

## **IBOOMERANG REPRESENTATIVE AND COMMISSION AGREEMENT**

This **iBoomerang Representative and Commission Agreement** (hereinafter the "Agreement") is made by and between **iBoomerang.com, Inc. ("iBoomerang")**, an Ohio corporation, and **You, the Representative**.

### **1. RELATIONSHIP AND SCOPE OF AUTHORITY**

Subject to the provisions and limitations set forth in this Agreement and in reliance on the promises, representations and warranties of Representative, iBoomerang hereby engages Representative to act as a marketer for iBoomerang products and to promote and sell iBoomerang products. This Agreement shall not render the Representative an employee, partner, agent or joint venturer with iBoomerang for any purpose. The Representative is and will remain an independent contractor in his or her relationship to iBoomerang. iBoomerang shall not be responsible for withholding taxes with respect to the Representative's compensation hereunder. The Representative shall have no claim against iBoomerang hereunder or otherwise for indemnification of Representative, for any reason, vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind. Representative is free to exercise its own judgment as to the time and manner for performing services required under this Agreement. Representative is also free to exercise own judgment as to the persons from whom Representative will solicit sales and the time and place of solicitation, subject to compliance with applicable law.

For the purposes of this Agreement, "Associate" means a person or entity that (i) has executed a Marketing Agreement with iBoomerang after being solicited by Representative to do so or (ii) that has executed a Representative Marketing Agreement with iBoomerang independent of any solicitation by Representative and has been duly appointed by iBoomerang to assist Representative in the performance of duties under this Agreement.

Representative shall have the right to solicit new Associates in any state where authorized in advance by iBoomerang, pursuant to rules and policies adopted by iBoomerang from time to time; provided, further, that Representative shall be responsible for any misappropriation or shortage of funds due iBoomerang due to the actions of such Associates; provided, further, that iBoomerang may, in its sole discretion, change the area assigned to Representative upon ten (10) days written notice to Representative. The area assigned to Representative is not exclusive to Representative, and iBoomerang retains the right to appoint other Representatives, producers, managers, directors or vice presidents (including other Representatives) in any state in which Representative is authorized to act under this Agreement. iBoomerang shall have the right at all times to deny appointment of any proposed Associate of Representative or to terminate iBoomerang's relationship with any Associate of Representative for any reason, with or without cause. Upon ten (10) days written notice to Representative, iBoomerang may, in its sole discretion and without incurring any liability to Representative or Associates, terminate this Agreement or discontinue conducting all or any part of its business within all or any part of Representative's territory or any other territory even if iBoomerang.

## 2. COMPENSATION

Subject to all terms and conditions of this Agreement. Representative shall be compensated with the commissions specified in the Commission Addendum as Representative's sole compensation for all services performed under this Agreement. Representative shall be solely responsible for paying all expenses incurred by Representative in performance of this Agreement.

iBoomerang shall pay no commission to Representative for the sale of any product unless and until iBoomerang receives payment from the customer or subscriber that desires to purchase such product. The Representative Commission Schedule and any commissions payable thereunder may be modified from time to time by iBoomerang, in its sole discretion, upon ten (10) days written notice to Representative, which may be contained in any iBoomerang bulletin or other written communication by iBoomerang to Representative.

## 3. RESPONSIBILITIES AND RESTRICTIONS

Representative shall have no authority to act on behalf of iBoomerang other than as expressly granted herein. Representative shall at all times comply with all of iBoomerang's rules and regulations as such may be amended from time to time and with all applicable federal and state laws and regulations. Representative shall comply with any and all rules and regulations in any manual or handbook published or adopted by iBoomerang. Representative shall not (i) rebate any premiums or commissions to any party; (ii) make, alter or discharge any contract; (iii) extend time for payment; or (v) modify any rate, receipt or requirement. Representative and Associates shall pay for all license fees, appointment fees, bond fees, and fees and taxes required by any federal, state or local government. Representative is solely and strictly responsible for the performance, fidelity and honesty of Representative's employees, Associates and independent contractors, all of whom shall act in accordance with this Agreement. Representative agrees to comply with applicable provisions of the Gramm Leach Bliley Financial Modernization Act, as amended from time to time and any requirements associated with such Act that may be enacted by any state. To the extent that nonpublic personal information of any individual is disclosed to Representative, Representative agrees that it will not disclose or use the information other than to carry out the purposes of this Agreement. All funds collected by Representative and Associates in connection with the Sale of any product shall be held by Representative and its Associates in trust and Representative and Associates shall act as trustees and fiduciaries with respect to those funds, which will in no event be used by any of them for personal, business or other purposes. All sales made by Representative and Associates shall be the property of iBoomerang. Representative covenants and agrees that it will not hold itself out to the public or others as an employee, partner, agent or co-venturer or Associate (other than as provided for herein) of iBoomerang.

## 4. TERM AND TERMINATION

- a. **Term.** This Agreement shall be effective between the parties as of the Effective Date. The initial term shall be for a period of one (1) year. Thereafter, this Agreement shall automatically renew for successive periods of one (1) year each unless terminated pursuant to the terms hereof, or unless either party gives written notice that it does not wish to renew the term of this Agreement at least 60 days, and no more than 120 days, prior to the expiration of the then existing term or renewal term.

- b. **Termination for Failure to Perform.** By providing written notice, a party may immediately terminate this Agreement if the other party materially breaches this Agreement and fails to cure that breach within ten (10) days after receiving written notice of the breach.
- c. **Termination for Other Reasons.** iBoomerang may terminate this Agreement as provided for in Paragraph 1. Either party may immediately terminate this Agreement upon written notice to the other party upon the occurrence of any of the following events: (i) the other party becomes insolvent or files a petition for bankruptcy, voluntary or involuntary, (ii) the other party has a receiver appointed or makes an assignment for the benefit of its creditors, (iii) either party dissolves or ceases to actively engage in business, (iv) either party defaults under or substantially breaches any obligation hereunder and the same is not substantially cured within thirty (10) days after written notice from the other party. This Agreement may also be terminated by the written mutual agreement of the parties at any time.
- d. **Termination for Cause.** iBoomerang may terminate this Agreement “for cause” immediately upon written notice to Representative’s last known address if Representative or any of Representative’s employees, Associates or independent contractors shall: (i) commit any fraud or dishonesty in connection with the duties, services or actions while performing on behalf of iBoomerang or under this Agreement; (ii) be indicted or convicted of a felony or violate any applicable law or regulation; (iii) publish, distribute or use any circulars, advertising, sales material or other matter referring to iBoomerang without first securing the written approval of iBoomerang; (iv) communicate with any iBoomerang customer for the purpose of canceling or otherwise terminating and/or replacing an iBoomerang product with a product from another company; (v) sell commercially furnished leads to a client not affiliated with iBoomerang, or uses said leads to sell another’s product.
- e. **Effects of Termination.** Upon the termination of this Agreement as provided above, the parties shall be released from further obligations hereunder except for accounting and payment of any fees or compensation accrued as of the date of termination of this Agreement, any provisions relative to confidentiality, any restrictive covenant contained herein, and any damage or liability resulting from the breach of any representation and warranty made herein. Within ten (10) days from the terminations date, each party shall deliver to the other any and all items designated as confidential information of the other party and all materials containing any proprietary information of the other. All intellectual property in the possession of a party shall be returned to the owner of such property.

This Section shall survive termination of this Agreement for any reason.

## **5. RIGHTS AND OBLIGATIONS**

iBoomerang may, in its sole discretion, change or modify the territory or area assigned to Representative. Nothing herein shall be construed to limit iBoomerang’s ability, upon termination of this Agreement for any reason, to reassign, solicit, appoint or otherwise work with the Associates that were within Representative’s hierarchy.

## **6. ADVANCES, LEADS, LIABILITIES AND CREDITS OF ASSOCIATES**

iBoomerang may, at its discretion, make one or more advances to Representative (each, an "Advance") in anticipation of future commissions payable to Representative and Associates pursuant to this Agreement. All Advances shall be deemed loans made to Representative and Associates and

shall be reflected in Representative's account or accounts (collectively "Account") on the books of iBoomerang. iBoomerang will use reasonable efforts to furnish commercially available leads to Representative. Such Leads may be used by Representative only for solicitation of customers and subscribers on behalf of iBoomerang and its affiliate relationships, and products. Representative shall account and report to iBoomerang for all leads furnished by iBoomerang to Representative. iBoomerang.com's furnished lead cost shall be the responsibility of the Representative. The cost per lead shall not exceed a reasonable charge, or \$15, whichever is less.

Representative is responsible for the liabilities and debit balances of Representative's Associates to iBoomerang from the date each Associate is appointed by Representative or is assigned to Representative by iBoomerang. The amount of the Account of each Associate assigned to Representative or appointed by Representative, which is deemed by iBoomerang in its discretion to be uncollectible by iBoomerang, and any liability incurred by iBoomerang as a result of acts or omissions of such Associates, will be assessed to Representative in its entirety. Satisfaction of Representative's debt incurred as a result of the liabilities and credits of Associates may be achieved by iBoomerang retaining and setting off against such debt any and all of Representative's unpaid earned commission, in any form, and other monies due and owing to Representative which are unpaid. Once all such indebtedness has been satisfied, the Representative will receive commissions in accordance with this Agreement.

All Advances hereunder shall be subject to the terms of that certain Advance, Lead and Pledge Agreement between Representative and iBoomerang, dated as of the date hereof (the "Pledge Agreement"), and that certain Promissory Note executed by Representative in favor of iBoomerang as of the date hereof (the "Note"), which are hereby incorporated by reference herein.

This Section shall survive termination of this Agreement for any reason.

## **7. METHOD OF REMITTANCE FOR NEW CUSTOMERS AND/OR SUBSCRIBERS**

Representative shall immediately remit to iBoomerang all funds collected or received by Representative or Associates. No commission shall be deemed earned until the customer and/or subscriber's payment is received by iBoomerang.

This Section shall survive termination of this Agreement for any reason.

## **8. RECORDS AND REPORTS**

Representative shall render such reports and keep such records and business accounts as iBoomerang requests. For so long as Representative represents iBoomerang, iBoomerang will furnish Representative with a monthly statement of Representative's Account and will pay any amount due Representative hereunder. Upon receipt of such statement Representative shall immediately examine it, and if not satisfied as to its accuracy, Representative shall return such statement and the payment to iBoomerang with full particulars of any discrepancy therein within thirty (30) days; otherwise the statement shall be deemed accepted by Representative as true and correct. The Account on the books of iBoomerang shall be competent evidence of such Account for all purposes.

## **9. PRINTED MATERIALS**

iBoomerang will furnish Representative with all printed materials iBoomerang deems necessary for doing business under this Agreement. Representative and Associates agree not to publish, distribute or use any circulars, advertising, sales material or other matter referring to iBoomerang's policies, procedures or internal pricing structure without first receiving iBoomerang's written approval. All printed matter and supplies iBoomerang furnishes are property of iBoomerang and shall be promptly returned to iBoomerang upon request or when this Agreement terminates.

## **10. REFUNDS AND REJECTIONS**

Within the limitations of the law, iBoomerang reserves the right, at all times, to reject any submitted Sale, and to cancel, refuse to renew, or modify any sale. Representative and/or Associates shall promptly refund all monies collected on any sale by Representative and/or Associates on which a iBoomerang rejects.

## **11. NON-COMPETITION**

Representative and Associates agree that during the term of this Agreement, and for a period of two (2) years following its termination for any reason, Representative, Representative's employees and Associates will not directly or indirectly contact, solicit, communicate or meet with any of iBoomerang's customers or subscribers for the purpose of offering like or similar products from another company.

Representative acknowledges that the provisions of this Agreement are reasonable and necessary to preserve the business interests of iBoomerang, its present and potential business activities, and the economic benefits derived therefrom and that they will not prevent Representative from earning a livelihood in Representative's chosen profession and are not an undue restraint on either Representative or the public. Unless prior written permission is obtained from an authorized representative of iBoomerang, Representative agrees to the following during the term of this Agreement:

- a.** Representative shall not, directly or indirectly, through a competing organization or otherwise, engage in any business activity which is competitive with any business activity conducted by iBoomerang;
- b.** Representative shall not solicit any existing or potential customers or clients of iBoomerang; provided, however, that iBoomerang may, in its sole discretion, direct Representative to solicit iBoomerang's existing and potential customers or clients on behalf of iBoomerang;
- c.** Representative shall not solicit work or accept work of a type similar to that performed by Representative from any Competing Organization to the extent that such work would impede the Representative's best efforts to perform the Services hereunder. For the purpose of this Agreement, "Competing Organization", shall be defined as any person or entity engaged in or about to become engaged in a business substantially similar to that of iBoomerang during the one (1) year period preceding the termination of this Agreement.

This Section shall survive termination of this Agreement for any reason.

## 12. PROPRIETARY INFORMATION

Representative specifically agrees that it will not at any time, in any fashion, form or manner, either directly or indirectly, divulge, disclose, or communicate to any person, firm, or corporation in any manner whatsoever any information of any kind, nature, or description concerning any matters affecting or relating to the business of iBoomerang, including without limiting the generality of the foregoing, the names of any of iBoomerang's customers, the prices it obtains or has obtained or at which it sells or has sold its services or any other information of, about, or concerning the business of iBoomerang, its manner of operation, its plans, processes, or other data of any kind, nature, or description without regard to whether any or all of the foregoing matters would be deemed confidential, material, or important, the parties hereto stipulating that as between the parties, the matters are important, material, and confidential and gravely affect the effective and successful conduct of the business of iBoomerang, and its good will, and any breach of the terms of this paragraph is a material breach hereof.

"Proprietary Information" includes, but is not limited to: Representative, customer or client lists, including names, addresses, telephone numbers, and amounts and types of insurance; lists of leads, as that term is defined in the Pledge Agreement; lists of business leads; and statements of monthly accounts submitted to Representative and Associates by iBoomerang. Representative agrees and covenants that all Proprietary Information is the sole property of iBoomerang. Representative hereby assigns to iBoomerang any rights it may have or may have acquired in such Proprietary Information. Further, during Representative's relationship with iBoomerang and for a period of two (2) years after the termination of this Agreement, Representative shall keep in confidence all such Proprietary Information. Representative agrees and covenants that it will not disclose, transfer, convey, reveal, report, comment on or publish any Proprietary Information without the prior written consent of the iBoomerang, except as may be necessary to perform services under this Agreement.

This Section shall survive termination of this Agreement for any reason.

## 13. LICENSES, INTELLECTUAL PROPERTY AND TRADE SECRET INFORMATION

- a. **Trademarks.** iBoomerang hereby grants to Representative and Associates a non-exclusive, worldwide license to use iBoomerang marks (including the Domain Name if applicable) to facilitate sales. iBoomerang may terminate the foregoing trademark license if, in its reasonable discretion, Representative's or Associate's use of the iBoomerang's marks blurs or dilutes the quality associated with the iBoomerang's marks, or the associated goodwill; alternatively, instead of terminating the license in total, iBoomerang may specify that certain Representative and Associate uses may not contain the marks. Representative and Associates shall use the marks exactly in the form provided and in conformance with any trademark usage policies. Any benefits accruing from use of such marks shall automatically vest in iBoomerang. Representative and Associates shall not form any combination marks with iBoomerang's marks other than the Domain Name (if applicable), unless specifically agreed upon in writing.
- b. **Ownership.** iBoomerang retains all rights, title and interest in and to all intellectual property rights embodied in or associated with the materials provided to Representative and/or Associates. There are no implied licenses under this Agreement, and the licensor or

its suppliers reserve any rights not expressly granted to a licensee hereunder. Neither party shall exceed the scope of the licenses granted hereunder.

- c. **Standards.** iBoomerang shall not knowingly provide to Representative and/or Associates any materials, that: (a) infringe any third party's intellectual property or privacy/publicity right; (b) violate any law or regulation; (c) are defamatory, obscene, harmful to minors or child pornographic; (d) contain any viruses, trojan horses, worms, time bombs, cancelbots or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information; or (e) are materially false, inaccurate or misleading.
- d. **Trade Secret Information** Representative does hereby acknowledge, agree and accept that the Trade Secret Information of iBoomerang falls within the term as defined by the Uniform Trade Secrets Act. Trade Secret Information as used in this Agreement includes, but is not limited to: Representative, customer or client lists, including names, addresses, and telephone numbers; lists of business leads; and statements of monthly accounts submitted to Representative and Associates by iBoomerang. All Trade Secret Information furnished to Representative and Associates shall be and remain the property of iBoomerang. iBoomerang derives independent economic value from the Trade Secret Information and from its not being generally known to the public or to other persons who can obtain economic value from its disclosure. Representative will not during or after the term of this Agreement divulge, make known, or otherwise make use of any Trade Secret Information for any purpose except as authorized by iBoomerang, including but not limited to the solicitation of business from any person or entity.

This section shall survive the termination of this Agreement for any reason.

#### **14. REPRESENTATION AND WARRANTIES**

- a. The representing party has the full power and unrestricted authority to enter into this Agreement. Entering this Agreement and performing the obligations hereunder does not conflict with and is not prohibited under the terms of any other agreement, document, law, rule, regulation or court order to which the representing party is subject.
- b. Each of the parties has the full power and unrestricted authority to grant the licenses that are granted herein. The granting of such licenses does not interfere with the rights of any third party. Each party has the full rights in and to all of its proprietary rights and such proprietary rights do not infringe upon the rights of any other party.

This Section shall survive termination of this Agreement for any reason.

#### **15. MUTUAL HOLD HARMLESS**

Representative agrees to indemnify iBoomerang and its affiliates, shareholders, directors, officers and employees and to hold iBoomerang, its affiliates, shareholders, directors, officers and employees harmless from any and all expenses, liabilities, costs, cause or causes of action and damages, including attorney's fees and costs of litigation, resulting from or growing out of any breach of this Agreement or any unauthorized, fraudulent, negligent or wrongful act, omission, statement or representation by Representative, Representative's employees, independent contractors and Associates.

This Section shall survive the termination of this Agreement for any reason.

## 16. GENERAL

- a. **Governing Law.** This Agreement will be governed and construed in accordance with the laws of the State of Ohio, without giving effect to conflict of laws principles. Both parties submit to the exclusive jurisdiction of the courts of Montgomery County, Ohio, or the United States District Court, Southern District, Dayton Division.
- b. **Legal Fees and Costs.** iBoomerang shall be entitled to an award of all costs and reasonable attorney fees related to any legal action brought pursuant to this Agreement.
- c. **Publicity.** Neither party shall issue any press release or similar publicity statement regarding this Agreement without the prior approval of both parties (not to be unreasonably withheld) or as required by law.
- d. **Independent Contractors.** The parties agree that their relationship shall be that of independent contractors and nothing in this Agreement or the relationship between the parties shall be construed as making them joint venturers, principals or agents, partners, employer/employees, franchiser/franchisee, master/servant, or any legal relationship other than independent contracting parties. Each party shall be responsible for their own income taxes and any withholding thereof. Neither party shall have the authority, express or implied, to act on behalf of the other or to bind the other to any contract, obligation, debt, responsibility or obligation of any nature or kind.
- e. **Assignment.** Representative may not assign the benefits or obligations under this Agreement and any attempt to do so shall be void and of no legal effect. Each of the parties recognizes and agrees that the other party is relying upon the identity of the other party and the owner and principals of the other party in entering into this Agreement. Neither party shall be permitted to subcontract any obligations contained herein to another party without the advanced written notice from the other party. The parties specifically agree that there shall be no third party beneficiaries to this Agreement.
- f. **Severability; Headings.** If any provision herein is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The parties agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision. Headings are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section.
- g. **Force Majeure.** Neither party shall be liable for delays or failures in performance resulting from causes beyond the reasonable control of that party, including, but not limited to, acts of God, labor disputes or disturbances, material shortages or rationing, riots, acts of war, power outages, natural disaster, governmental regulations, communication or utility failures, or casualties. However, if a force majeure detrimentally affects a party's performance of a material covenant hereunder for 14 days or more, the other party can terminate this Agreement. Each party acknowledges that website operations may be affected by numerous factors outside of a party's control.
- h. **Notice.** Any notice under this Agreement will be in writing and delivered by personal delivery, overnight courier, confirmed facsimile, confirmed email, or certified or registered mail, return receipt requested, and will be deemed given upon personal delivery, 1 day after deposit with an overnight courier, 5 days after deposit in the mail, or upon confirmation of

receipt of facsimile or email. Notices will be sent to a party at its address set forth above or such other address as that party may specify in writing.

- i. **Entire Agreement; Waiver.** This Agreement, and its Exhibits, sets forth the entire understanding and agreement of the parties, and supersedes any and all oral or written agreements or understandings between the parties, as to the subject matter of the Agreement. Only a writing signed by both parties may change this Agreement. The waiver of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach.

This Section shall survive termination of this Agreement for any reason.

**BY INITIALING THAT YOU HAVE READ AND ACKNOWLEDGED THE TERMS AND CONDITIONS OF THIS REPRESENTATIVE AND COMMISSION AGREEMENT, YOU ACCEPT IT TERMS AND CONDITIONS AND AGREE TO BE BOUND BY THEM.**