums, any defamatory, discrediting or disparaging remarks, comments or statements concerning the other party or its businesses, or any of its employees or officers, now or in the future. For purposes of this paragraph, a disparaging or discrediting statement or representation is any communication which, if publicized to another, would cause or tend to cause the recipient of the communication to question the business condition, integrity, competence, good character, or product quality of the person or entity to whom the communication relates, but will not include any disclosure required to be made to any governmental or quasi-governmental agency, or any disclosure made in the course of any pending or threatened litigation, mediation, arbitration or agency action.
- 12.3. Notices. All notices must be in writing and addressed to the attention of the other party at the address first set forth above or on the signature page hereto, or at such other address as provided by a party from time to time by like notice. Notice will be deemed given: (a) when delivered by personal courier, (b) one (1) business day after sending via a nationally-recognized overnight courier, (c) three (3) business days after sending via certified mail, or (d) when verified by automated receipt or electronic logs if sent by facsimile or email.
- 12.4. Beneficiaries: No Agency: Assignment. There are no third-party beneficiaries to this Agreement. The parties are independent contractors, and this Agreement does not create an agency, partnership or joint venture. Marketing Affiliate may not assign or transfer any part of this Agreement, including without limitation, by change of control or an assignment by operation of law, without Bark's prior written consent. Any attempt by Marketing Affiliate to transfer or assign this Agreement in violation of this Section is void.
- 12.5. Force Majeure. Neither party will be liable for inadequate performance to the extent caused by a condition (for example, natural disaster, epidemic or pandemic, act of war or terrorism, riot, labor condition, governmental action, and Internet disturbance) that was beyond the party's reasonable control.
- 12.6. No Waiver: Severability. Failure to enforce any provision of this Agreement will not constitute a waiver. If any provision of this Agreement is found unenforceable, it and any related provisions will be interpreted to best accomplish the unenforceable provision's essential purpose.
- 12.7. Governing Law: Jurisdiction. This Agreement is governed by the laws of the State of Georgia, excluding its choice of law rules. FOR ANY DISPUTE RELATING TO THIS AGREEMENT, THE PARTIES CONSENT TO PERSONAL JURISDICTION IN FULTON COUNTY, GEORGIA AND THE EXCLUSIVE VENUE OF, THE COURTS IN FULTON COUNTY, GEORGIA.
- 12.8. Waiver of Jury Trial. EACH PARTY HEREBY WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR THE SUBJECT MATTER HEREOF. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS (INCLUDING NEGLIGENCE), BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. THIS SECTION HAS BEEN FULLY DISCUSSED BY EACH OF THE PARTIES HERETO AND THESE PROVISIONS WILL NOT BE SUBJECT TO ANY EXCEPTIONS. EACH PARTY HERETO HEREBY FURTHER WARRANTS AND REPRESENTS THAT SUCH PARTY HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT SUCH PARTY KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.
- 12.9. Equitable Relief: Survival. Nothing in this Agreement will limit either party's ability to seek equitable relief. Upon expiration or termination of this Agreement, the rights and obligations of the parties will cease, except for the rights and obligations in all provisions of this Agreement which by their nature contemplate performance or applicability after the expiration or termination hereof, which will survive termination or expiration of this Agreement.
- 12.10. Entire Agreement: Amendments: Counterparts. This Agreement constitutes the parties' entire agreement relating to its subject and supersedes any prior or contemporaneous agreements on that subject. Any amendments to this Agreement must

be agreed upon in writing and signed by both parties hereto. The parties may execute this Agreement electronically (including, without limitation, via Marketing Affiliate's acceptance of this Agreement through the Affiliate Webpage, or via www.docusign.com) and the parties may exchange executed signature pages in counterparts, including by facsimile, PDF or other electronic method, which taken together will constitute one instrument.

13. Definitions. For purposes of this Agreement, the following terms will have the meanings set forth below:

“Affiliate Webpage” means the URL designed by Bark for prospective affiliates to register as a marketing affiliate of Bark and obtain an Affiliate Code, currently located at: <https://www.bark.us/affiliates/>, as may be updated by Bark from time to time.

“Confidential Information” means information disclosed by a party to the other party under this agreement that is marked as confidential or would normally be considered confidential under the circumstances. Without limiting the foregoing, the Referral Fee and any information obtained through the Services are Confidential Information of Bark. Notwithstanding the foregoing, Confidential Information does not include information that: (a) the recipient of the Confidential Information already knew; (b) becomes public through no fault of the recipient; (c) was independently developed by the recipient; or (d) was rightfully given to the recipient by another party.

“Effective Date” means the earlier of: (a) the date Marketing Affiliate accepts this Agreement by clicking a box indicating its acceptance through the Affiliate Webpage, or (b) the date on which both Bark and Marketing Affiliate execute this Agreement below. For purposes of (b), if this Agreement is executed by Marketing Affiliate and Bark on different dates, the Effective Date will be the date the last party signs this Agreement.

“Export Laws” means all applicable export and re-export control laws and regulations, and specifically includes the Export Administration Regulations maintained by the U.S. Department of Commerce, the trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control, and the International Traffic in Arms Regulations maintained by the Department of State.

“Intellectual Property Rights” means current and future worldwide rights under patent law, copyright law, trade secret law, trademark law, moral rights law, and other similar rights.

“Referral Customers” means those prospective customers referred by Marketing Affiliate to Bark and accepted by Bark in accordance with Section 2 above.

“Referral Notice” means Marketing Affiliate's submission of written notice to Bark regarding a prospective customer's interest in purchasing the Services, in the form designated by Bark from time to time, which shall include all information about the prospective customer and opportunity as reasonably requested by Bark.

“Services” means the products and services offered by Bark to Referral Customers as more particularly described at www.bark.us, as may be updated or modified by Bark from time to time.

“Taxes” means any and all taxes, charges, fees, levies, imposts, duties, tariffs or other assessments imposed by or payable to any federal, state, local or foreign tax or governmental authority, including, without limitation, sales, use, goods, services, value-added, transfer, customs, personal property, stamp duty, excise, withholding and other obligations of the same or similar nature.

“Term” means the Initial Term together with all Renewal Terms, as such terms are defined in Section 8.1 above.

“TOS” means the Terms of Service presented by Bark to Referral Customers upon login to the Services, as Bark may modify from time to time, which must be accepted by each Referral Customer prior to its use of the Services. A copy of the then-current TOS for the applicable Services will be made available by Bark for review upon request.