

# ProWorkflow Affiliate Agreement

This Affiliate Agreement ("Agreement") contains the complete terms and conditions between us, ProWorkflow ("ProWorkflow") and you, regarding your application to and participation in, the ProWorkflow Affiliate Program (the "Affiliate Program") as an affiliate of ProWorkflow (an "Affiliate"), and the establishment of links from your website to our website, <https://www.proworkflow.com>.

BY SUBMITTING AN APPLICATION TO JOIN OR BY PARTICIPATING IN THE AFFILIATE PROGRAM, YOU ARE CONFIRMING THAT YOU HAVE READ THIS AGREEMENT AND THE PROWORKFLOW TERMS AND CONDITIONS AND THAT YOU AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS.

## 1. Definitions

"Affiliate" - The business, individual, or entity applying to or participating in the Affiliate Program, or that displays ProWorkflow's products and Services and/or promotions on its website, or other means, using an affiliate tracking code in exchange for receiving a commission from ProWorkflow for sales directly resulting from such display.

"Affiliate Site" - The Affiliate's website which displays ProWorkflow's Products and Services and/or promotions.

"ProWorkflow's Products and Services" – Project-management related products and services that are available for purchase from ProWorkflow.

"Commission Fees" - The amount you will be paid for each Qualified Purchase by a Referred Customer that you refer to ProWorkflow subject to the Commission Threshold and pursuant to the terms of this Agreement.

"Commission Threshold" - The amount of Commission Fees an Affiliate must accrue prior to receiving a payment from ProWorkflow.

"Qualified Purchase" - A sale of ProWorkflow Products and Services by ProWorkflow, with a minimum term of twelve (12) months or longer, to a Referred Customer that is not excluded under Section 7.

"Referred Customer" - Each new and unique customer referred from Affiliate through a Link (as defined in Section 3) that provides valid account and billing information.

"Registration Form" - Any and all order forms or other signup or acceptance form submitted by a customer to purchase ProWorkflow's Products and Services.

## 2. Enrolment in the Affiliate Program

- a. To begin the enrolment process, you must submit a completed Affiliate Program Signup Form. The Signup Form can be found at <https://proworkflow.leaddyno.com/> or <https://www.proworkflow.com/company/affiliates/>
- b. We will evaluate your application in good faith and will notify you of your acceptance or rejection in a timely manner. We may reject your application if we determine (in our sole discretion) that your website is not suitable for the Affiliate Program for any reason, including, but not limited to, its inclusion of content that is, in our opinion, unlawful or otherwise violates our [Terms Of Service](#).
- c. If we reject your application, for any reason, you may not re-apply to the Affiliate Program utilising the same domain name/URL or reapply using a different domain/URL name and then add the previously rejected domain name/URL to your affiliate account. ProWorkflow, in its sole discretion,

reserves the right to notify or to not notify any prospective affiliate of their rejection or removal from the Affiliate Program at any time.

3. **Promotion of Our Affiliate Relationship**

- . **Use of Links.** If you qualify and agree to participate as an Affiliate, we will make a variety of graphic and textual links available to you (each referred to herein as a "Link" or collectively, as the "Links"). The Links will serve to identify your website as a member of the Affiliate Program and will establish a link from your website or e-mail to ProWorkflow's website. You agree to cooperate fully with us in order to establish and maintain such Links. You further agree that your use of the Links must be in compliance with this Agreement at all times. ProWorkflow may modify the Links from time to time in its sole discretion. You will not use graphic or textual images (indicating a Link) or text messages to promote ProWorkflow that are not approved in advance by ProWorkflow. All Affiliate Sites shall display the Links prominently in relevant sections of their website. Furthermore, you agree not to use cookie stuffing techniques that set the affiliate tracking cookie without the Referred Customer's knowledge (e.g. iframe). Any information with respect to ProWorkflow that is going to be displayed on the Affiliate Site must be preapproved by ProWorkflow in writing.
- a. **Disclaimer.** EXCEPT AS PERMITTED HEREIN, YOU SHALL NOT AND ARE NOT AUTHORISED TO (i) USE THE PROWORKFLOW TRADEMARK, NAME OR ANY OF OUR OTHER INTELLECTUAL PROPERTY, INCLUDING WITHOUT LIMITATION, THE LINKS, AND THE LICENSED MATERIALS (COLLECTIVELY, THE "PROWORKFLOWIP") (OR ANY VARIATIONS OR MISSPELLINGS THEREOF OR OTHER TERM OR TERMS CONFUSINGLY SIMILAR TO ANY OF THE FOREGOING) WITHOUT PROWORKFLOW'S EXPRESS PRIOR WRITTEN PERMISSION; (ii) USE PROWORKFLOW IP IN A DOMAIN OR WEBSITE NAME, IN ANY BIDS FOR KEYWORDS OR GOOGLE ADWORDS (OR SIMILAR PROGRAMS AT OTHER SEARCH ENGINES), IN ANY SEARCH ENGINE ADVERTISING (PAID OR OTHERWISE), IN ANY METATAGS, GOOGLE ADS, BING ADS, CAPTERRA, (OR SIMILAR PROGRAMS AT OTHER SEARCH ENGINES), KEY WORDS, ADVERTISING, SEARCH TERMS, CODE, OR OTHERWISE; (iii) ACT IN ANY WAY THAT CAUSES OR CREATES OR COULD CAUSE OR CREATE ANY "INITIAL INTEREST CONFUSION" OVER THE USE OF PROWORKFLOW IP ON THE INTERNET OR IN ANY SEARCH ENGINE ADVERTISING. YOUR USE OF PROWORKFLOW IP IN ANY MANNER, OTHER THAN AS EXPRESSLY PERMITTED HEREUNDER SHALL CONSTITUTE UNLAWFUL INFRINGEMENT OF PROWORKFLOW'S INTELLECTUAL PROPERTY RIGHTS, AND MAY SUBJECT YOU TO CLAIMS FOR DAMAGES (INCLUDING POTENTIAL TREBLE DAMAGES FOR KNOWING OR WILFUL INFRINGEMENT), AND THE OBLIGATION TO PAY PROWORKFLOW'S LEGAL FEES AND COSTS IN CONNECTION WITH ANY ACTION OR PROCEEDING IN WHICH PROWORKFLOW SEEKS TO ENFORCE ITS RIGHTS UNDER THIS AGREEMENT OR WITH REGARD TO ANY OF PROWORKFLOW'S INTELLECTUAL PROPERTY RIGHTS.

- b. **Discounts and Coupons.** You are not allowed to post any refunds, credits or discounts on the ProWorkflow Products and Services, or other content concerning ProWorkflow without ProWorkflow's prior written consent in each instance. Affiliates may only use coupons and discounts that are provided exclusively through the Affiliate Program using banners and links. Each Link connecting users of the Affiliate Site to the pertinent area of the ProWorkflow website will in no way alter the look, feel, or functionality of the ProWorkflow website. Any violations of the terms surrounding links, coupons, refunds, credits or discounts shall constitute a material breach of this Agreement, and may result in your termination from the Affiliate Program or the withholding of Commission Fees

c.

4. **Data Security**

Affiliate shall comply with all applicable data protection laws regarding the transmission of data exported to or from the United States or the country in which Affiliate resides, including without limitation, the General Data Protection Regulation 2016/679 of European Parliament and of the Council of 27 April 2016 (the "GDPR"). Affiliate, as a controller under the GDPR, shall also implement appropriate technical measures to ensure a level of security appropriate to the risk, taking into account the nature, scope, context, and purpose of processing any personal data. Affiliate agrees to promptly assist ProWorkflow in complying with any data subject rights request under the GDPR that ProWorkflow may receive from any individuals referred to ProWorkflow by Affiliate. Affiliate further agrees to promptly assist ProWorkflow in complying with any duties to cooperate with supervisory authorities under the GDPR.

5. **Order Processing**

ProWorkflow will process orders placed by Referred Customers who follow the Links from an Affiliate Site to ProWorkflow. We reserve the right, in our sole discretion, to reject orders that do not comply with certain requirements that we may establish from time to time. All aspects of order processing and fulfilment, including ProWorkflow's services, cancellation, processing, refunds and payment processing will be our responsibility. We will track the Qualified Purchases generated by your Affiliate Site and will make this information available to you through our website. To permit accurate tracking, reporting, and commission accrual, you must ensure that the Links between your website and our website are properly formatted.

6. **Commission Determination; Qualified Purchases**

- . Commissions will be calculated based on the commission rates stated on the ProWorkflow website for each Qualified Purchase (as defined herein) subject to commission accruing pursuant to Section 8 below. A "Qualified Purchase" does NOT include the following:
  - i. A purchase by a Referred Customer that has transferred from any ProWorkflow partners or subsidiaries.
  - ii. A purchase by a Referred Customer who is also associated with any ProWorkflow reseller, referral, or other program.
  - iii. A purchase by a Referred Customer that is not up to date on its payments or is subject to a refund, referral, or other program.
  - iv. A purchase that was completed prior to the Affiliate joining the Affiliate Program or was not tracked properly through an Affiliate Link.
  - v. A purchase by a Referred Customer that has not been in good standing for a period of at least thirty (30) days or is in violation of

ProWorkflow's [Terms Of Service](#), or other applicable policies at the time the Commission Fees accrue.

- vi. A purchase that ProWorkflow suspects, in its sole discretion, is the result of fraud, which shall include but is not limited to, the use of software that generates real and fictitious information, multiple accounts from the same customer, or the referral of accounts that do not comply with this Agreement.
  - vii. A purchase referred by an Affiliate that has an excessive cancellation rate as determined in ProWorkflow's sole discretion.
  - viii. A purchase by a Referred Customer if the Referred Customer was offered or received coupons, refunds, credits or discounts from the Affiliate.
  - ix. A purchase by a Referred Customer if the Affiliate or Referred Customer is in or is promoting a business-opportunity program, as determined by us in our sole discretion.
  - x. A purchase by a Referred Customer engaging in "Domain Speculation," which is determined by the identification of two (2) web hosting accounts with the same Referred Customer's name, email address, or other identifying characteristic as determined by ProWorkflow and/or the identification of two (2) or more web hosting accounts that have no content on their websites or have similar content, templates or formatting, as determined by ProWorkflow, in our sole discretion.
- a. ProWorkflow reserves the right to withhold payment of initial Commissions Fees to Affiliates who are new to the Affiliate Program, or who have commissions that are potentially fraudulent as determined by ProWorkflow in its sole discretion, to determine the legitimacy and cancellation rates of Referred Customers.
  - b. ProWorkflow reserves the right to suspend the payment of Commission Fees at any time and indefinitely, if it suspects fraud or other improper activity or a potential breach of any of the terms of this Agreement by the Affiliate or a Referred Customer. ProWorkflow reserves the right to deduct from Affiliate's current and any fraudulent, questionable, and cancelled purchases.
  - c. ProWorkflow reserves the right to immediately cancel or withhold for later review any Commission Fee that fails to meet the criteria of a "Qualified Purchase." Affiliate is responsible for monitoring the payment, denial, and withholding of Commission Fees; ProWorkflow is not obligated to actively notify Affiliates of the status of Commission Fees. If Affiliate has a question about a Commission Fee that has been cancelled or withheld, Affiliate has thirty (30) days from the day the payment would have been due to contact ProWorkflow to request that the Commission Fee be paid. Any changes to decisions about cancelled or withheld Commission Fees are strictly made in ProWorkflow's sole discretion.
  - d. Commissions for any Referred Customer who is associated with any ProWorkflow reseller, referral or other program may not be considered a Qualified Purchase. In other words, you may not receive double commissions or compensation.
  - e. In the event that the Referred Customers that are referred to ProWorkflow by an Affiliate are determined to have an excessive cancellation rate, as determined by ProWorkflow in its sole discretion, ProWorkflow reserves the

right to withhold or decline pending and future Commission Fees to such Affiliate.

- f. Any attempt by an Affiliate to manipulate, falsify or inflate Referred Customers, Qualified Purchases, or Commission Fees to intentionally defraud ProWorkflow or any violation of the terms of this Agreement constitutes immediate grounds for ProWorkflow to terminate the Affiliates participation in the Affiliate Program and will result in the forfeiture of any Commission Fees due to the Affiliate.

#### 7. **Accrual of Commissions**

Commissions will accrue and only become payable once you (i) provide all relevant tax and address documentation pursuant to Section 9 below and (ii) reach the Commission Threshold of at least one (1) Qualified Purchase of an annual (12 month) subscription. For further details on the Commission Structure, please see the “Affiliate Plan Package” section on the ProWorkflow Website.

#### 8. **Commission Payments**

- . Subject to the terms of this Agreement and the accrual of commissions as set forth in Section 8 above, commissions will be calculated according to the specified percentage or dollar amount set forth in the commission report in your custom Affiliate Dashboard for each Qualified Purchase that accrues during the period for which such commission fee is being calculated.
- a. Commission Fees will be processed approximately fifteen (15) to thirty (30) days after the end of the month or other period in which they accrue. ProWorkflow will only compensate you for Qualified Purchases made in accordance with this Agreement.
- b. Commission Fees shall be paid based on the current information in your Affiliate profile. You are required to notify us promptly of any change in your address by updating your profile information in the Affiliate console. You are responsible for informing ProWorkflow of your desired payment form/type. You can update or change your desired payment method at any time by updating your affiliate profile located in the affiliate console. Any changes to your desired payment method may take up to two payout cycles to take effect.
- c. You may choose to receive Commission Fees through PayPal, ACH, check or hosting credit, subject to the following conditions:
  - . **PayPal Payments:** Please refer to PayPal's policy to ensure you are eligible to receive payment if you reside outside of the United States <https://www.paypal.com/cgi-bin/webscr?cmd=display-approved-signup-countries-outside>. (PayPal payments will only be reissued within one hundred and twenty (120) days of the original issue date in the case of an incorrect PayPal address or refusal from PayPal to accept a payment.)
  - i. ProWorkflow is not responsible for paying any third-party fees charged by PayPal in order for you to receive Affiliate Commission Fees.
- d. ProWorkflow, in its sole discretion, reserves the right to modify the available commission payment methods or payment schedule at any time. Such changes shall take effect when posted.
- e. Disputes: Affiliate has access to ProWorkflow's real-time Affiliate Program statistics and agrees to file any disputes within forty-five (45) days after the end of the month in which the sale or event that is disputed occurred. Disputes filed after forty-five (45) days of the date on which the disputed sale or event

occurred will not be accepted by ProWorkflow and Affiliate forfeits forever any rights to a potential claim.

- f. It is solely your responsibility to provide ProWorkflow with accurate tax and payment information that is necessary to issue a Commission Fee to you. If ProWorkflow does not receive the necessary tax or payment information within ninety (90) days of a Qualified Purchase which would otherwise trigger Commission Fees, the applicable commissions shall not accrue and no Commission Fees will be owed with respect to such Qualified Purchase.
- g. You are responsible for the payment of all taxes related to the commissions you receive under this Agreement.
- h. Any address change must be made in the Affiliate profile in the affiliate console at least fifteen (15) business days prior to the end of the calendar month in order for Commission Fees for that month to be processed

9. **Reports of Qualified Purchases**

You may log into your affiliate dashboard to review your click through and potential Qualified Purchases statistics on a daily basis. The potential Qualified Purchases shown in this report have not been reviewed to confirm they meet all criteria for Qualified Purchases. As such, Commission Fees may not be issued for all Referred Customers that appear in the affiliate console.

10. **Obligations Regarding Your Affiliate Site**

- . You are solely responsible for the development, operation, and maintenance of your Affiliate Site and for all materials that appear on your Affiliate Site. Such responsibilities include, but are not limited to, the technical operation of your Affiliate Site and all related equipment; creating and posting product reviews, descriptions, and references on your Affiliate Site and linking those descriptions to our website; the accuracy of materials posted on your Affiliate Site (including, but not limited to, all materials related to ProWorkflow Products and Services); ensuring that materials posted on your Affiliate Site do not violate or infringe upon the rights of any third party and are not libellous or otherwise illegal. We disclaim all liability and responsibility for such matters
- a. We have the right in our sole discretion to monitor signups through your Affiliate Site from time to time to determine if you are in compliance with the terms of this Agreement. If you are not in compliance we may terminate your participation in the Affiliate Program effective immediately.

11. **ProWorkflow Responsibilities**

We will provide all of the information necessary for you to make Links from your Affiliate Site to our site. ProWorkflow will be solely responsible for order processing (including payment processing, cancellations, and refunds) for orders for ProWorkflow Products and Services placed by a Referred Customer following a Link from your Affiliate Site, for tracking the volume and amount of Qualified Purchases generated by your Affiliate Site, and for providing information to Affiliates regarding Qualified Purchase statistics. ProWorkflow will be solely responsible for all order processing, including but not limited to payment processing, cancellations, refunds and related ProWorkflow service.

12. **Policies and Pricing**

Referred Customers who buy ProWorkflow Products and Services through our affiliate network are deemed to be ProWorkflow Customers. ProWorkflow's Terms and Conditions, rules, policies, and operating procedures will apply to such customers. We may change our policies, pricing, and operating procedures at any

time. For example, ProWorkflow determines the prices to be charged for ProWorkflow Products and Services sold through the affiliate network in accordance with our own pricing policies. Prices and availability of ProWorkflow Products and Services may vary from time to time, from affiliate to affiliate, and from region to region. Because price changes may affect products that you have listed on your Affiliate Site, you may or may not be able to include price information in your product descriptions. We will use commercially reasonable efforts to present accurate information on our website, but we cannot guarantee the availability or price of any particular ProWorkflow Product or Service.

13. **E-mails and Publicity**

You shall not create, publish, transmit or distribute, under any circumstances, any bulk email messages (also known as "SPAM") without prior written consent from ProWorkflow, to be granted or denied in ProWorkflow's sole discretion, in each instance. Additionally, you may only send emails containing a ProWorkflow affiliate link and or a message regarding ProWorkflow or ProWorkflow's Affiliate Program to people who have previously consented to receiving such communications from you. Your failure to abide by all applicable laws relating to email communications, in any manner, will be deemed a material breach of this Agreement by you and will result in the forfeiture by you of any and all rights you may have to any commissions and the termination of your participation in the Affiliate Program. Further, if your account has excessive clicks in a very short period of time as determined by ProWorkflow in its sole discretion, the Affiliate relationship may be terminated.

14. **Licenses and Use of ProWorkflow Logos and Trademarks.**

- . Subject to the limitations set forth in Section 3 above and otherwise in this Agreement, we grant you a non-exclusive, non-transferable, revocable license to (i) access our website through the Links solely in accordance with the terms of this Agreement and (ii) solely in connection with such Links, to use the ProWorkflow trademark and logo and similar identifying material provided by us (collectively, the "Licensed Materials"), for the sole purpose of selling ProWorkflow Products and Services on your Affiliate Site and as approved in advance by us. You may not alter, modify, or change the Licensed Materials in any way. You are only entitled to use the Licensed Materials while you are an Affiliate in good standing and in compliance with all of the terms of this Agreement.
- a. You shall not use the Licensed Materials for any purposes other than selling ProWorkflow Products and Services, without first submitting a sample to us and obtaining the express prior written consent of ProWorkflow in each instance. You shall not use the Licensed Materials in any manner that is disparaging or that otherwise portrays ProWorkflow, any hosted member of ProWorkflow or any ProWorkflow employee or representative in a negative light. We reserve all of our rights in the Licensed Materials and your license to use such material is limited to the manner described herein. We may revoke your license at any time, by giving you written notice. If not previously revoked, this license shall immediately terminate upon the termination of your participation in the Affiliate Program.
- b. You grant to us a non-exclusive license to utilize your name, title, trademarks, and logos (the "Affiliate Trademarks") in any advertisement or other materials used to promote ProWorkflow and the Affiliate Program, provided that ProWorkflow's use of the Affiliate Trademarks is not required and is at its

sole discretion. This license shall terminate upon the termination of your participation in the Affiliate Program.

**15. Term and Termination**

- The term of this Agreement will begin upon our acceptance of your Affiliate Program application and will end when terminated by either party (the “Term”). Either party may terminate this Agreement at any time, with or without cause.
- a. You are only eligible to earn Commission Fees on Qualified Purchases occurring during the Term. Commission Fees earned prior to the date of termination will be eligible for commissions only if the full annual subscription order for the related ProWorkflow Products and Services are not cancelled within (90) days and comply with all of the terms of this Agreement. We may withhold your final payment of Commission Fees for a reasonable time to ensure that all Qualified Purchases are valid and payment from Referred Customers are legitimate as determined by ProWorkflow in its sole discretion.
- b. Any Affiliate who violates this Agreement, ProWorkflow's Terms and Conditions, or any applicable law will immediately forfeit any right to any and all accrued, but not yet received, Commission Fees and will be immediately removed from the Affiliate Program.
- c. ProWorkflow reserves the right to remove an Affiliate from the Affiliate Program, and to terminate or suspend this Agreement, at any time for any reason, in ProWorkflow's sole discretion.

**16. Modification**

We may modify this Agreement at any time in our sole discretion; provided that the change shall solely apply to events occurring after the date on which you accept and agree to such modifications unless you otherwise agree herein. Such modifications shall take effect when posted on our website. Modifications may include, but are not limited to, changes in the scope of available Commission Fees, commission amounts or percentages, payment procedures, Commission Fee payment schedules, and Affiliate Program rules. If any modification is unacceptable to you, your only recourse is to terminate this agreement, in which event you shall be entitled to your rights under the unmodified Agreement prior to the date of the applicable modification. Your continued participation in the Affiliate Program following our posting of any modification on our website will constitute binding acceptance of the change.

**17. Disclaimers**

We make no express or implied warranties or representations with respect to the Affiliate Program or any ProWorkflow Products and Services sold through the Affiliate Program (including, without limitation, WARRANTIES OF FITNESS, MERCHANTABILITY, NON-INFRINGEMENT, OR ANY IMPLIED WARRANTIES ARISING OUT OF COURSE OF PERFORMANCE, DEALING, OR TRADE USAGE). In addition, we make no representation that the operation of our website will be uninterrupted or error free, and we will not be liable for the consequences of any interruptions or errors, including the tracking of information concerning Referred Customers during any period of interruption.

**18. Relationship of Parties**

You and ProWorkflow are independent contractors, and nothing in this Agreement will create any partnership, joint venture, agency, franchise, sales representative, or employment relationship between the parties. You will have no authority to make or



accept any offers or representations on our behalf. You will not make any statement, whether on your Affiliate Site or otherwise, that contradicts anything in this section.

19. **Representations and Warranties**

You hereby represent and warrant to us as follows:

- . You have reviewed and understand this Agreement and agree to be bound by its terms.
- a. Your acceptance of this Agreement and participation in the Affiliate Program will not violate (i) any provision of law, rule, or regulation to which you are subject, (ii) any order, judgment, or decree applicable to you or binding upon your assets or properties, (iii) any provision of your by-laws or certificate of incorporation, or (iv) any agreement or other instrument applicable to you or binding upon your assets or properties.
- b. You are the sole and exclusive owner of the Affiliate Trademarks and have the power to grant to ProWorkflow the license to use such marks in the manner contemplated herein, and such grant will not (i) breach, conflict with, or constitute a default under any agreement or other instrument applicable to you or binding upon your assets or properties, or (ii) infringe upon any trademark, trade name, service mark, copyright, or other proprietary right of any third person or entity.
- c. You are not required to obtain consent, approval, or authorisation of, or exemption by, or filing with, any governmental authority or any third party in connection with your entrance into this Agreement
- d. There is no pending or threatened claim, action, or proceeding against you, or any affiliate of yours with respect to the Affiliate Trademarks, and, to the best of your knowledge, there is no basis for any such claim, action, or proceeding.
- e. During the Term, you will not include in your Affiliate Site content that is, in our opinion, unlawful, harmful, threatening, defamatory, obscene, harassing, racially, ethically, or otherwise objectionable or are in violation of our Terms and Conditions or Acceptable Use Policy.
- f. You are at least eighteen (18) years of age.
- g. Each Referred Customer is valid, genuine, and unique and meets the criteria of a Qualified Purchase for generating a Commission Fee as provided in this Agreement.

20. **Limitation of Liability**

WE WILL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF REVENUE, PROFITS, OR DATA, ARISING IN CONNECTION WITH THIS AGREEMENT OR THE AFFILIATE PROGRAM, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, OUR AGGREGATE LIABILITY ARISING WITH RESPECT TO THIS AGREEMENT AND THE AFFILIATE PROGRAM WILL NOT EXCEED THE TOTAL COMMISSIONS PAID OR PAYABLE TO YOU UNDER THIS AGREEMENT DURING THE THREE (3) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY.

21. **Indemnification**

You hereby agree to indemnify and hold harmless ProWorkflow and its subsidiaries and affiliates, and their directors, officers, employees, agents, shareholders, partners, members, and other owners, against any and all claims, actions, demands, liabilities, losses, damages, judgments, settlements, costs, and expenses (including reasonable attorneys' fees) (any or all of the foregoing hereinafter referred to as "Losses") insofar

as such Losses (or actions in respect thereof) arise out of or are based on (i) any claim that our use of the Affiliate Trademarks infringes on any trademark, trade name, service mark, copyright, license, intellectual property, or other proprietary right of any third party, (ii) any misrepresentation of a representation or warranty or breach of a covenant and agreement made by you herein, or (iii) any claim related to your Affiliate Site, including, without limitation, its development, operation, maintenance and content therein not attributable to us.

22. **Confidentiality**

Each of the parties hereto agrees that all information including, without limitation, the terms of this Agreement, business and financial information, ProWorkflow and vendor lists, and pricing and sales information, shall remain strictly confidential and shall not be utilised for any purpose outside the terms of this Agreement except and solely to the extent that any such information is (a) already lawfully known to or independently developed by the receiving party, (b) disclosed in published materials, (c) generally known to the public, or (d) lawfully obtained from any third party any obligation of confidentiality to the discloser hereunder. Notwithstanding the foregoing, each party is hereby authorised to deliver a copy of any such information (a) to any person pursuant to a valid subpoena or order issued by any court or administrative agency of competent jurisdiction, (b) to its accountants, attorneys, or other agents on a confidential basis, and (c) otherwise as required by applicable law, rule, regulation, or legal process.

23. **Independent Investigation**

You understand that we may at any time (directly or indirectly) solicit ProWorkflow relationships on terms that may differ from those contained in this Agreement. We may also solicit relationships with entities that operate websites that are similar to or compete with your Affiliate Site. You have independently evaluated the desirability of participating in the ProWorkflow Affiliate Program and are not relying on any representation, guarantee, or statement other than as set forth in this Agreement

24. **Miscellaneous**

- . **Governing Law.** This Agreement is governed by the laws of New Zealand. Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction there in connection with matters concerning this Agreement.
- a. **Assignment.** You may not assign this Agreement, by operation of law or otherwise, without our prior written consent. Subject to that restriction, this Agreement will be binding on, inure to the benefit of, and be enforceable against the parties and their respective successors and assigns
- b. **Waiver.** Our failure to enforce your strict performance of any provision of this Agreement will not constitute a waiver of our right to subsequently enforce such a provision or any other provision of this Agreement.