

## PROMAPP PARTNER PROGRAM TERMS

Last updated: 28 March 2017

Welcome to Promapp's Partner Program ("**Program**"). Here are the terms and conditions that apply to your participation in the Program. By registering for our Program, you agree that you will be bound by these Terms.

Please read these Terms carefully before submitting your application. If you do not agree to any of these Terms, please do not submit an application and your registration for the Program will not proceed.

We may change these Terms at any time and will update you of this by updating the "Last updated" notice on this page. By continuing to participate in our Program you agree to be bound by the amended Terms. You should check this page from time to time to see if these Terms have changed.

If you have any questions or concerns in relation to the Program or these Terms, please [contact us](#)

### 1. Definitions: In these Terms:

**Confidential Information** means non-public business, technical and other information and materials disclosed or otherwise made available (whether directly or indirectly by an affiliate) by one party ("**Discloser**") to the other party ("**Recipient**") (whether directly or indirectly by an affiliate). This includes information that:

- (a) is submitted by you, to us, to meet our Program requirements as set forth in the applicable Partner Program Application Form (which shall be considered your Confidential Information);
- (b) relates to our Partner Program, including Program participation, terms, forms, requirements, details, benefits, discounts, funds, fees and similar information (which shall be considered our Confidential Information);
- (c) relates to our Process Management Solution (which shall be considered our Confidential Information); or
- (d) relates to a party's current and future products and services, including methodologies, algorithms, source code, workflows, implementations, and research (which shall be considered Confidential Information of the Discloser).

**Intellectual Property Rights** means any patent, trade mark, service mark, copyright, moral right, right in a design, know-how and any other intellectual property rights, whether registered, in the course of being registered or

unregistered and any analogous rights worldwide;

**Lead** means any potential customer of the Process Management Solution;

**Partner** means any person that registers to be part of the Program and who is approved by us to participate in the Program;

**Partner Program Application Form** means the online application form located [online](#);

**Process Management Solution** means our process management software which provides a central repository for managing business process information;

**Referral Fee** means the amount (if applicable) that we will pay you in accordance with section 6.

**we, our** and **us** refers to Promapp Solutions Limited;

**you** and **your** refers to the person that is applying for registration as a Partner in accordance with these Terms.

### 2. Promapp Partner Program:

(a) In accepting these Terms, you agree that you have read and understood the information on our Partner Program and the requirements for our Registered, Silver and Gold Partner tiers, as set out [here](#). You acknowledge that, once you are appointed to the Silver Partner or Gold Partner tier, you will be responsible for continuing to meet the relevant requirements in order to remain at that Partner tier.

(b) We reserve the right to:

- (i) change the Program and/or the requirements for the Partner tiers at any time; and
- (ii) make final decisions, at our sole discretion, about the participation of Partners in our Program. This includes the right to accept or decline any person's application for registration as a Registered Partner, Silver Partner or Gold Partner, the right to change any person's Partner status, and the right to appoint Partners that do not strictly meet the requirements for Partner tiers.

(c) If we appoint you as a Partner then these Terms will, amongst other things, govern

your promotion, marketing and resale of the Process Management Solution to customers.

(d) Without limiting your obligations under these Terms, you will:

- (i) advertise and promote the Process Management Solution provided that your use of any promotional materials containing our trade marks or other references to the Process Management Solution will be subject to our prior approval;
- (ii) observe all directions and instructions that we give to you in relation to the promotion and advertisement of the Process Management Solution;
- (iii) not send unsolicited electronic messages to multiple unrelated recipients in promoting the Process Management Solution, or otherwise engage in any other form of mass electronic communications prohibited by law in connection with activities contemplated under these Terms;
- (iv) conduct your business in a manner that reflects favourably at all times on us and our good name, goodwill and reputation and not enter into any contract or engage in any practice detrimental to our interests or the Process Management Solution;
- (v) avoid deceptive, misleading or unethical practices that are, or might be, detrimental to us, the Process Management Solution, or the public and will not publish or employ, or co-operate in the publication or employment of, any false, misleading or deceptive advertising material or other representations with regard to us or the Process Management Solution;
- (vi) not represent yourself as an agent of ours for any purpose, nor pledge our credit or give any condition or warranty or make any representation on our behalf or commit us to any contracts; and
- (vii) not without our prior written consent make any representations, warranties, guarantees or other commitments

with respect to the specifications, features or capabilities of the Process Management Solution which are inconsistent with those contained in any promotional material supplied by us or otherwise incur any liability on our behalf.

(e) Nothing in these Terms shall be construed to form a partnership, joint venture, agency, employment, or fiduciary relationship between the parties.

(f) Nothing in these Terms will prevent us from:

- (i) promoting the Process Management Solution to any third party;
- (ii) granting further rights to any third party to promote the Process Management Solution anywhere in the world.

(g) During and after the duration of these Terms, we will be the exclusive owner of all relations created by you among us and Leads with respect to the Process Management Solution, including any and all information identifying Leads who contract, or may contract, with us for the use of the Process Management Solution and we may use this information in our sole discretion.

**3. Ownership of the Program and the Process Management Solution:** You agree that all Intellectual Property Rights in the Program and, subject to section 4, the Process Management Solution, including in any adaptations, modifications or enhancements to the same (**Promapp IP**), belong exclusively to us or our licensors. You hereby assign to us without reservation or extra charge the Intellectual Property Rights and all other rights in any adaptations, modifications or enhancements to the Program and Process Management Solution developed by you or on your behalf. You agree to execute all documents and do all acts and things reasonably necessary for the purpose of giving effect to this section. You further agree to join and co-operate with us, and perform such acts as necessary, to permit us to fully protect the Promapp IP.

#### 4. Ownership of your data:

- (a) From time to time you may provide data to us as part of the Program or input data into the Process Management Solution in accordance with your use of it under these Terms (**your data**). You will retain the Intellectual Property Rights in your data and will be solely responsible for ensuring the legality, reliability, integrity, accuracy and quality of your data.
- (b) You hereby grant us a non-exclusive licence to use your data for the term of your appointment as a Partner to:
  - (i) perform our obligations or exercise our rights under these Terms;
  - (ii) improve or enhance the Process Management Solution;
  - (iii) assess your performance under these Terms;
  - (iv) performing data analysis on an aggregated and anonymous basis, in accordance with our obligations regarding Confidential Information.

#### 5. Access to Process Management Solution:

- (a) This section applies to Partners who we choose to provide access to our Process Management Solution.
- (b) Where we provide you with access to our Process Management Solution, we grant you a non-transferable, non-exclusive and revocable licence to use the Process Management Solution to promote, market and resell the Process Management Solution to customers in accordance with these Terms, and otherwise as expressly permitted by us in writing.
- (c) You agree that you will use our Process Management Solution as we direct you from time to time and will:
  - (i) ensure that the Process Management Solution is used only by you, and in accordance with our guidelines for it;
  - (ii) not share your access to the Process Management Solution with any other

person, except with our prior consent, and will tell us immediately if you have reason to believe any person may have unauthorized knowledge, possession or use of the Process Management Solution;

- (iii) not attempt to make any copy, reverse engineer, disassemble, modify, translate or make any derivative work of the Process Management Solution or any part of it;
- (iv) not attempt to bypass any security mechanism in place on any system we use to make the Process Management Solution available to you or in the Process Management Solution itself; and
- (v) not gain or attempt to gain unauthorized access to, or alter or attempt to modify, our Process Management Solution, our systems, or any of our customers' systems, information or data.

#### 6. Referral Fee

- (a) Where as part of the Program we offer to pay you a Referral Fee for submitting qualifying Leads which result in a sale, then we will pay that Referral Fee to you in accordance with this section 6.
- (b) We will pay you a Referral Fee:
  - (i) for qualifying Leads, which you have registered with us, and which we have approved, following our then current Lead registration process; and
  - (ii) when the qualifying Lead subscribes to the Process Management Solution, provided that its subscription payment is made within 12 months of your first introduction of that Lead to us.
- (c) A qualifying Lead is a Lead that is accepted or approved by us. You acknowledge and agree that we may accept or approve that Lead where we:
  - a. have no record of the Lead in connection with the Process Management Solution; or
  - b. at the time the Lead is referred by you, we are not in any contractual relations or on-going negotiations with the Lead in connection with the Process Management Solution.

- (d) The Referral Fee will be calculated by us at the end of each month or such other date as we may specify, and remitted within 60 days after the qualifying Lead's subscription payment is received.
- (e) We may deduct a clawback from the Referral Fee payable if the Lead terminates its subscription to the Process Management Solution within 12 months of subscribing to the Process Management Solution.
- (f) All amounts stated in these Terms are exclusive of all applicable taxes, levies and duties. If any amount payable by either party is subject to the payment of any tax collected at source, whether by deduction, withholding or otherwise, that amount may be reduced by the amount of the tax, provided that income tax withholding certificates are presented to the party being paid in lieu of the amount deducted.

## 7. Confidentiality:

- (a) Each party ("**Recipient**") acknowledges the strict confidentiality of all Confidential Information of the other party ("**Discloser**") and agrees that no right, entitlement or interest in the Confidential Information is granted to the Recipient other than for the strict purpose of carrying out its obligations under these Terms.
- (b) The Recipient undertakes that it will:
  - (i) only use the Confidential Information of the Discloser for the purposes of the Program and/or for performing its obligations under these Terms;
  - (ii) not disclose the Confidential Information of the Discloser to any third party, except as permitted under these Terms, as required by law or with the Discloser's prior written consent; and
  - (iii) only disclose the Confidential Information to its employees, sub-contractors and advisors to the extent necessary for the purposes described above and ensure that its employees, sub-contractors and advisors observe these Terms.

## 8. Termination:

- (a) You may cease your participation in the Program at any time by notifying us of your intention to do so.
- (b) We may cease providing the Program or terminate your participation in the Program and, where we do so, we will notify you of this as soon as reasonably practicable.
- (c) Upon termination of your participation in the Program:
  - (i) both parties must immediately return any copies of the other's Confidential Information, except to the extent that a party is required by law to keep such information;
  - (ii) all rights and licences, including those relating to the Process Management Solution, granted by each party to the other under these Terms will terminate; and
  - (iii) we will pay you any Referral Fee due to you (less any clawback in accordance with section 6(d)) provided that you are not in breach of these Terms.

- 9. Liability:** To the fullest extent permitted by law, we exclude all responsibility and liability in relation to your participation in the Program and your use of the Process Management Solution as part of the Program. Where any such liability cannot be excluded then we limit our liability to the total Referral Fees (if any) paid to you in the 12 months prior to the time the liability arises.

- 10. Law:** These Terms are governed by and will be construed in accordance with the laws of New Zealand and you submit to the exclusive jurisdiction of the courts of New Zealand.