



Optify Coaching Platform Services Agreement

This **OPTIFY COACHING PLATFORM SERVICES AGREEMENT** (this “**Agreement**”), is by and between Optify LLC., a Delaware limited liability company, with its principal place of business located at 11921 Freedom Drive, Center Suite 550, Reston, VA 20190 (“**Optify**”), and you. You are referred to herein as (“**Customer**”). This Agreement sets forth the terms and conditions under which you will purchase and receive Optify’s Coaching Platform Services (the “**Services**”). This Agreement is effective as of the date (the “**Effective Date**”) that you activate your subscription.

1 DEFINITIONS

Capitalized terms used herein have the meaning ascribed below, or where such terms are first used, as applicable.

1.1 “**Authorized Users**” means the one (1) individual person who agrees to the terms contained herein, such person being referred to herein also as “Customer” as well as Customer’s Coaching Clients. No additional users are permitted except with the written consent of Optify which may be provided or withheld in Optify’s sole discretion.

1.2 “**Coaching Clients**” shall mean Customer’s clients, which receive coaching services from Customer.

1.3 “**Optify Materials**” shall mean all Materials owned by Optify.

1.4 “**Eligible Features and Functions**” means those features and functions of the Cloud Service that are eligible for use with respect to the Subscription Level purchased by Customer.

1.5 “**Marks**” shall mean trademarks, trade names, website domain names, service marks and logos, whether or not registered.

1.6 “**Materials**” shall mean any and all reports, computer programs, documentation, specifications, products, work product, software, source code, algorithms, routines, graphics, files, software patches, enhancements, modifications, diagrams, charts, functional descriptions, photographs, surveys, knowledge bases or other materials, writings, or derivatives thereof however delivered.

1.7 “**Personal Data**” means any information that identifies or relates to an identifiable individual, including an individual’s name, address, telephone number, e-mail address, credit card information, social security number, or other similar specific factual information, regardless of the media on which such information is stored (e.g., on paper or electronically) and includes such information that is generated, collected, stored or obtained as part of this Agreement or such information that Optify has access to while performing its obligations and responsibilities under this Agreement.



1.8 **“Cloud Service”** means the applicable software as a service functionality provided by Optify to Customer hereunder.

1.9 **“Promotion Code”** means a discount to the Subscription price as may, from time to time, be determined, defined, and offered by Optify.

1.10 **“Subscription”** means Customer’s right, for a fixed period of time, to use and/or access, an applicable Cloud Service, and if applicable, to receive associated Support Services.

1.11 **“Subscription Term”** means the period of time for which a Subscription is valid, as further described in Section 6.1 of this Agreement.

1.12 **“Support Services”** means maintenance and support services for an applicable Cloud Service, if any, that are included in a Subscription.

1.13 **“Third Party Claim(s)”** shall mean all claims or threatened claims, civil, criminal, administrative, or investigative action or proceeding, demand, charge, action, cause of action or other proceeding asserted against a Party brought by a third party.

2 AGREEMENT SCOPE; CLOUD SERVICES

2.1 Customer Agreement. This Agreement is a customer agreement that includes terms and conditions applicable to the provision of the Cloud Service, as applicable and to the extent they are provided by Optify to Customer.

2.2 Pricing and Subscription Levels. The applicable (i) Subscription Levels, (ii) Subscription Term, and (iii) specific features and functionalities included in connection with the Cloud Services being purchased hereunder are described on Optify’s website which such terms shall be incorporated by reference herein. Optify’s website also contains payment terms which shall be applicable to Customer’s purchase of Cloud Service Subscriptions hereunder. Subscription Levels, Subscription Term and/or specific features and functionalities included in connection with the Cloud Service may be updated and/or modified from time to time via Optify’s website and/or via Customer’s interaction with the applicable registration/ordering process on the Optify website and such changes shall be incorporated herein by reference.

2.3 Service Restrictions. Customer will not: (i) rent, lease, distribute, sublicense, or loan the Cloud Service (or any Optify content therein) to any Party; (ii) permit any party to access and/or use the Cloud Service, other than Authorized Users, authorized to do so under this Agreement; (iii) interfere with, disrupt, alter, translate, or modify the Cloud Service or any part thereof, or create an undue burden on the Cloud Service or the networks or services connected to the Cloud Service; (iv) reverse engineer, disassemble, decompile, or reverse compile any part of the Cloud Service; (v) use any Optify trade secrets or Confidential Information in order to (A) build a competitive product or service, (B) build a product using similar ideas, features, functions or graphics of the Cloud Service, or (C) copy any ideas, features, functions or graphics of the Cloud Service; (vi) without Optify’s express written permission,



introduce software or automated agents or scripts to the Cloud Service so as to produce multiple accounts, generate automated searches, requests and queries, or to strip, scrape, or mine data from the Cloud Service; or (vii) perform or publish any performance or benchmark tests or analyses relating to the Cloud Service or the use thereof. Customer shall be expressly liable for any failure by any by Authorized User to comply with any of the terms contained in this Agreement.

2.4 Ownership. Except as expressly set forth in this Agreement, Optify, and its licensors, retain all right, title, and interest in and to the Cloud Service and all intellectual property rights therein. Optify shall also own and retain all right, title and interest in and to the following: (i) the Optify Materials; (ii) content developed and/or provided by Optify including, without limitation, resources available in shared libraries; (iii) all developments, enhancements, features, modifications relating in or to the Cloud Services; and (iv) aggregated and de-personalized data and metrics relating to the use, operation and performance of the Cloud Services. Optify reserves all rights not expressly granted to Customer under this Agreement. Notwithstanding the foregoing, Customer shall own all data and information provided by Customer and/or Customer's Authorized User coaching client that is stored in the Cloud Service, including sponsor data and substantive content generated as a result of coaching sessions. Customer shall also own all data which is specific to Customer's coaching programs, including program descriptions, meeting schedules, sponsor information, coach information, coach matching questions and measurement surveys. Optify shall have no legal or equitable interest in, or claim to, such data and information; provided, however, that Optify may run and use metrics on the foregoing data and information for the purpose of maintaining, marketing and improving Optify's products and services. Customer shall reasonably comply with Optify's requests for access to the foregoing data to be used as stated above.

3. CONFIDENTIAL INFORMATION; PERSONAL INFORMATION

3.1 Confidential Information. Customer acknowledges that, in the course of performing this Agreement, Customer may obtain information relating to products (such as goods, services, and software) of Optify, or relating to the Optify itself which is of a confidential and proprietary nature. "**Confidential Information**" shall mean any non-public information of Optify that is that is designated as confidential, or that the Customer knew or reasonably should have known was confidential or proprietary because it derives independent value from not being generally known to the public. Confidential Information includes materials and all communications concerning Optify's business and marketing strategies, including but not limited to employee and customer lists, customer profiles, project plans, design documents, product strategies and pricing data, research, advertising plans, leads and sources of supply, development activities, design and coding, interfaces with the Cloud Service, anything provided by Optify in connection with the Cloud Service provided under this Agreement, including, without limitation, computer programs, technical drawings, algorithms, know-how, formulas, processes, ideas, inventions (whether patentable or not), schematics and other technical plans and other information of Optify which by its nature can be reasonably expected to be proprietary and confidential, whether it is presented in oral, printed, written, graphic or photographic or other tangible form (including information received, stored or transmitted electronically) even though specific designation as Confidential Information has not been made. Confidential Information also includes any notes, summaries, analyses of the foregoing that are prepared by Customer. Without limiting the generality of the foregoing, Optify's Confidential Information shall include Optify's proprietary methodologies and Optify Materials.



3.2 Non-use and Non-disclosure. Except as provided herein, Customer will not at any time without Optify's prior written consent disclose to any person or use for its own benefit or the benefit of anyone, Confidential Information of Optify without the prior written consent of Optify. Customer shall limit disclosure of Confidential Information to its: (i) employees or agents who have a need to know related to the Parties' business relationship; (ii) third party auditors or consultants who have a need to know in order to perform their respective contractual obligations for Customer; (iii) or as otherwise necessary to carry out its duties under this Agreement, provided that any person to whom Confidential Information may be disclosed under subsections (i) or (ii), above are subject to a confidentiality agreement, or in the case of a Customer's employees, confidentiality policies, that in either case protects the Confidential Information of the Optify in a manner that is consistent with the terms of this Section, and further provided that Customer shall be allowed to disclose Confidential Information of Optify to the extent that such disclosure is approved in writing by Optify, or necessary to enforce its rights under this Agreement. Upon termination of this Agreement or upon the request of Optify, Customer shall promptly deliver to Optify or destroy any and all such information in its possession or under its control, and any copies made thereof which Customer may have made, except as the parties by prior express written permission have agreed to retain. Customer acknowledges and agrees that a breach of its obligations under this Section may cause harm to Optify for which monetary damages are not a sufficient remedy. In such event Customer understands and agrees that the Optify shall be entitled to seek to obtain from a court of appropriate jurisdiction immediate injunctive or other equitable relief to which it may be entitled under the circumstances in addition to other remedies allowed under this Agreement and under applicable law.

3.3 Non-Applicability. The obligations of confidentiality shall not apply to information which (i) has entered the public domain or is otherwise publicly available, except where such entry or availability is the result of Customer's breach of this Agreement; (ii) prior to disclosure hereunder was already in Customer's possession without restriction as evidenced by appropriate documentation; (iii) Customer can demonstrate was obtained by Customer on a non-confidential basis from a third party who has the right to disclose such information; or (iv) was developed by Customer without any use of any of the Confidential Information as evidenced by appropriate documentation.

3.4 Personal Information and Customer Data.

(a) Optify shall take commercially reasonable steps, or cause such commercially reasonable steps to be taken, designed to prevent security breaches to the Cloud Services.

(b) Optify shall only use the Customer data to (i) provide the Cloud Services (including reporting to Customer on their use of the Cloud Service), (ii) use aggregated and/or anonymized information to improve and market its services, develop new services, show trends about general use of services, and for statistical analysis and business measures, (iii) conduct research, including to measure and improve coaching performance, (iv) monitor Customer's use of the Cloud Services for security and technical support purposes and for validating Customer's compliance and usage limitations, and for purposes of otherwise complying with Optify's obligations to Customer, (v) enforce the terms of this Agreement, and (vi) share with any Optify subcontractors who need to know such information in order to provide the Cloud Services, provided that they are bound by similar confidentiality obligations.

(c) Optify and Customer will comply with all applicable privacy and other laws and regulations relating to protection, collection, use, and distribution of Personal Data.



4 WARRANTIES AND DISCLAIMER OF WARRANTIES

4.1 Limited Product Performance Warranty. Optify warrants that during the applicable Subscription Term, the Cloud Service will perform in all material respects in accordance with any applicable documentation. In the event of a breach of the foregoing warranty, Optify's sole obligation, and Customer's exclusive remedy shall be for Optify to use commercially reasonable efforts to (i) correct any failure(s) of the Cloud Service to perform in all material respects in accordance with the documentation or (ii) if Optify is unable to provide such a correction within thirty (30) days of receipt of notice of the applicable non-conformity, Customer may elect to terminate the associated Subscription. The warranty set forth in this Section 4.1 does not apply to any trial use of a feature or any beta version of a feature, or if the Cloud Service or any portion thereof: (a) has been altered, except by or on behalf of Optify; (b) has not been used, installed, operated, repaired, or maintained in accordance with this Agreement and/or the applicable documentation; or (c) is used on equipment, products, or systems not meeting specifications identified by Optify in the applicable documentation. Additionally, the warranties set forth herein only apply when notice of a warranty claim is provided to Optify during the applicable Subscription Term, and do not apply to any bug, defect or error caused by or attributable to software or hardware not supplied by Optify.

4.2 Warranty Disclaimer. EXCEPT AS SET FORTH IN SECTION 4.1 OPTIFY MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE CLOUD SERVICE IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND AND OPTIFY MAKES NO ADDITIONAL WARRANTIES, WHETHER EXPRESSED, IMPLIED OR STATUTORY, REGARDING OR RELATING TO THE CLOUD SERVICE OR ANY MATERIALS FURNISHED OR PROVIDED TO CUSTOMER UNDER THIS AGREEMENT. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, OPTIFY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT WITH RESPECT TO THE CLOUD SERVICE AND ANY MATERIALS FURNISHED OR PROVIDED TO CUSTOMER UNDER THIS AGREEMENT. CUSTOMER AGREES THAT IT IS SOLELY RESPONSIBLE FOR THE RESULTS OBTAINED IN CONNECTION WITH ITS USE OF THE CLOUD SERVICE PROVIDED HEREUNDER. IN ADDITION, CUSTOMER UNDERSTANDS AND AGREES THAT THE CLOUD SERVICE AND ANY MATERIALS FURNISHED OR PROVIDED TO CUSTOMER UNDER THIS AGREEMENT ARE NOT DESIGNED OR INTENDED FOR USE IN CONNECTION WITH ANY CONTENT OR COACHING ACTIVITIES THAT ARE REGULATED OR VIOLATE ANY LAWS OR WHICH OTHERWISE PRESENT A HIGH RISK OF CLAIMS OR LIABILITIES WHICH MIGHT BE ASSERTED BY ANY GOVERNMENTAL ENTITY OR THIRD PARTY AGAINST ANY COACH, ANY COACHING CLIENT, CUSTOMER OR OPTIFY AND SUCH USAGE IS EXPRESSLY PROHIBITED WITHOUT THE PRIOR WRITTEN CONSENT OF OPTIFY. CUSTOMER WILL INDEMNIFY OPTIFY IN RESPECT OF ANY CLAIM BROUGHT AGAINST OPTIFY AS A RESULT OF CUSTOMER'S BREACH OF THE FOREGOING RESTRICTION.

4.3 Compliance With Laws. Each party agrees at all times to comply with laws and regulations applicable to it in its performance of this Agreement. Optify agrees and warrants that the Cloud Service will not violate any applicable law, rule, or regulation.



5 LIMITATION OF LIABILITY

5.1 Excluded Damages. EXCEPT WITH RESPECT TO OPTIFY'S BREACH OF ITS OBLIGATIONS UNDER SECTION 3 (CONFIDENTIALITY; PERSONAL INFORMATION) OF THIS AGREEMENT, IN NO EVENT SHALL OPTIFY OR ITS AFFILIATES BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, COST OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY PUNITIVE, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THE PERFORMANCE OF OR FAILURE TO PERFORM THIS AGREEMENT, WHETHER ALLEGED AS A BREACH OF CONTRACT OR TORTIOUS CONDUCT, INCLUDING NEGLIGENCE, EVEN IF OPTIFY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

5.2 Damages Cap. EXCEPT WITH RESPECT TO A BREACH OF ITS OBLIGATIONS UNDER SECTION 3 (CONFIDENTIALITY), IN NO EVENT SHALL OPTIFY'S TOTAL, CUMULATIVE LIABILITY UNDER THIS AGREEMENT EXCEED AN AMOUNT WHICH IS GREATER THAN THE AMOUNT PAID OR PAYABLE BY CUSTOMER TO OPTIFY UNDER THIS AGREEMENT.

6 TERM AND TERMINATION

6.1 Term. The Subscription Term and the Term of this Agreement will commence and expire in accordance with the start date and end date for the Subscription as selected by Customer during the registration process, unless earlier terminated in accordance with Section 6.3 below. Notwithstanding the foregoing or anything else to the contrary, the Subscription Term and the Term of this Agreement will automatically renew for successive terms of equal length to the then expiring term unless either Customer or Optify cancels such auto renewal prior to the expiration of the current term as provided for via Optify's website.

6.2 Use of Promotion Code. In the event that a Promotion Code is accessed by Customer to discount the Subscription Term, the Promotion Code discount will automatically expire at the end of the Promotion term, which term shall be noted below the Promotion Code on the Subscription checkout page where the discount is calculated. Upon expiration of the Promotion term, the Subscription shall continue at full price, and automatically renew for successive terms of equal length until otherwise terminated according to Section 6.3 below.

6.3 Termination.

Optify may terminate the Subscription and this Agreement upon giving notice in writing to Customer if Customer commits a material breach of this Agreement, and has failed to cure such breach within thirty (30) days following a request in writing from Optify to do so. In such case of termination by Optify for material breach by Customer, Customer shall not be entitled to a return of any prepaid fees.

Upon termination of this Agreement, Customer may retain any printouts and other written output obtained through the use of the Cloud Services. Further, upon termination or expiration of this Agreement, Customer may request in writing, no later than thirty (30) days following such termination or expiration of this Agreement that Customer's data be deleted permanently from the Cloud Services and the computing platforms upon which such Cloud Services operate. Optify reserves the right, in its sole discretion to



delete any and all of Customer's data after a thirty (30) day period following expiration or termination of this Agreement.

7 GENERAL

7.1 **Assignment.** Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other party, provided that no such consent will be required to assign this Agreement in its entirety to a successor in interest in connection with a merger, acquisition or sale of all or substantially all of the assigning party's assets. Any assignment in violation of this Section 7.1 shall be void, *ab initio*, and of no effect. Subject to the foregoing, this Agreement is binding upon, inures to the benefit of and is enforceable by, the parties and their respective permitted successors and assigns.

7.2 **Publicity.** Each of the parties agrees that they may refer to the other as a customer or supplier of the other, as applicable.

7.3 **Marks.** Optify shall own and retain all right, title and interest in its Marks. Customer may not use, copy, or distribute the Optify Marks without Optify's prior written approval in each instance. Customer shall immediately cease any use of Optify's Marks which is not approved by Optify as required hereunder. Customer may have the ability to attach Customer's brand and/or name to some aspects of the Cloud Services as the same will appear when the Cloud Services are used by the Coaching Clients. Customer shall own and retain all right, title and interest in its Marks. Optify may not use, copy, or distribute the Customer Marks without the Customer's prior written approval in each instance. Customer will indemnify and defend Optify with respect to any claims made against Optify alleging that Customer's Marks infringe the intellectual property rights of a third party.

7.4 Governing Law; Equitable Relief.

(a) **Governing Law; Venue.** This Agreement, and any claim, dispute or controversy of whatever nature arising out of or relating to this Agreement, will be governed by the laws of the Commonwealth of Virginia, without giving effect to any conflicts of laws principles that require the application of the laws of a different jurisdiction. Any action or proceeding arising from this Agreement must be brought in the state or federal courts located in Fairfax County, Virginia. Each Party irrevocably submits to the exclusive jurisdiction and venue of any such court in any such action or proceeding.

(b) **Equitable Relief.** A breach or threatened breach, by either party of Section 3 may cause irreparable harm for which damages at law may not provide adequate relief, and therefore Optify shall be entitled to seek injunctive relief without being required to post a bond.

7.5 **Notices.** Any notice or other communication under this Agreement given by either party to the other will be deemed to be properly given if given in writing and delivered in person or by e-mail, if acknowledged received by return e-mail or followed within one day by a delivered or mailed copy of such notice, or if mailed, properly addressed and stamped with the required postage, to the intended recipient at its address specified on an Order Form. Customer's address for notice is as provided by Customer in connection with Customer's registration for use of the Cloud Service.



7.6 Non-waiver. Any failure of either party to insist upon or enforce performance by the other party of any of the provisions of this Agreement or to exercise any rights or remedies under this Agreement will not be interpreted or construed as a waiver or relinquishment of such party's right to assert or rely upon such provision, right or remedy in that or any other instance.

7.7 Severability. If any provision of this Agreement is held to be invalid or unenforceable, the remaining portions will remain in full force and effect and such provision will be enforced to the maximum extent possible so as to give effect the intent of the parties and will be reformed to the extent necessary to make such provision valid and enforceable.

7.8 Suggestions, Ideas and Feedback. Subject to its obligations under Section 3 of this Agreement (Confidential Information), Optify will be free to use, irrevocably, in perpetuity and for any purpose, all suggestions, ideas and/or feedback (collectively, "**Feedback**") provided to Optify by Customer with respect to the Cloud Service. The foregoing grant of rights is made without any duty to account to any of the foregoing persons or entities for the use of such Feedback.

7.9 Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof, and it supersedes, and its terms govern, all prior proposals, agreements, or other communications between the parties, oral or written, regarding such subject matter. This Agreement may be modified from time to time by Optify by providing Customer with not less than thirty (30) day's written notice with email being deemed sufficient notification. To the extent that any such modifications materially and negatively impact Customer's ability to benefit from the use of the Cloud Service, Customer may request termination of the remaining time on its active Subscription in return for a pro-rata refund of any fees which are unearned by Optify beginning on the effective date of such proposed amendment to this Agreement.

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