

# VoIPLy LLC

## REFERRAL AGREEMENT

THIS AGREEMENT is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2018 (the “Effective Date”), by and between VoIPLy LLC, a Pennsylvania corporation (the “**Company**”), and \_\_\_\_\_ (“**Referrer**”).

### RECITALS

**WHEREAS**, Company is engaged in the business of VOIP SERVICES (the “Services”); and

**WHEREAS**, Referrer desires to refer potential clients (“Referrals”) of the Services to the Company in exchange for a commission on any revenue generated by the Company as a result of such introductions.

**NOW, THEREFORE**, for and in consideration of the premises and the mutual promises hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

#### **Section 1.           Referrals.**

(a) During the Term, the Referrer will make Introductions (as defined in Schedule A) of the Company to potential clients for purposes of promoting the Services to such potential clients. The Referrer will use its professional judgment as to the appropriateness of a particular introduction (recognizing that some Introductions may not be appropriate at a particular time or at any time).

(b) The Company will meet or conference and negotiate independently with a potential client after an Introduction with respect to a potential relationship and the terms applicable to such potential relationship. The Referrer may not object to any decisions made by the Company regarding the terms or conditions of a particular relationship entered into after an Introduction. Further, the Company will have sole discretion to enter into or not enter into an arrangement with a potential client.

#### **Section 2.           Commission Payments.**

- (a) During the Term, Company will pay Referrer a commission (the “Compensation”) on “Business Pro Plan, and Fax Plan.” (as defined below) generated as a result of Introductions by Referrer in accordance with Schedule A.
- (b) In the event that the final pricing offered to the Referee is lower than the pricing listed on the VoIPLy website, VoIPLy reserves the right to reduce the referral reward. New service must be active for 60 days prior to reward payment.
- (c) The Compensation shall be considered complete consideration for all Referrals made during the Term. Referrer shall be responsible for any and all income and other taxes applicable to it in connection with its receipt of Compensation pursuant hereto and as an independent contractor of the Company. The Company will not be responsible for any expenses of the Referrer in the course of the performance of its obligations hereunder unless such expenses have been previously approved in writing by the Company.

### **Section 3. Term and Termination.**

(a) The term (the “**Initial Term**”) of this Agreement shall commence on the Effective Date and shall continue for a period of twelve (12) months as long as the REFEREE remains with VoIPLy LLC and the REFERER continues to offer support to the REFEREE. Prior to the end of the Initial Term and each “Renewal Term” (as hereafter defined), this Agreement will automatically extend for an additional twelve (12) month period (each, a “**Renewal Term**”) unless either party sends the other party a notice of non-renewal at least thirty (30) days prior to the expiration of the “Term” (as hereafter defined). The Initial Term and any Renewal Terms shall be collectively referred to herein as the “**Term**.” This Agreement may be terminated by either party upon thirty (30) days prior written notice.

(b) The following provisions shall survive the Termination Date: Sections 6 (Representations and Warranties), 7 (Indemnification), 8 (Limitation of Liability), 9 (Confidentiality), and 10 (Non-Competition and Non-Solicitation) and 11 (Miscellaneous).

### **Section 6. Representations and Warranties.**

(a) Each of Referrer and Company represents and warrants that: (i) it has the right to enter into this Agreement and the right to grant the rights and licenses granted herein; (ii) it is not a party to any agreement, contract, or understanding that would prevent, limit or hinder its performance of this Agreement; (iii) during the Term, it will not enter into any contract, agreement or understanding which is in conflict or which would interfere with the full and complete performance of any of the duties or grants hereunder; and (iv) it is not a party to any pending claims or litigation which might affect its performance of this Agreement.

(b) **EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, TO THE**

**MAXIMUM EXTENT PERMITTED BY LAW, EACH PARTY DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESS, IMPLIED, OR STATUTORY, WITH RESPECT TO THE MARKETING SERVICES PROVIDED TO THE OTHER PARTY AND OTHER OBLIGATIONS UNDERTAKEN HEREUNDER, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE (EVEN IF Referrer HAS BEEN INFORMED OF SUCH PURPOSE), OR WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. FURTHER, THE COMPANY DOES NOT MAKE ANY WARRANTY THAT THE QUALITY OF THE SERVICES PURCHASED OR OBTAINED BY A CLIENT AFTER A REFERRAL WILL MEET SUCH CLIENT'S EXPECTATIONS.**

**Section 7.     Indemnification.**

(a) Each party (an “**Indemnifying Party**”) shall indemnify, defend and hold harmless the other party (the “**Indemnified Party**”), its affiliates, and each of their directors, officers, employees, and agents from and against all claims, suits and proceedings and any and all related liabilities, losses, expenses, damages and costs (including, without limitation, reasonable attorneys’ fees) (collectively, “**Losses**”) incurred by the Indemnified Party, relating to or arising out of the breach by the Indemnifying Party of any of its duties, obligations, representations or warranties under this Agreement.

(b) An Indemnified Party will (i) promptly notify the Indemnifying Party of any claim, suit, or proceeding for which indemnity is claimed (but the Indemnifying Party shall be relieved from liability only to the extent any delay in providing such notice prevents the Indemnifying Party from defending such claim, suit or proceeding); (ii) cooperate reasonably with the Indemnifying Party at the Indemnifying Party’s expense; and allow the Indemnifying Party to control the defense or settlement thereof. The Indemnified Party will have the right to participate in any defense of a claim and/or to be represented by counsel of its own choosing at its own expense.

**Section 8.     Limitation of Liability.**

(a) NEITHER PARTY HERETO WILL BE LIABLE TO THE OTHER PARTY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES (EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES) SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUE OR ANTICIPATED PROFITS OR LOST BUSINESS.

(b) A party’s failure to bring a claim against the other party within one (1) year after the date on which the claiming party becomes aware of the existence of a potential claim, constitutes a waiver of such claim.

**Section 9.     Confidentiality.**

(a) Referrer and Company, and either party’s affiliates, and their or their affiliates’ officers, directors, trustees, employees, advisers, agents and other personnel, shall use at least the same care and discretion to prevent disclosure of Confidential Information (as hereinafter defined) of the other party as it uses with similar Confidential Information of its own that it does not desire to disclose, but in no event with less than a reasonable degree of care. Either party may use Confidential Information of the other party in order to carry out its obligations hereunder, but in doing so will only allow dissemination of Confidential Information internally on a need-to-know basis (provided such persons are first informed of the confidential nature of such information and directed to use or disclose it only as permitted herein). If either

party must disclose any Confidential Information of the other party as required by law, then that party may make such disclosure after providing the other party with reasonable notice so that the other party may seek protective relief.

(b) Nothing herein shall be construed as granting either party any property rights, by license or otherwise, to any Confidential Information of the other party, or to any invention or any patent, copyright, trademark, or other intellectual property right of the other party except as specifically provided for in this Agreement. Neither party shall make, have made, use or sell any product or service or other item using, incorporating or derived from any of the other party's Confidential Information except as provided in this Agreement.

(c) The obligations under this Section 9 will survive the Termination Date, but Confidential Information that is not a trade secret will cease to be protected hereunder two (2) years after the Termination Date. On or before the Termination Date, each party will return to the other party all of that other party's Confidential Information embodied in tangible form, and will destroy, unless otherwise agreed, all such other Confidential Information in that party's possession.

(d) For purposes of this Section 9, "**Confidential Information**" means (1) business or technical information or data (oral, written, electronic or otherwise), including, without limitation, a trade secret (as defined under applicable law), of or about a party provided or made available by such party to the other party that is competitively or commercially valuable to that party and not generally known or readily available by legal means to others, and (2) information regarding the existence, content or status of the business relationship described herein. Confidential Information shall not include information which (i) at the time of disclosure, was published, known publicly, or otherwise in the public domain, (ii) after disclosure, is published, becomes known publicly, or otherwise becomes part of the public domain through no fault of the party receiving the Confidential Information, (iii) prior to the time of disclosure, is known by that receiving party or, after disclosure, is independently developed by that receiving party as evidenced by its written records, (iv) after disclosure, is made available to that receiving party in good faith by a third party who is under no obligation of confidentiality or secrecy to the party disclosing the Confidential Information, or (v) information agreed to be disclosed in accordance with Section 9 hereof.

## **Section 10. Miscellaneous.**

(a) Notice. All notices under this Agreement will be given in writing or by written telecommunications via overnight mail, facsimile, or electronic mail to the addresses set forth below or such other address as either party may substitute by notice hereunder and all such notices given in accordance hereunder will be deemed as given as of the date of sending:

If to Company:

VoIPly LLC.

\_\_\_\_\_  
\_\_\_\_\_  
Attn:

Phone:

Facsimile:

Email:

If to Referrer:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn:

Phone:

Facsimile:

Email:

(b) Partial Invalidity. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination will not affect the validity or enforceability of any other part or provision of this Agreement.

(c) Waiver. The waiver by any party of any breach of any provision of the Agreement by any other party will not be construed to be a waiver of that party's rights regarding any succeeding breach of any such provision or a waiver of the provision itself.

(d) Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to this subject matter and supersedes all previous proposals, both oral and written, negotiations, representations, commitments, writings and all other communications among the parties. This Agreement may not be released, discharged or modified except by an instrument in writing signed by the parties.

(e) Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Pennsylvania, without regard to any applicable conflicts of laws, except to the extent that certain matters may be governed by federal law by reason of preemption.

(f) Relationship of Parties. Nothing contained in this Agreement will be deemed or construed as creating a joint venture or partnership between Company and Referrer. Neither party, by virtue of this Agreement, is authorized as an agent, employee or legal representative of the other. Except as specifically set forth herein, neither party will have the power to control the activities and operations of the other and their status is, and at all times will continue to be, that of independent contractors.

(g) Assignment; Effect of Change in Control. Neither party may assign its rights or obligations under this Agreement (whether by merger, consolidation, sale of assets, sale of stock or otherwise) without the other parties' written consent.

(h) Waiver of Jury Trial. EACH OF COMPANY AND REFERRER SPECIFICALLY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY COURT WITH RESPECT TO ANY CONTRACTUAL, TORTIOUS OR STATUTORY CLAIM, COUNTERCLAIM OR CROSS-CLAIM AGAINST THE OTHER ARISING OUT OF OR CONNECTED IN ANY WAY TO THIS AGREEMENT BECAUSE THE PARTIES HERETO, EACH OF WHOM IS REPRESENTED BY COUNSEL, BELIEVE THAT THE COMPLEX COMMERCIAL AND PROFESSIONAL ASPECTS OF THEIR DEALING WITH ONE ANOTHER MAKE A JURY DETERMINATION NEITHER DESIRABLE NOR APPROPRIATE.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date hereof.

**VoIPLy, LLC.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

☐ Tick Only If You Agree To Terms Laid Out In This Agreement

**[REFERRER]**

\_\_\_\_\_

Name: \_\_\_\_\_

☐ Tick Only If You Agree To Terms Laid Out In This Agreement



## **Schedule A**

### **Referral Representative Compensation**

The compensation for the referral of clients wherein a successful engagement and the collection of accounts receivable, disputed fees, and/or judgments is accomplished by VoIPLy, LLC. is as follows:

**I.** A residual fee of twenty percent (20%) of each sale on the qualified services realized by VoIPLy, LLC., net of legal costs, will be paid to the Referral Representative during the first 90 days of a client engagement referred by the Representative.

**II.** Payment will be issued within 90 days of service activation. Payment will not occur until the referred customer has activated the lines of service and has paid their bill for the first two billing periods. Lines of service must be activated within 60 days of purchase to qualify for reward payment. The referred customer must be in good standing for 60 consecutive days at the time payment is processed.

**III.** Payment will continue as long the REFERER continuously offer support to the REFEREE month to month. The REFERER shall forfeit commissions during any month in which no support is rendered to the REFEREE.

**IV.** Payment will be forfeited if the Referrer's W-9 is not provided to VoIPLy within 90 days of the order date of the referral. Lines of service will be disqualified from referral payment eligibility if the service activation has not occurred within 90 days.

**V.** The referral amount paid per Qualifying Extension will depend upon the quantity of extensions deployed within a 30-day period after deployment of the first extension up to a maximum of 999 extensions. The full referral amount will be paid for any qualifying extension sold at \$15 per month.

**VI.** If an add on referral within 30 days of the initial order is subject to a higher tier level of payment the tier level will be paid only on the add on order and not on the original order i.e. there is no retro-active tiered credit for the original order. Referral payments will not be made on any add on orders beyond 30 days after the initial order.

**VII.** The maximum amount payable for a referral is one hundred thousand dollars (\$100,000.00).

The above described fees shall be payable to the Referral Representative so long as the Referral Agreement remains in effect and the Referral Representative wishes to remain active under the terms of this agreement.

### **Payment Terms:**

All fees earned by the Referral Representative shall be due and payable within thirty (30) days of receipt of success fees by VoIPly, LLC.