

TOFT Introducer Agreement

Last Modified: September 03, 2024

PLEASE READ THIS AFFILIATE PROGRAM AGREEMENT CAREFULLY.

This is a contract between you (the “Affiliate”) and us (“Opimise Ltd”). It describes how your introduction of products and services provided by us will earn you Commission Payments. It is a legal document so some of the language is necessarily “legalese” but we have tried to make it as readable as possible.

We might update these terms from time to time. We might also choose to replace these terms in their entirety if, for example, the Affiliate Program changes, ends, or becomes part of another program.

Definitions

“Affiliate Program” means our affiliate program as described in this Agreement.

“Affiliate Policies” means the policies applicable to affiliates which we may make available to you from time to time.

"Agreement" means this Affiliate Program Agreement and all materials referred or linked to in here.

“Commission Payment” means an amount paid to you for your introduction of our products or services.

“Learning Course” means our “IT Support Service High Performance Principles” training course that can be accessed through our website.

“Paid Student” means a student with an account on the Learning Course that is associated with a payment having been made for Learning Course assessment and qualification.

“Introduced Organisation” means an organisation introduced by you.

“Validated Organisation” means an Introduced Organisation that has a minimum of three employees registered on our Learning Course and / or that has retained us for consultancy services.

“Introduced Customer” means an Introduced Organisation that has purchased a product or service from us.

“Customer Transactions” means those transactions by Introduced Customers received by us that are eligible for Commission Payment pursuant to the ‘Eligibility’ section of this Agreement (1.1.).

“Registration Date” means the date that you register for the Affiliate Program.

"We", "us", "our" means Opimise Ltd.

"You", "Affiliate", and "TOFT Introducer" means the party, other than Opimise, entering into this Agreement and participating in the Affiliate Program.

Non-Exclusivity

This Agreement does not create an exclusive agreement between you and us. Both you and we will have the right to recommend similar products and services of third parties and to work with other parties in connection with the design, sale, installation, implementation and use of similar services and products of third parties.

1. Affiliate Acceptance

Affiliates must register through our website. Once you register to be an affiliate of us, the terms and conditions of this Agreement become applicable, including any applicable Program Policies.

1.1. Customer Transactions and Commission Payment: Eligibility.

- To be eligible for a Commission Payment (i) you must be accepted and confirmed by us as an Affiliate in accordance with the 'Acceptance and Validity' section (1.2.); and (ii) a Customer Transaction must have occurred.
- You are not eligible to receive Commission Payments or any other compensation from us if: (i) such compensation is disallowed or limited by law; (ii) the applicable Introduced Customer becomes aware of your being party to the Affiliate Program and objects to or prohibits such compensation or communicates to us that such compensation will be excluded from its payments to us or you; (iii) the Introduced Customer has paid or will pay such commissions, referral fees, or other compensation directly to you; or (iv) the Introduced Customer participates in any of our partner programs.
- While the approach that we take in managing our Affiliate Program is designed to ensure that there is only one accepted and confirmed Affiliate for any single organisation and Introduced Customer, if a competitive situation with one or more other Affiliate does arise, we may elect to provide the Commission Payment to the Affiliate that we deem to be the most eligible for commission, at our discretion.

1.2. Customer Transactions and Commission Payment: Acceptance and Validity.

You will only be eligible for a Commission Payment in relation to a Customer Transaction once we have accepted and confirmed in writing that you are an Affiliate. The conditions for being accepted and confirmed as an Affiliate are:

1.2.1. Within eight weeks of the Registration Date, an Introduced Organisation is confirmed by us as being a Validated Organisation because it has retained us for consultancy services and / or three employees have created student accounts on our Learning Course, whether or not a student is a Paid Student.

1.2.2. As well as to meet condition 1.2.1., the Introduced Organisation is not, at the time of the introduction by you, one of our pre-existing customers or involved in our active sales process.

1.2.3. As well as to meet condition 1.2.1., the Introduced Organisation has not been previously introduced by another Affiliate of ours.

If the criteria set out in 1.2.1. are not met, you may ask us to allow more time for three Learning Course student accounts to be created for employees of an Introduced Organisation but we may refuse any such request.

Once you are an accepted and confirmed Affiliate, the Registration Date is the start date of your being an Affiliate. Any other Introduced Organisation is considered accepted as a Validated Organisation based on our reasonable determination of: (i) within eight weeks of registration of the Introduced Organisation, or within an extended period that might be agreed between us, the Introduced Organisation has retained us for consultancy work, or three employees have created student accounts on our Learning Course, whether a student is a Paid Student or not; (ii) the organisation is not, at the time of the introduction by you, one of our pre-existing customers or involved in our active sales process; (iii) the organisation has not been previously introduced by another Affiliate of ours; and (iv) you have no more than three Introduced Organisations that are not yet a Validated Organisation (you may nominate removal of one or more Introduced Organisation so that this condition is met).

2. Affiliate Arrangement

2.1. Commission Payment.

In order to receive Commission Payment under this Agreement, you must ensure that we have a valid and up-to-date payment method for you. We will initially take your payment method immediately following a first Customer Transaction if such transaction should occur.

An applicable Commission Payment will usually be made by us to you within 30-days of a Customer Transaction.

2.2. Commission Rate.

We will determine the currency for the Commission Payment, as well as the applicable conversion rate.

We will not pay more than one Commission Payment or other similar referral fee on any given Customer Transaction (unless we choose to in our discretion).

2.3. Taxes.

You are responsible for payment of all taxes and fees (including bank fees) applicable to the Commission Payment.

2.4. Offset

All amounts payable by us to you are subject to offset by us against any amounts owed by you to us.

2.5. Commission Amounts.

We reserve the right to alter or change the Commission Payment level and if we do so, we will let you know.

2.6. Commission Payment Level

Learning Course paid enrolment: 35% of the prevailing gross enrolment price.

Key services: 15% of the prevailing net price (less UK VAT).

All other work provided to an Introduced Customer: 12% of the net charged fees (less UK VAT).

2.7. Training and Support

We may make available to you, without charge, resources suited to explaining our products and services. We may change or discontinue any or all parts of any such resources at any time without notice.

3. Term and Termination

- Term. This Agreement will apply for as long as you participate in the Affiliate Program, until terminated.
- Termination. We may terminate this Agreement with you immediately and for any reason, but after termination, subject to clause 1.2, Commission Payments will continue to be due to you for any Validated Organisation, and for any Introduced Customer.

4. Indemnification

You will indemnify, defend and hold us harmless, at your expense, against any third-party claim, suit, action, or proceeding (each, an "Action") brought against us (and our officers, directors, employees, agents, service providers, licensors, and affiliates) by a third party not affiliated with us to the extent that such Action is based upon or arises out of (a) your participation in the Affiliate Program, or (b) our use of the prospect data you provided us. We will: notify you in writing within thirty (30) days of our becoming aware of any such claim; give you sole control of the defence or settlement of such a claim; and provide you (at your expense) with any and all information and assistance reasonably requested by you to handle the defence or settlement of the claim. You shall not accept any settlement that (i) imposes an obligation on us; (ii) requires us to make an admission; or (iii) imposes liability not covered by these indemnifications or places restrictions on us without our prior written consent.

5. Disclaimers; Limitations of Liability

- No Indirect Damages. TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS OR BUSINESS OPPORTUNITIES.
- Limitation of Liability. IF, NOTWITHSTANDING THE OTHER TERMS OF THIS AGREEMENT, WE ARE DETERMINED TO HAVE ANY LIABILITY TO YOU OR ANY THIRD PARTY, THE PARTIES AGREE THAT OUR AGGREGATE LIABILITY WILL BE LIMITED TO THE TOTAL COMMISSION AMOUNTS YOU HAVE ACTUALLY EARNED FOR THE RELATED CUSTOMER TRANSACTIONS IN THE TWELVE-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO A CLAIM.

6. General

6.1. Amendment; No Waiver.

We may update and change any part or all of this Agreement, including by replacing it in its entirety. If we update or change this Agreement, the updated Agreement will be made available to you by email. The updated Agreement will become effective and binding on the next business day after we have notified you. When we change this Agreement, the "Last Modified" date above will be updated to reflect the date of the most recent version.

6.2. Force Majeure.

Neither party will be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions; or other event outside the reasonable control of the obligated party. Each party will use reasonable efforts to mitigate the effect of a force majeure event.

6.3. Actions Permitted. Except for actions for non-payment, no action, regardless of form, arising out of or relating to this Agreement may be brought by either party more than one (1) year after the cause of action has accrued.

6.4. Relationship of the Parties. Both you and we agree that no joint venture, partnership, employment, or agency relationship exists between you and us as a result of this Agreement.

6.5. Severability. If any part of this Agreement is determined to be invalid or unenforceable by applicable law, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of this Agreement will continue in effect.

6.6. Entire Agreement. This Agreement is the entire agreement between us for the Affiliate Program and supersedes all other proposals and agreements, whether electronic, oral, or

written, between us. We object to and reject any additional or different terms proposed by you.

6.7. Assignment. You will not assign or transfer this Agreement without our prior written consent.

6.8. No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to or shall confer upon any person or entity (other than the parties hereto) any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.