

# Affiliate Agreement

This Affiliate Agreement ("Agreement") contains the complete terms and conditions between, Newfold Digital, Inc., and its subsidiaries, affiliates, predecessors, successors and assigns ("Provider") and you, regarding your application to and participation in, the Provider Affiliate Program (the "Affiliate Program") as an Affiliate of Provider, and the establishment of links from your website to Provider's Website. The terms of this Agreement are subject to change by Provider without prior notice, but we will try to notify you of such changes in advance.

BY SUBMITTING AN APPLICATION TO JOIN OR BY PARTICIPATING IN THE AFFILIATE PROGRAM, YOU CONFIRM THAT YOU HAVE READ AND AGREE TO BE BOUND BY THIS AGREEMENT AND THE APPLICABLE PROVIDER TERMS AND CONDITIONS.

## 1. Definitions

**"Affiliate"** - The business, individual, or entity applying to or participating in the Affiliate Program, or that displays Provider services and/or promotions on the Affiliate Site, or other means, using an affiliate tracking code in exchange for receiving a commission from Provider for sales directly resulting from such display.

**"Affiliate Dashboard"** - The Affiliate Dashboard is used by Affiliates to track commissions, view reports, and update contact information and payment preferences.

**"Affiliate Platform"** – An internal or third party platform, including without limitation, Impact Tech, Inc. ("Impact Radius") used by Provider to track Affiliate performance, including specific referrals and commissions earned through the Affiliate Program.

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

**"Provider Services"** - The services that are available for purchase from Provider.

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

**"Commission Threshold"** - The amount of Commission Fees as determined by Provider in its sole discretion an Affiliate must accrue prior to receiving a payment from Provider.

**"Qualified Purchase"** - A sale of Provider Services by Provider, with a term of one (1) month or longer, to a Referred Customer that is not excluded under the Agreement.

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

**“Terms of Service”** – The terms of service agreed upon between Provider and a Referred Customer relating to the Provider Services.

**“Provider’s Website”** – The Provider designated website that Affiliate shall link to from Affiliate Site.

## 2. Applying for our Program

- a) To begin the enrollment process, you must submit a completed Affiliate Program signup form.
- b) We will evaluate your application 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 or promotional method is not suitable for the Affiliate Program for any reason, including, but not limited to, its inclusion of content that is unlawful or otherwise violates Provider’s Acceptable Use Policy, as determined in our sole discretion.
- c) If we reject your application, for any reason, you may not re-apply to the Affiliate Program utilizing 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 Dashboard. Provider, in its sole discretion, reserves the right to reject or remove any prospective affiliate from the Affiliate Program at any time, with or without notice.

## 3. Promotion of our Affiliate Relationship

- a) Use of Links. If you qualify and agree to participate as an Affiliate, we may provide you with access to graphic and textual links and JavaScript code (each referred to herein as a "Link" or collectively, as the "Links") that you may use to promote Provider Services. 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 Provider Website. The You agree to cooperate fully with us to establish, display, and maintain such Links. You further agree that your use of the Links must be in compliance with this Agreement at all times. Provider 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 Provider that are not approved in advance by Provider. Furthermore, you agree not to use cookie stuffing techniques that set the affiliate tracking cookie without the Referred Customer's knowledge (e.g. iframe).
- b) Search Engine Marketing. Unless otherwise approved by Provider in writing, Affiliates shall not to run SEM campaigns for Provider products and services on Google.
- c) Keyword Noncompete. For so long as you are an Affiliate, you may not purchase, either directly or indirectly, or bid, either directly or indirectly, on any Keywords owned or offered through an internet search engine (including Google, Yahoo, or Bing) that

compete with Provider's name, trademarks, or product names. In addition, you will not, directly or indirectly, engage in any activities that could result in confusion among consumers as to the source of an ad (including the overuse of an authorized trademark, trademark cyber-stuffing or other similar activities). "Keywords" shall mean a word used in a search request by an internet search engine user which, when used in such internet search engine, causes a particular sponsor's ad to appear next to the search results.

- d) **Prohibited Activities.** Except as permitted herein, you shall not and are not authorized to (i) use Provider's trademark or other intellectual property, including without limitation, the Links (collectively, "Provider's IP") without Provider's express prior written permission; (ii) use Provider's name (or any variation or misspelling thereof or other terms that are confusingly similar to any of the foregoing) in a domain name, any metatags, advertising, search terms, code, or otherwise; or (iii) act in any way that causes or could cause any confusion concerning the source of, or your association with Provider's Services. Your use of Provider's IP in any manner, other than as expressly permitted hereunder shall constitute unlawful infringement of Provider's intellectual property rights and may subject you to liability (including potential treble damages for knowing or willful infringement), and the obligation to pay Provider's legal fees and costs in connection with Provider's enforcement of its rights.
- e) **Discounts and Coupons.** You are not allowed to post any refunds, credits or discounts on Provider Services, or other content concerning Provider without our prior written consent in each instance. Affiliates may only use active 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 Provider Website will in no way alter the look, feel, or functionality of the Provider 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.

## **4. Disclosures**

- a) It is the intent of Provider to treat all customers fairly. Accordingly, we require all Affiliates to comply with applicable laws, regulations and guidelines, including without limitation, those concerning advertising and marketing which further includes as applicable the Federal Trade Commission (FTC) Endorsement Guides, which require that material connections between advertisers and endorsers be disclosed. This means that all Affiliate Sites (e.g. directories, review/rating websites, blogs, and other websites) and any email or collateral that provide an endorsement or assessment of Provider's Services must clearly and conspicuously disclose the fact that you receive compensation for Referred Customers. In addition, disclosures must (i) be made as close as possible to the claims, (ii) be made on each page of the Affiliate Site containing a Link or referencing Provider, and (iii) be immediately evident and not

require scrolling, clicking or any other user action to learn you receive compensation. You can read more about how the FTC guidelines apply to you [here](#). FTC guidelines are subject to change over time and it is your responsibility to review and comply with current guidelines as they may change over time. You are advised to seek and obtain your own legal advice on how these rules apply to the Affiliate Site or other promotional activities for which you receive compensation.

- b) Provider reserves the right to withhold Commission Fees and cancel your participation in the Affiliate Program should we determine, in our sole discretion, that you are not in compliance with applicable laws, regulations and guidelines.

## **5. Commission Determination; Qualified Purchases**

Commission Fees will be calculated based on the commission rates stated on the Affiliate Dashboard for each Qualified Purchase (as defined herein) subject to commission accruing pursuant to the Agreement. A “Qualified Purchase” does NOT include any of the following:

- i. A purchase by a Referred Customer that has transferred from any Provider partner or entity that owns, is owned by, or is under common ownership with Provider.
- ii. A purchase by a Referred Customer who is also associated with any Provider 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 a 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 Provider’s Terms of Service or other applicable policies at the time the Commission Fees accrue.
- vi. A purchase that Provider 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 Provider’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 in Provider’s sole discretion.
- x. A purchase by a Referred Customer who received a popup with a discounted offer, while leaving Provider’s Website during their purchase.

- xi. A purchase by a Referred Customer who, prior to such purchase, clicked through a Link established by another affiliate under this Affiliate Program.
  - xii. A purchase by a Referred Customer more than ninety (90) days after clicking through the Link.
- 
- a) Provider reserves the right to withhold payment of Commission Fees to Affiliates who are new to the Affiliate Program, or who have referrals that are potentially the result of fraud as determined by Provider in its sole discretion, to determine the legitimacy and cancellation rates of Referred Customers.
  - b) Provider 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 or the Provider Terms and Conditions by the Affiliate or a Referred Customer. Provider reserves the right to deduct from Affiliate's current and future Commission Fees any and all Commission Fees corresponding to any fraudulent, questionable, or cancelled purchases. If no subsequent Commission Fees are due and owing, Provider may send Affiliate a bill for the balance of such refunded purchase upon termination of Affiliate's participation in the Affiliate Program or termination of the Referred Customer.
  - c) Provider reserves the right to immediately cancel or withhold for later review any Commission Fees that fail to meet the criteria of a "Qualified Purchase." Affiliate is responsible for monitoring the payment, denial, and withholding of Commission Fees. Provider 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 Provider to request that the Commission Fee be paid. Any changes to decisions about cancelled or withheld Commission Fees are strictly made in Provider's sole discretion.
  - d) Commissions for any Referred Customer who is associated with any Provider reseller, referral or other program may not be considered a Qualified Purchase, as determined by Provider in its sole discretion. In other words, you may not receive double commissions or compensation.
  - e) In the event that the Referred Customers that are referred to Provider by an Affiliate are determined to have an excessive cancellation rate, as determined by Provider in its sole discretion, Provider 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 Provider or any violation of the terms of this Agreement constitutes immediate grounds for Provider to terminate the Affiliate's participation in the Affiliate Program and will result in the forfeiture of any Commission Fees due to the Affiliate.

## 6. Commission Payments

- a) Subject to the terms of this Agreement and the terms of any applicable Affiliate Platform, Commission Fees will be calculated according to the specified percentage or dollar amount set forth in the commission report in your Affiliate Dashboard for each Qualified Purchase that accrues during the period for which such Commission Fees are being calculated.
- b) Commission Fees will be processed approximately forty-five (45) to seventy (70) days after the last day of the month in which they accrue, unless you use an Affiliate Platform in which case they will be processed in accordance with your agreement with the applicable Affiliate Platform.
- c) Provider will only compensate you for Qualified Purchases made in accordance with the terms of this Agreement.
- d) Commission Fees shall be paid based on the current information in your Affiliate Dashboard. You are required to notify the Affiliate Platform promptly of any change in your address by updating your profile information in the Affiliate Dashboard. You are responsible for informing the Affiliate Platform 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 Dashboard.
- e) Depending on your Affiliate Platform, you may be subject to a minimum or maximum payment amount. All such minimum and maximum payment amounts are governed by your agreement with the Affiliate Platform.
- f) You may view the currently available payment methods by logging into your Affiliate Dashboard for the applicable Affiliate Platform. If the Affiliate Platform offers PayPal as a payment method, please refer to PayPal's policy to ensure you are eligible to receive payment if you reside outside of the United States.
- g) Provider and the Affiliate Platform, in its sole discretion, reserves the right to modify the available payment methods or payment schedule at any time. Such changes shall take effect when posted.
- h) Disputes: Affiliate agrees to file any disputes within forty-five (45) days of the date on which a disputed sale or event occurred. Disputes filed after forty-five (45) days of the date on which the disputed sale or event occurred will not be accepted by Provider and Affiliate forfeits forever any rights to a potential claim.
- i) Commission Fees will accrue and only become payable once you (i) provide all relevant tax and address documentation pursuant to this Section, and (ii) reach the Commission Threshold based on the commission rates stated in the Affiliate Dashboard, solely as applied to Qualified Purchases which occurred within ninety (90) days of the end of the calendar month in which the first of such Qualified Purchases occurred. Provider reserves the right to change the Commission Threshold and will notify you as may be required pursuant to the terms of this Agreement.

- j) It is solely your responsibility to provide Provider with accurate tax and payment information that is necessary to issue Commission Fees to you. Each Affiliate is required to submit a W8 (for Affiliates located outside of the U.S.) or W9 (for Affiliates located in the U.S.) tax form as applicable before any Commission Fees shall accrue. You are responsible for the payment of all taxes related to the Commission Fees you receive under this Agreement. In compliance with U.S. tax laws, the Affiliate Platform will issue a Form 1099 to Affiliates whose earnings meet or exceed the applicable threshold. If Provider 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.
- k) Any address change must be made in the Affiliate profile in the Affiliate Dashboard 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.
- l) Provider is not responsible for paying any third-party fees, including any fees charged by PayPal or banks, in order for you to receive Commission Fees.
- m) Provider, in its sole discretion, may offer you the ability to receive Commission Fees through PayPal Payouts, standard PayPal, wire or ACH transfer. As it relates to PayPal Payouts mass pay option only, and notwithstanding any other provision of this Agreement to the contrary, if you utilize PayPal Payouts mass pay option then Provider will pay any transaction fees charged by PayPal.

## **7. 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 Provider in complying with any data subject rights request under the GDPR that Provider may receive from any individuals referred to Provider by Affiliate. Affiliate further agrees to promptly assist Provider in complying with any duties to cooperate with supervisory authorities under the GDPR.

## **8. Order Processing**

Provider will process orders placed by Referred Customers who follow the Links from an Affiliate Site to Provider. 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 fulfillment, including Provider’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 and/or the applicable Affiliate Platform. To permit accurate tracking, reporting, and commission accrual, you must ensure that the Links between the Affiliate Site and the Provider Website are properly formatted.

## **9. Obligations Regarding Your Affiliate Site**

- a) 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 the Provider Website; the accuracy of materials posted on your Affiliate Site (including, but not limited to, all materials related to Provider Services); ensuring that materials posted on your Affiliate Site do not violate or infringe upon the rights of any third party and are not libelous or otherwise illegal. We disclaim all liability and responsibility for such matters
- b) 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. Affiliate shall reasonably cooperate with any Provider audit of the Affiliate Site, including but not limited to the provision of documentation or information reasonably requested by Provider. If you are not in compliance, we may terminate your participation in the Affiliate Program effective immediately.

## **10. Provider Responsibilities**

We will provide all information necessary for you to make Links from your Affiliate Site to Provider Website. Provider will be solely responsible for order processing (including payment processing, cancellations, and refunds) for orders for Provider Services placed by a Referred Customer, for tracking the volume and amount of Qualified Purchases generated by your Affiliate Site, for providing information to Affiliates regarding Qualified Purchase statistics, and for providing Referred Customers with the services purchased.

## **11. Policies and Pricing**

Referred Customers who buy Provider Services through our affiliate network are deemed to be Provider's customers. Provider'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, Provider determines the prices to be charged for Provider Services sold through the affiliate network in accordance with our own pricing policies. Prices and availability of Provider 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 Provider Website, but we cannot guarantee the availability or price of any particular Provider Service.

## **12. E-mails and Publicity**

You shall not create, publish, transmit or distribute, under any circumstances, any bulk email messages without Provider's prior written consent, to be granted or denied in Provider's sole discretion, in each instance. Additionally, you may only send emails containing a Link and or a message regarding Provider or the Affiliate Program to people who have previously consented to receiving such communications from you. Your failure to abide by this Section and 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 Commission Fees and the termination of your participation in the Affiliate Program. Further, if your Affiliate account has excessive clicks in a very short period of time as determined by Provider in its sole discretion, the Affiliate relationship may be terminated.

## **13. IP Licenses and Use**

- a) Subject to the limitations set forth in this Agreement, we grant you a non-exclusive, non-transferable, non-assignable, revocable license to (i) provide access to the Provider Website through the Links solely in accordance with the terms of this Agreement; and (ii) use Provider's IP for the sole purpose of promoting Provider's Services on your Affiliate Site. You may not alter, modify, or change Provider's IP in any way or use Provider's IP in any manner that is disparaging or that otherwise portrays Provider, any Provider employee, representative or customer in a negative light. You are only entitled to use Provider's IP in compliance with the terms of this Agreement. Your license to use Provider's IP shall immediately terminate upon the termination of your participation in the Affiliate Program for any reason. We reserve all of our rights in Provider's IP and your license to use Provider's IP is limited to the manner described herein. Provider may review the Affiliate Site to ensure compliance with this Agreement at any time.
- b) You grant to us a non-exclusive, worldwide license to utilize your name, title, trademarks, and logos (the "Affiliate Trademarks") in any advertisement or other materials used to promote Provider and the Affiliate Program. For the avoidance of doubt, Provider may, but is not obligated to use the Affiliate Trademarks at its sole discretion. This license shall terminate upon the termination of your participation in the Affiliate Program.

## 14. Term and Termination

- a) The terms of this Agreement are effective upon your submission of an application to the Affiliate Program and shall remain in effect until either party terminates your participation in the Affiliate Program (the "Term"). Your participation in the Affiliate Program may be terminated at any time by either party, with or without notice or cause.
- b) 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 Commission Fees only if the orders for the related Provider Services are not cancelled within (30) days and comply with all 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 the Provider in its sole discretion.
- c) Any Affiliate who violates this Agreement, Provider's Terms of Service, or any applicable law or regulation 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.
- d) Provider 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 Provider's sole discretion.

## 15. Modification

We may modify this Agreement at any time in our sole discretion, and any modifications shall take effect when posted on our website. Your continued participation in the Affiliate Program following the posting of any modification on our website will constitute your binding acceptance of the modified terms. Modifications may include, but are not limited to, changes in the scope of Provider Services eligible for Commission Fees, Commission Fee 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 in effect prior to the date of the applicable modification.

## 16. Disclaimers

We make no express or implied warranties or representations with respect to the Affiliate or any Provider Services sold through the Affiliate Program (including, without limitation, WARRANTIES OF FITNESS, MERCHANTABILITY, NON-INFRINGEMENT, OR ANY IMPLIED WARRANTIES ARISING OUT OF THE COURSE OF PERFORMANCE, DEALING, OR TRADE USAGE). In addition, we make no representation that the operation of our websites 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.

## **17. Relationship of Parties**

You and Provider 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.

## **18. Representations and Warranties**

You hereby represent and warrant to us as follows:

- a) You have reviewed and understand this Agreement and agree to be bound by its terms.
- b) 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.
- c) You are the sole and exclusive owner of the Affiliate Trademarks and have the power to grant to Provider 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.
- d) You are not required to obtain consent, approval, or authorization of, or exemption by, or filing with, any governmental authority or any third party in connection with your entrance into this Agreement
- e) 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.
- f) 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 in violation of our Terms of Service.
- g) You are at least eighteen (18) years of age.
- h) 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.

## **19. 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 FIVE HUNDRED DOLLARS (\$500.00).

## **20. Indemnification**

You hereby agree to indemnify and hold harmless Provider 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.

## **21. Confidentiality**

Each of the parties hereto agrees that all information including, without limitation, the terms of this Agreement, business and financial information, Provider customer and vendor lists, or pricing and sales information (including without limitation commission rates), shall remain strictly confidential and shall not be utilized 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 not under any obligation of confidentiality to the discloser hereunder. Notwithstanding the foregoing, each party is hereby authorized to deliver a copy of any such information (a) pursuant to a valid subpoena or order issued by a 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 including, without limitation, the Securities Exchange Act of 1933, as amended, and the rules and regulations promulgated thereunder, and the Securities Exchange Act of 1934, as amended, and the

rules and regulations promulgated thereunder. In the event of such disclosure, the receiving party shall give the disclosing party prior notice before releasing any information unless giving such notice is prohibited.

## **22. Independent Investigation**

You understand that we may at any time (directly or indirectly) solicit Provider 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 Affiliate Program and are not relying on any representation, guarantee, or statement other than as set forth in this Agreement.

## **23. Miscellaneous**

- a) **Governing Law.** The laws of the State of Florida will govern this Agreement, without reference to rules governing choice of laws. Any action relating to this Agreement must be brought in the federal or state courts located in Duval County, Florida and you irrevocably consent to the jurisdiction of such court.
- b) **Binding Arbitration.** By participating in this Affiliate Program, you agree to binding arbitration for any disputes or claims that arise against Provider or its subsidiaries in conjunction with this Affiliate Program. An arbitration firm selected by Provider will be the sole and final arbitrator for any and all disputes or claims related or resulting from participation in this Affiliate Program. All decisions rendered are final. You also are responsible for any and all costs related to such arbitration.
- c) **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. Provider may assign its rights and obligations under this Agreement.
- d) **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.
- e) **Force Majeure.** Provider is not liable for any default or delay in the performance of any of its obligations under this Agreement caused, directly or indirectly, by forces beyond Provider's reasonable control, including without limitation, earthquake, flood, fire, storm, natural disaster, act of God, war, terrorism, armed conflict, labor strike, pandemics or epidemics, lockout or boycott.

**This file was last modified on May 18, 2022**