

### 1. Strategic Partner Referral Program

- a. These Referral Program Terms and Conditions govern the respective rights and obligations of O'Neil Software, Inc. ("**O'Neil Software**") and the program participant (the "**Referrer**"). These Terms and Conditions apply to the Referrer's participation in the O'Neil Software Strategic Partner Referral Program (the "**Referral Program**") whereby Referrer will refer to O'Neil Software potential customers ("**Prospects**").
- b. O'Neil Software may modify the content, terms and conditions of this Referral Program from time to time. Referrer should re-visit the O'Neil Software's Web site from time to time to stay abreast of such changes. Any change to this Referral Program will be effective immediately when posted to O'Neil Software's Web site.
- c. Referrer acknowledges that Referrer has read and agrees to be bound by the following Referral Program Terms and Conditions, which are located at <http://www.oneilsoft.com/about/referral.shtml>

### 2. Referrals

- a. Referrer will actively refer Prospects to O'Neil Software. A Successful Referral is one which satisfies the following criteria:
  1. Referral Process.
    - (i) Referrer places the O'Neil Strategic Partner logo on their web site or on published marketing materials.
    - (ii) Referrer submits Prospect's information to O'Neil Software by completing and submitting the O'Neil Software on-line referral form or Prospect identifies that they were referred by Referrer or via a link from Referrers web site/marketing literature (Lead Source).
    - (iii) The Prospect will be contacted by O'Neil Software; and the Prospect orders the License Programs within ninety (90) days; and Prospect maintains the Licensed Programs for a minimum of sixty-one (61) consecutive calendar days; and Prospect pays for one (1) full year of the Annual Renewable License Fee.
  2. In order for Referrer to be eligible for the Credit, the Referral Form or lead source must be completed prior to the Prospect being contacted by O'Neil Software and prior to the Prospect ordering the Service ; and
  3. The Licensed Programs are ordered in the Prospect's name and contains complete, accurate and current billing and contact information specific to the Prospect and cannot match any other contact information in O'Neil Software's customer database; and
  4. No Credit or Payment will be made for self-referrals or plans Referrer purchases for Referrer's own use; and
  5. The Prospect is not a previous customer of O'Neil Software who received Services from O'Neil Software during the six (6) months prior to the new Order Date; and
  6. The Prospect is not a previous customer of O'Neil Software's, whose Services were terminated by O'Neil Software for non-payment or other violation of O'Neil Software's standard terms and conditions.
- b. All Prospect information will expire sixty (90) days after being submitted. O'Neil Software in its sole discretion may accept or reject any Prospect.
- c. All Prospect Orders are subject to credit approval, availability, and other O'Neil Software terms and conditions available from O'Neil Software.

### 3. Compensation and Benefits.

- a. Referrer shall receive a credit for each Successful Shared Referral as follows:
  1. Referrer shall receive the following credits:
    - (i) a \$100 for placing the O'Neil Strategic Partner logo on their web site (with a link to [www.oneilsoft.com](http://www.oneilsoft.com)) or onto published marketing literature;
    - (ii) a \$100 for each Referral that is received and accepted by O'Neil Software on or after February 1st, 2005;
    - (iii) an amount equal to the first months Annual Renewable License Fee for each Successful Referral received by O'Neil Software on or after February 1st, 2005. (the "**Credit**").
  2. The Credit will only be applied toward fees due O'Neil Software for Referrer's Service for the account specified during the referral process.
  3. Referrer shall bear all taxes, duties, levies, and other similar charges (and any related interest and penalties), however designated or imposed on it as a result of the existence or operation of the Credits or Referral Program Agreement, including any income, sales, or use tax on profits which may be levied against it.
  4. Referrer must be an O'Neil Software customer in good standing to receive the Credit; no Credit will be applied to accounts that are past-due or for accounts that are cancelled before the conditions for payment of the Credit are met. Upon cancellation of Referrer's account, any outstanding or previously accrued Credits will be forfeited. Credits will be applied against purchases or renewals for which payment is due after the date the Credit is applied. Credits will not be applied against past due balances.
  5. Credits will not be paid for accounts established through any channels other than as described herein. The Credit will be applied to Referrer's account within thirty (30) days following the month in which the conditions for payment of the Credit as described herein are met.

4. **Referrer's Representations and Warranties.**

Referrer hereby represents and warrants to O'Neil Software, and agrees that during the Term of the Agreement Referrer will ensure that: (a) The information submitted by Referrer as part of the Referral Program is true and correct in all material respects; (b) Referrer will comply with all applicable laws, rules and regulations in the conduct of its business; (c) Referrer will not make any representations concerning the Licensed Program Materials or Services except those that have been approved or published by O'Neil Software; (d) Referrer will not distribute any documents or materials describing the Licensed Program Materials or Services except those that have been approved or published by O'Neil Software; and (e) Referrer has obtained from Prospect's any and all approvals and permissions that are necessary for Referrer to submit the Prospect's information to O'Neil Software.

5. **O'Neil Software's Acceptable Use Policy.**

Referrer will abide by and utilize, the Referral Program, O'Neil Software's other products and services, and the Referrer Web site, only in accordance with the Acceptable Use Policy (the "Acceptable Use Policy") that O'Neil Software posts on its Web site, as such Acceptable Use Policy may be changed by O'Neil Software from time to time. The Acceptable Use Policy is hereby incorporated herein and made a part hereof by this reference. Referrer shall familiarize itself with the Acceptable Use Policy and periodically access O'Neil Software's Web site to determine if O'Neil Software has made any changes thereto.

6. **Referrer's Responsibilities.**

- a. Referrer will conduct itself in a professional manner and will maintain a reputation for fair dealing and exemplary service among its customers or clients. Referrer will not make any statement, or take any action, that could reasonably be expected to reflect poorly on O'Neil Software or on the reputation of O'Neil Software or its products and services.
- b. Referrer will cause its personnel who are responsible for Referrer's activities under this Agreement to remain well-informed concerning O'Neil Software's products and services. Among other things, Referrer will cause such personnel to review O'Neil Software's web site occasionally to ensure that such personnel are reasonably familiar with O'Neil Software's product offerings, pricing, promotions and service terms and conditions.

7. **Miscellaneous.**

- a. Governing Law; Jurisdiction. This AGREEMENT shall be governed and construed in accordance with the laws and the courts of the State of California, without reference to its conflict of laws provisions. Both parties agree that proper jurisdiction for any action relevant to this AGREEMENT shall be Orange County, California, and agrees to submit to the jurisdiction of the courts within that County. The parties hereto hereby agree that this AGREEMENT shall have full force and effect from the Effective Date.
- b. Limitation of Actions. No action arising out of this AGREEMENT, regardless of form, may be brought by either party more than two years after the cause of action has accrued.
- c. Mandatory Arbitration. ANY DISPUTE RELATING TO OR ARISING FROM THIS AGREEMENT SHALL BE RESOLVED BY ARBITRATION UNDER THE COMMERCIAL RULES OF THE AMERICAN ARBITRATION ASSOCIATION. ARBITRATION WILL TAKE PLACE IN ORANGE COUNTY, CALIFORNIA, USA. ANY COURT HAVING JURISDICTION OVER THE MATTER MAY ENTER JUDGMENT ON THE AWARD OF THE ARBITRATOR (S). SERVICE OF A PETITION TO CONFIRM THE ARBITRATION AWARD MAY BE MADE BY FIRST CLASS MAIL OR BY COMMERCIAL EXPRESS MAIL, TO THE ATTORNEY FOR THE PARTY OR, IF UNREPRESENTED, TO THE PARTY AT THE LAST KNOWN BUSINESS ADDRESS. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR IN THE COMMERCIAL RULES OF THE AMERICAN ARBITRATION ASSOCIATION, (I) ANY ARBITRATOR(S) SHALL BE BOUND BY THE TERMS AND CONDITIONS OF THE AGREEMENT, AND (II) EXCEPT FOR THE INDEMNIFICATION OBLIGATIONS OF THE AGREEMENT, OR FOR BREACHES OF SUCH OBLIGATIONS, IN NO EVENT SHALL THE ARBITRATOR(S) BE ABLE TO AWARD AND IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS EVEN IF SUCH PARTY HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- d. Entire Agreement; Amendments. This Agreement, including documents incorporated herein by reference, supersedes all prior discussions, negotiations and agreements between the parties with respect to the subject matter hereof, and this Agreement constitutes the sole and entire agreement between the parties with respect to the matters covered hereby. In case of a conflict between this Agreement and any purchase order, service order, work order, confirmation, correspondence or other communication of Referrer or O'Neil Software, the terms and conditions of this Agreement shall control. No additional terms or conditions relating to the subject matter of this Agreement shall be effective unless approved in writing by any authorized representative of Referrer and O'Neil Software. This Agreement may not be modified or amended except by another agreement in writing executed by the parties hereto; provided, however, that these Terms and Conditions may be modified from time to time by O'Neil Software in its sole discretion, which modifications will be effective upon posting to O'Neil Software's web site.
- e. Severability. All rights and restrictions contained in this Agreement may be exercised and shall be applicable and binding only to the extent that they do not violate any applicable laws and are intended to be limited to the extent necessary so that they will not render this Agreement illegal, invalid or unenforceable. If any provision or portion of any provision of this Agreement shall be held to be illegal, invalid or unenforceable by a court of competent jurisdiction, it is the intention of the parties that the remaining provisions or portions thereof shall constitute their agreement with respect to the subject matter hereof, and all such remaining provisions or portions thereof shall remain in full force and effect.
- f. Notices. All notices and demands required or contemplated hereunder by one party to the other shall be in writing and shall be deemed to have been duly made and given upon date of delivery if delivered in person or by an overnight delivery or postal service, upon receipt if delivered by facsimile the receipt of which is confirmed by the recipient, or upon the expiration of five days after the date of posting if mailed by certified mail, postage prepaid, to the addresses or facsimile numbers (i) for the Referrer, O'Neil Software's billing address of record for Referrer, and (ii) for O'Neil Software, as designated on O'Neil Software's web site for the giving of notices. Either party may change its address or facsimile number for purposes of this Agreement by notice in writing to the other party as provided herein.
- g. Waiver. No failure or delay by any party hereto to exercise any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy by any party preclude any other or further exercise thereof or the exercise of any other right or remedy. No express waiver or assent by any party hereto to any breach of or default in any term or condition of this Agreement shall constitute a waiver of or an assent to any succeeding breach of or default in the same or any other term or condition hereof.
- h. Assignment; Successors. Referrer may not assign or transfer this Agreement, or any of its rights or obligations hereunder, without the prior written consent of O'Neil Software. Any attempted assignment in violation of the foregoing provision shall be null and void and of no force or effect whatsoever. O'Neil Software may assign its rights and obligations under this Agreement, and may engage subcontractors or agents in performing its duties and exercising its rights hereunder, without the consent of Referrer. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.
- i. Force Majeure. Neither party is liable for any default or delay in the performance of any of its obligations under this Agreement (other than failure to make payments when due) if such default or delay is caused, directly or indirectly, by forces beyond such party's reasonable control, including, without limitation, fire, flood, acts of God, labor disputes, accidents, interruptions of transportation or communications, supply shortages or the failure of any third party to perform any commitment relative to the production or delivery of any equipment or material required for such party to perform its obligations hereunder.
- j. Marketing. Referrer agrees that during the term of this Agreement O'Neil Software may publicly refer to Referrer, orally and in writing, as a referral partner of O'Neil Software. Any other public reference to Referrer by O'Neil Software requires the written consent of Referrer.

- i. **Force Majeure.** Neither party is liable for any default or delay in the performance of any of its obligations under this Agreement (other than failure to make payments when due) if such default or delay is caused, directly or indirectly, by forces beyond such party's reasonable control, including, without limitation, fire, flood, acts of God, labor disputes, accidents, interruptions of transportation or communications, supply shortages or the failure of any third party to perform any commitment relative to the production or delivery of any equipment or material required for such party to perform its obligations hereunder.
- j. **Marketing.** Referrer agrees that during the term of this Agreement O'Neil Software may publicly refer to Referrer, orally and in writing, as a referral partner of O'Neil Software. Any other public reference to Referrer by O'Neil Software requires the written consent of Referrer.
8. **International Provisions.** If Referrer maintains an office outside the United States, or conducts business with Persons other than U.S. citizens, the following provision will apply:
- Referrer will comply with all laws relating to the conduct of business practices that prohibit any gratuities or inducements. Referrer acknowledges that O'Neil Software is subject to certain United States laws, including but not limited to the Foreign Corrupt Practices Act of 1977 and any amendments thereto, which apply to activities carried out on O'Neil Software's behalf outside the United States. Referrer agrees neither to take nor omit to take any action if such act or omission might cause O'Neil Software to be in violation of any such laws. Upon written notice from O'Neil Software, Referrer shall provide such information as O'Neil Software may reasonably consider necessary to verify compliance by Referrer with the provisions of this Section.
9. **Definitions.** For purposes of this Agreement, the following terms have the meanings specified below:
- a. **"Person"** means any individual, partnership, joint venture, corporation, limited liability company, trust, unincorporated association or organization, or government or any agency or political subdivision thereof.
- b. **"Referral"** means a Referral for O'Neil Software's Licensed Programs which meets the qualifications described in Section 2.
- c. **"Successful Referral"** means a Referral for O'Neil Software's Licensed Programs that results in an order and which meets the qualifications described in Section 2.
- d. **"Annual Renewable License Fee(s)"** means the yearly fee, for continued use of the Licensed Programs. This fee will be in accordance with O'Neil Software's then-applicable fee schedule and in accordance with clause 14.2. of the License & Warranty
- e. **"Days"** means calendar days unless otherwise specified.
- f. **"Initial License Fee"** means the fee due for an Initial License of the Licensed Programs to Licensee.
- g. **"the Licensed Programs"** means the application computer programs known as Record Storage - SQL (RS-SQL), RSWeb or RSMobile in object code form including all Error Corrections, Enhancements, Major Releases and Minor Releases issued by O'Neil Software to the Licensee from time to time.
- h. **"the Licensed Programs Materials"** means the Licensed Programs, the Program Documentation, and the Media.
- i. **"the Media"** means the media on which the Licensed Programs and the Program Documentation are recorded or printed as provided to the Licensee by O'Neil Software.
- j. **"the Program Documentation"** means the operating manuals, user instructions, technical literature and other related materials supplied to the Licensee by O'Neil Software for aiding in the use and application of the Licensed Programs.
- k. **"Major Releases"** means new modules or options which relate to the Licensed Programs but which do not affect the operation of the Licensed Programs which are provided as part of the Annual Renewable License Fee.
- l. **"Minor Releases"** means new versions of the Licensed Program which incorporate accumulated Error Corrections and which are provided as part of the Annual Renewable License Fee.
- m. **"Error Correction"** means either a software modification or addition which, when made or added to the Licensed Programs, establishes material conformity of the Licensed Programs to O'Neil Software's published Program Documentation or a procedure or routine which, when observed in the regular operation of the Licensed Programs, eliminates the practical adverse effect on the Licensee of such non-conformity provided to Company at no additional charge.
- n. **"Enhancements"** means any modification or addition which when made or added to the Licensed Programs improves the utility, efficiency or functional capability of the Licensed Programs, but which do not solely include Error Corrections provided by Company at no additional charge.

## About O'Neil Software

Committed to leading the industry, the name O'Neil Software has become synonymous with **accuracy, flexibility, experience and delivering results** in record storage management. For over 20 years, O'Neil Software has been the software and hardware **solutioneers** for over 800 record centers in more than 50 countries, ranging from start-ups to multi-nationals.

O'Neil's solutions manage/track multiple types of data including traditional storage boxes, filefolders, documents and tapes; from Deposit to Destruction, from Work Order to Invoice. We're also known as industry pioneers for barcode tracking, portable printers, laser scanners and web technology. O'Neil's products consistently offer automation, enhancements and new features that improve ease of use not found anywhere else. Our flagship product, RS-SQL® , is the most competitively-priced software solution on the market, ensuring record center productivity and profitability.

Regional coverage includes the Americas, Europe, India/Middle East and Australasia.

You can learn more about O'Neil Software by visiting our website at [www.oneilsoft.com](http://www.oneilsoft.com)



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**The FIRST Choice of Record Centers Worldwide**

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