



# Optimise Technology Terms of service

## Recitals

- A) Optimise operates a range of performance marketing solutions which may be integrated with or form part of the Companies marketing plans
- B) Optimise wishes to offer to the Company the opportunity to promote its products using one or more of those solutions ("the Services").
- C) The Company wishes to promote its products using one or more of those solutions under the terms and conditions contained in this Agreement and any specific Terms and Conditions in force on the particular solution.

## 1. Definitions and Interpretation

- 1.1. In this Agreement, unless the context otherwise requires, the following words and expressions shall have the following meanings:

**Affiliate** synonymous with Referrer

**'High-Traffic' area of the system** includes; External landing pages, End-user login; homepage, edit details page & statistics pages, Email distribution system, Client login; referrer search / details pages & statistics

**Optimise Commission** means commission payable by the Company to Optimise under this Agreement

**Optimise Tracking** means the system developed by Optimise to track transactions generated on the program and record such detail as is required to calculate the Commission and effectively manage each Programme

**Optimise System** means the various elements of software owned and developed by Optimise, to which the Company, Referrers and Merchants, are given access through the hosted web environment, and which facilitate the provision of the Services

**Optimise Content** means the content or appearance of any web page within the Optimise System providing, describing or referring to the Services as may be provided by Optimise from time to time which has not been branded as the Merchant

**'Low-Traffic' area of the system** includes; End-user pages; FAQ, T&C's, contact pages, Client Login ; communications tool  
**Language** the language agreed between the parties for the provision of each part of the system or documentation. In the event that no specific language is agreed the language shall be assumed to be British English.

**Merchant** means the Company

**Merchant Account** means the account on a secure area of the Optimise Website provided for the Merchant which provides access to management and reporting tools

**Merchant Content** means any Product specific content (whether and not restricted to editorial banners or text links) which is used to promote a Product

**Merchant Website** means any website operated by a Merchant through which the Products are advertised or sold

**Programme** means a campaign set-up through the Services to promote a Product on behalf of a Merchant.

**Product** means the product(s) or services of a Merchant marketed [or to be marketed] through the Services

**Project** means a piece of chargeable work agreed by the Company including bespoke development, research or consultancy.

**Project Fees** means any fee payable by the Company for approved bespoke developments or changes.

**Referrer** means a person who is approved to promote, recommend or otherwise transfer consumers to a Merchants Website or Call Centre in accordance with the terms of the Services, whether this be consumers or businesses engaged in marketing promotion (Affiliates)

**Referrer Account** means the account on a secure area of the Optimise System provided for each Referrer which provides access to Programmes and reporting tools

**Referrer Commission** means the remuneration payable by the Company to Referrers participating in the Services, whether in the form of a payment to their bank account or incentive.

**Services** means the range of services taken by the Company from Optimise as agreed in the attached Technology Order or otherwise in writing.

**Set-up Fee** means any upfront charge for set-up and training, as agreed between the parties.

**Transaction** means the event performed by a User and tracked by Optimise Tracking which may trigger the payment of Referrer Commission

- 1.2. Words denoting the singular shall include the plural and vice versa;
- 1.3. Words denoting any gender shall include all genders;
- 1.4. References to persons shall include firms corporations and other associations or bodies of persons whether or not incorporated and any government state or agency of a state whether or not any of the foregoing has any separate legal personality;
- 1.5. Any reference to a statute or statutory provision shall be construed as including a reference to any statutory modification consolidation or re-enactment (whether before or in the case of consolidation or re-enactment only after the date hereof) from time to time and shall include reference to any provision of which it is a re-enactment (whether with or without modification) and any bye-laws, statutory instruments, rules, regulations, orders, directions, consents and permissions made or given thereunder and any conditions attaching thereto;
- 1.6. Clause headings are for ease of reference only and shall not affect the construction or interpretation of this Agreement;
- 1.7. Any reference to Clauses, sub-Clauses and paragraphs is to Clauses, sub-clauses and paragraphs of this Agreement.
- 1.8. Each Optimise Product may be subject to separate Terms and Conditions, which can be found here:  
  
Campaign Referrer –  
uk.omgpm.com/terms/CR2791  
Campaign Manager –  
uk.omgpm.com/terms/CM1822

## 2. System Availability & Bug Fixes

- 2.1. In consideration of the Commission, Optimise will provide access to the Services through the Optimise System and the Company will take up the Services on the terms contained in this Agreement.
- 2.2. Optimise shall provide and ensure the ongoing provision of access to the agreed modules of the Optimise System.
- 2.3. Optimise shall ensure that each module of the system is available as per the table below, subject to Clause 2.4 and events beyond Optimises reasonable control:

	Tracking & Content Serving system	Referrer Account	Agency Login & Merchant Account
Core Hours (GMT)	6am – 12am	7am – 10pm	7am – 7pm
Uptime during Core Hours	99%	98%	98%
Uptime during non-Core Hours	95%	90%	90%

- 2.4. Optimise may suspend the Referrer Account and Merchant Account for routine maintenance subject to providing at least 5 days notice.
- 2.5. Optimise will address any bugs within the system provided, be they cosmetic or functional free of charge. Such system bugs can be categorised and will be addressed as follows;



## Optimise Technology Terms of service

Issue Categorisation	Description	Response – Work Initiation
Urgent Functional Problem	A failure with a fundamental aspect of the system is preventing it from functioning correctly and having a significant impact on the revenue stream of this channel	3 Hour response (24/7)
Significant Functional problem	A functional issue in a 'High-Traffic' area of the system	1 working day
Significant visual issue	A visual issue in a 'high-traffic' area of the system	1 working day
Programme Management constraint	A functional issue that is impacting the efficient management of the campaign	2 working days
Minor functional issue	A functional issue located in a 'low-traffic' area of the system	3 working days
Minor visual issue	A visual issue located in a 'low-traffic' area of the system	3 working days

### 3. Account Management

- 3.1. An appointed Account Manager will be the single point of contact for all communications with the client. Should the Account Manager be unavailable then a stand-in Account Manager will be appointed and the client informed accordingly.
- 3.2. Optimise shall provide ongoing account management and support including technical queries, Programme set-up advice and general Programme advice. Specific Account Manager Service levels are included within the individual terms of each Service.

### 4. Client Specific Developments

- 4.1. Optimise shall set up the Company on the Optimise System for each Service, including any additional bespoke developments in accordance with the agreed Initial Specification, subject to the Set-up Fee.
- 4.2. Following the agreement of the Initial Specification, Optimise may agree to provide additional bespoke developments, functionality or consultancy ("Projects") at the request of the Company, any such Projects shall be based on the specifications agreed between the two parties ("Project Specification") and the Company shall be responsible for communicating any requirements that should be included within the specification.
- 4.3. Unless otherwise agreed with the Company, Optimise shall provide written quote based on an agreed specification and current Optimise Rate Card. No chargeable work shall be completed by Optimise without approval from the Company.
- 4.4. Should a Project modification request be received from a client following the commencement of the Project, Optimise will assess the impact that the change may have upon the Project. Optimise shall provide a revised Project plan and costs to the Company for approval.
- 4.5. Where required, Optimise can carry out integration testing on a new piece of technology or enhancement to an existing piece of technology developed by Optimise, in conjunction with the client's software systems or with the systems of a designated third party. Any such testing shall be included within the approved project plan. However, should any problems be identified during such testing, whether with the clients or third parties systems, then Optimise will charge the client for such subsequent unscheduled testing work

- 4.6. Optimise reserves the right to alter or change the Optimise Content from time to time, save that any material changes shall be notified to the Company in advance. Optimise shall not change the Merchant Content without the approval of the Company.

### 5. Obligations of the Company

- 5.1. The Company shall be responsible for all activity through the Optimise System, including but not limited to:
  - 5.1.1. agreeing terms and concluding legal agreements with Referrers
  - 5.1.2. the correct implementation and maintenance of tracking tags and other elements of the Optimise System which are integrated with the Merchant Website.
  - 5.1.3. the monitoring and approval and management of Referrers, as required.
  - 5.1.4. ensuring the compliance of any Programmes and activities, including the Product Content, with any and all relevant legislation, including but not limited to data protection, advertising and the promotion of financial products legislation.

- 5.2. The Company agrees to include such clauses as Optimise shall reasonably require within the Company's agreements with Referrers concerning their use of the Optimise System.

- 5.3. The Company shall indemnify and keep indemnified Optimise against all and any claims, damages, losses or liability howsoever arising whether directly or indirectly as a result of the Company's failure to comply with these obligations

- 5.4. If the Company is at any time, or it is notified by one of its Merchants or Referrers that they are, unable to access the Optimise System it shall immediately notify Optimise. Optimise shall use its reasonable endeavours to resolve any such problem as soon as practicable.

### 6. Commission

- 6.1. The Company shall pay to Optimise the Set-up Fee, Project Fees and the Commission as agreed for each Service.
- 6.2. Optimise shall raise an invoice for the Set-up Fee on the signing of this Agreement. The Company shall be required to pay this invoice in advance of any activity.
- 6.3. The Commission is calculated in accordance with the terms of the particular Service.
- 6.4. Company will make payment of all invoices within 30 days of the Invoice Date. Where Optimise shall process payments to Referrers on behalf of the Company, Optimise shall only process such payments after receipt of the funds from the Company.
- 6.5. If the period for invoice payment exceeds 30 days, Optimise shall be entitled to interest on the sum overdue until payment at a rate equal to the minimum lending rate from time to time of National Westminster Bank plc. plus 4% per annum.
- 6.6. The Company shall keep such records as are adequate to allow calculation of the Commission and shall allow Optimise access on reasonable notice in writing to inspect such records at the offices of the Company during usual business hours.

## Optimise Technology Terms of service

- 6.7. In the event of any dispute regarding the amount of any Commission due will in the first instance be referred to the Contact Person who shall negotiate in good faith with Optimise's appointed representative with a view to resolving such dispute. If the dispute is not resolved within one week, the matter shall be escalated to the next senior management level within the parties. If the matter is not resolved within 4 weeks of the dispute arising, then the parties shall agree a process of mediation.

### 7. Intellectual Property Rights and Confidentiality

- 7.1. Optimise owns all copyrights, trademarks, intellectual property rights, know-how or any other rights connected with the Services, including but not limited to the software necessary for the Service developed by Optimise, even if developed at the request of the Company or as part of a Project. The Company, by this Agreement, acquires no rights or licenses whatsoever connected with the Service and the software necessary for the Service or Optimise other than that explicitly set out in this Agreement.
- 7.2. Optimise acquires no rights, other than as required to perform its obligations under this agreement, over the intellectual property of the Company.
- 7.3. Neither party shall reveal the trade secrets of the other party nor use such secrets except for the purpose of fulfilling its obligations under this Agreement. The parties shall take all precautions reasonably necessary to prevent an unauthorised disclosure or use of such trade secrets by employees or third parties.
- 7.4. The Company agrees in particular not to communicate details of its trading terms with Optimise to any other party.

### 8. Term and Termination of Services

- 8.1. This agreement shall remain in force for an Initial period of 1 year. After the Initial Period either party shall be entitled to terminate this Agreement in relation to any one or more of the Services by giving to the other 6 months' notice in writing.
- 8.2. Optimise reserves the right to suspend any of the services from the Company with immediate effect in the event of:
- 8.2.1. Any problem with the functionality of the Service in question which Optimise is unable to resolve within 48 hours of becoming aware of the same.
- 8.2.2. Any breach by the Company of its obligations contained in this Agreement.
- 8.2.3. Commission due under this Agreement remains outstanding for more than 60 days
- 8.3. For the avoidance of doubt if Optimise suspends the service under Clause 6.2.2 or 6.2.3 then the Optimise Commission will continue to accrue.
- 8.4. Either party shall be entitled to terminate this Agreement forthwith if:
- 8.4.1. the other party commits any repudiatory breach of any of the provisions of this Agreement;
- 8.4.2. in the case of a breach capable of remedy, fails to remedy the same within 30 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied;

- 8.4.3. an encumbrancer takes possession or a receiver or trustee is appointed over any of the property or assets of that other party;
- 8.4.4. that other party makes any voluntary arrangement with its creditors or becomes subject to an administration order;
- 8.4.5. that other party goes into liquidation (except for the purposes of amalgamation or reconstruction and in such manner that the company resulting therefrom effectively agreed to be bound by or assume the obligations imposed on that other party under this Agreement);
- 8.4.6. anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to that other party; or
- 8.4.7. that other party ceases, or threatens to cease, to carry on business

### 9. Miscellaneous

- 9.1. If any provision of this Agreement or part thereof should to any extent be or become invalid or unenforceable, the parties shall agree upon any necessary and reasonable adjustments of the Agreement in order to secure the interests and objectives of the parties prevailing at the time of the Agreement.
- 9.2. Neither party shall assign its rights or obligations under this Agreement in whole or in part to any third party without the prior written consent of the other.
- 9.3. The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and no person other than the parties to this Agreement shall have any rights under it, nor shall it be enforceable under that Act by any person other than the parties to it.
- 9.4. The failure or delay by either party to exercise or enforce any right under this Agreement shall not operate as a waiver of that right or preclude the exercise or enforcement of it at any time or times thereafter.
- 9.5. This Agreement shall be governed by and construed in all respects in accordance with the laws of England and any dispute shall be subject to the exclusive jurisdiction of the English courts