

## ROI-CALC, INC. LEAD REFERRAL PROGRAM TERMS AND CONDITIONS

**IT IS AGREED** by and between **ROI-CALC, Inc.** ("**Company**") and the entity identified in the Lead Qualification Referral Form ("**Representative**") that Representative will make lead referrals of Company service under the following terms and conditions:

### **1. RELATIONSHIP.**

**1.1** Representative shall act as Company's non-exclusive sales referral representative for the referral of leads for Company Services (the "**Services**"). Representative's sole authority shall be to provide sales leads to allow Company to solicit orders for the Services.

**1.2** Representative shall not have the authority to make any commitments or agreements or incur any liabilities whatsoever on behalf of Company, nor shall Company be liable for any acts, omissions to act, contracts, commitments, promises or representations made by Representative. Company and Representative are independent contractors, and nothing contained in this Agreement shall be construed to (a) give either party the power to direct and control the day-to-day activities of the other; (b) create an employer-employee relationship; (c) give the Representative the authority to bind Company to any contract with a third party; or (d) constitute the parties as partners, joint venturers, co-owners or otherwise as participants in a joint undertaking. All financial and other obligations associated with Representative's business are the sole responsibility of Representative. As an independent contractor, the mode, manner and method used by Representative shall be under Representative's sole control and Representative shall be responsible for risks incurred in the operation of its business and the benefits thereof. Any persons employed by Representative to perform any part of Representative's obligations hereunder shall be under the sole control and direction of Representative and Representative shall be solely responsible for all liabilities and expenses thereof. Representative agrees that neither it nor its employees or anyone else acting on its behalf shall receive any employee benefits of any kind from Company. Representative (and its employees, consultants and agents) are excluded from participating in any employment benefit plans or programs as a result of performance of services hereunder and waive any and all rights, if any, to participate in any of employee benefits offered by Company to its employees. All expenses necessary to perform the duties of each party, except as expressly provided herein, shall be the sole and exclusive responsibility of that party.

**1.3** Representative acknowledges and agrees that no license is granted under this Agreement to use or access the Services, any of Company's proprietary technologies embodied therein, or any data, information or other content provided thereby and Representative shall have no right to access or use the Services. As between Company and Representative, Company retains all right, title and interest in and to the Services and all technology, data, information or other content embodied therein or provided thereby, as well as any intellectual property rights or similar rights in connection therewith, and Representative acknowledges that it neither owns nor acquires any rights in or to the Services.

**2. REFERRALS.** Representative shall identify potential customers (each, a "**Proposed Lead**") and relevant commercial conditions relating to Proposed Lead. Representative shall complete a Lead Qualification Referral Form ("**LQR Form**") in the form attached hereto as Exhibit A for each Proposed Lead and provide the completed LQR Form to Company. At the Company's request, Representative agrees to discuss each completed LQR Form in detail with Company and to assist Company in making contact with the Proposed Lead by arranging an introduction, meeting, conference call or other means of communication with the Proposed Lead. Representative shall conduct all of its business in Representative's own name and in a businesslike and professional manner. In no event will Representative make or purport to make representations or warranties on Company's behalf, or purport to act as an agent of the Company for any purpose. Company

shall make available to Representative materials and literature regarding the Services, including Service information and marketing materials. Representative shall not refer as a Proposed Lead any customer or account consisting of existing ROI-Calc customers, whether or not such customers upgrade ROI-Calc service, convert ROI-Calc service to another ROI-Calc account, or consolidate ROI-Calc service with another account. Such customer or account shall not become a Sales Lead or Customer ("**Excluded Account**").

### **3. REFERRAL FEES, BILLING AND COLLECTIONS.**

**3.1** Company shall, in its sole discretion, accept or decline a Proposed Lead submitted by Representative within twenty (20) business days of the date each LQI Form is submitted to Company. Any accepted Proposed Lead provided by Representative to Company will become a "**Sales Lead**." All leads received from Representative will expire twelve (12) months after acceptance by Company. The method of following up Sales Leads will be determined in Company's sole discretion.

**3.2** To become a "**Customer**" upon which Representative is eligible to receive a Referral Payment, the Customer must (a) be a Sales Lead referred to Company by Representative; (b) not already be or have been a customer or account of Company for any period of time in the prior twelve (12) months; and (c) enter into an Agreement with Company within twelve (12) months after the Proposed Lead becomes a Sales Lead and not cancel the contract during the first 120 days following its execution.

**3.3** Company shall have sole and exclusive control over all prices, discounts, allowances, refunds, development, specifications, delivery, and other terms governing the Services, which are subject to change by Company, upon ten days' written notice thereof. Company shall have sole discretion to refuse to offer any Services to any third party without liability to Representative for any Referral Payment. Representative agrees that it shall quote only the prices and terms for the Services from time to time provided to Representative by Company, and Representative shall not alter or change such prices or terms unless otherwise authorized by Company in writing. Full responsibility for all contracts and collection rests with Company. All orders shall be taken and contracts executed in the name of Company, which shall invoice customers and carry accounts in its own name as creditor, except in cases where a different procedure is agreed upon in advance in writing.

### **4. PAYMENT.**

**4.1** Company shall pay Representative a referral payment for each Sales Lead that becomes a Customer ("**Referral Payment**"). The Referral Payment shall be 12% of the lead referral revenue, which shall be the cash actually received by Company for all charges for Services ("**Lead Referral Revenue**"). If the Representative has paid for services equal or greater than \$3,000 the Referral Payment shall be 20% of the lead referral revenue, which shall be the cash actually received by Company for all charges for Services ("**Lead Referral Revenue**"). Lead Referral Revenue shall NOT include taxes, applicable transaction fees, subsequently credited charges, write-offs, special promotional discounts, multi-service and term discounts, refunds, chargebacks, fraudulent charges, any amounts paid by Customer for any sales or sublicenses of third party products or services provided on or behalf of Company, or revenue generated by any Excluded Account. The Referral Payment shall be deemed earned and shall be payable one (1) month after the end of the month in which Company actually receives the applicable Lead Referral Revenue from the Customer, subject to the provisions of 4.2 below. The parties agree that Representative and its employees are independent contractors for tax purposes and Representative and its employees shall be solely responsible for payment of any and all taxes and charges arising from or imposed on the payments made to Representative by Company, and Representative shall be responsible for all expenses incurred by it in connection with the implementation and performance of its duties and obligations under this Agreement except as provided herein. Representative agrees, as an independent contractor, that neither it nor its employees are entitled to

unemployment benefits in the event this Agreement terminates, or workers' compensation benefits in the event that Representative, or any employee of Representative, is injured in any manner while performing obligations under this Agreement. Representative will be solely responsible to pay any and all local, state, and/or federal income, social security and unemployment taxes for Representative and its employees. The Company will not withhold any taxes or prepare W-2 Forms for Representative, but will provide it with a Form 1099, if required by law.

**4.2** Except in the event of termination for breach and subject to this Section 4, following termination of this Agreement, Company shall pay Representative a Referral Payment on all Proposed Sales Leads received by Company prior to the effective date of termination that are accepted by Company and become Customers within ninety (90) days after the effective date of termination of this Agreement, pursuant to the terms and limitations of Section 4.1. Except as provided in this Section 4.2, Company shall have no obligation to pay Referral Payment to Representative after the effective date of termination.

**5. CONFIDENTIALITY.** All Confidential Information obtained by Representative in connection with its activities hereunder shall be treated as confidential and proprietary information of Company that Representative shall not use for its own benefit or for any purpose other than fulfilling its obligations under this Agreement, and Representative shall not disclose such Confidential Information to any third party except with Company's prior written consent. "Confidential Information" as used in this Agreement shall mean all information disclosed by Company to Representative and other information regarding the Company or its business obtained by Representative pursuant to services provided under this Agreement or otherwise that is not generally known in the trade or industry. Confidential Information shall also include proprietary or confidential information of any third party who may disclose such information to Company or Representative in the course of Company's business. The foregoing obligation shall not apply to information which was (a) otherwise publicly available; (b) previously known to Representative free of any duty of confidentiality; or (c) required to be disclosed pursuant to applicable law (in which case prior to such disclosure Representative must first notify Company and give Company the opportunity to seek a protective order or to contest such required disclosure). All Confidential Information is the sole and exclusive property of the Company or its suppliers or customers, as appropriate. Upon request by Company, Representative agrees to promptly deliver to Company the original and any copies of the Confidential Information. Representative shall take all reasonable steps to protect Company's Confidential Information.

## **6. TERM AND TERMINATION.**

**6.1** The term of this Agreement shall commence on the Effective Date and continue, unless earlier terminated, for twelve (12) months, at which time this Agreement shall terminate.

**6.2** This Agreement may be terminated by either party upon ten (10) days prior written or email notice to the other party. The Company may also terminate this Agreement immediately in the event of a breach by the Representative.

**6.3** Sections 1.2, 1.3, 4.2, 5, 6.3, 7, 8, and 9 shall survive termination of the Agreement. Upon termination of this Agreement for any reason, Representative immediately shall cease the use of all Company confidential and proprietary information and shall return to Company all brochures, literature, documentation and other materials within Representative's control.

**7. REPRESENTATIONS, DISCLAIMER, LIMITATIONS.** Representative represents and warrants (i) that it shall conduct its business activities in a legal and ethical manner; (ii) that it will commit no act which would reflect unfavorably on the Company; and (iii) that the execution and performance of this Agreement will not conflict with or violate any provision of any law having applicability to Representative.

**8. INDEMNIFICATION.** Representative shall indemnify and hold harmless Company, its officers, directors, owners, agents and employees, from and against any and all claims, losses, actions, damages, expenses and all other liabilities, including but not limited to reasonable attorneys' fees and costs, brought or imposed against Company by Representative, its employees or by any other parties, arising out of or resulting from the acts or omissions of Representative, its agents, employees or contractors. Representative will obtain for itself and its personnel before providing services, at its own expense, General Liability (GL) insurance coverage for services covered by this Agreement and (if available under state law) worker's compensation coverage.

**9. GENERAL.** This Agreement, including any Exhibits attached hereto, constitutes the entire understanding of the parties; shall supersede any oral or written agreements; and shall be binding upon and inure to the benefits of the parties' successors and assigns. Representative's continued performance will be Representative's agreement and consent to any subsequent changes, modifications, or amendments to this agreement. Representative shall not assign this Agreement in whole or in part without Company's prior written consent. Any such assignment in violation thereof shall be null and void. Any notice required or permitted to be given under this Agreement shall be sufficient if in writing, and shall be deemed to be fully given when personally delivered or sent by confirmed facsimile or two days after being sent by commercial courier to the addresses first set forth below, which may be changed from time to time pursuant to ten (10) days' advance notice hereunder. If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to law that provision will be enforced to the maximum permissible extent and the remaining provision of this Agreement will remain in full force and effect. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Georgia, without regard to conflicts of laws principles thereof. For purposes of all claims brought under this Agreement, each of the parties hereby submits to the exclusive jurisdiction of the state courts of the State of Georgia located in Cobb County.

**EXHIBIT A**

**LQR FORM**

**LEAD QUALIFICATION REFERRAL FORM**

This form must be completed by Representative. All Proposed Leads are subject to acceptance by Company.

**LEAD SUBMITTED BY:**

Today's Date  
Your Name  
Telephone Number  
E-Mail

**LEAD INFORMATION:**

Company Name  
Primary Contact  
Title  
Address

Telephone Number  
E-Mail Address  
Describe the Opportunity