

# **Toptal Affiliate Program Terms and Conditions:**

## **PartnerStack Platform**

Date of Last Revision: July 13, 2023

### **1. Affiliate Program in General.**

Pursuant to these terms and the terms on the PartnerStack platform (collectively, "Terms"), you may work with Toptal, LLC ("Toptal") to provide Toptal with Leads (as defined in Section 5.1 below) through the PartnerStack platform. For each Lead, Toptal may provide you a Lead Payment (as defined in Section 5.2 below). While Toptal appreciates all leads provided, the Terms do not obligate Toptal to consider, contact, cooperate with, evaluate, approve, accept, engage, or enter into any agreement or other arrangement based on a Lead provided to Toptal and may refuse to proceed with any Lead in Toptal's sole and absolute discretion.

### **2. Acceptance and Legally Binding Effect.**

By accepting the Terms or by providing Toptal with Leads, you acknowledge that you have read, understood, and agree to be legally bound by the Terms in their entirety. If you are entering into these Terms on behalf of a company or other legal entity, you must have the legal authority to contractually bind such company or other legal entity to these Terms, in which case the terms "you" or "your" will refer to such company or other legal entity. If you lack such legal authority to contractually bind or you do not agree to these Terms, you must not accept these Terms or provide Toptal with Leads as contemplated herein.

### **3. Updates to the Terms.**

Toptal reserves the right, in its sole discretion, to change or modify portions of the Terms at any time. Toptal will post any changes to the Terms on the PartnerStack platform and will indicate at the top of the Terms page the date these terms were last revised. It is your responsibility to check the Terms periodically for changes. Your continued participation in the Toptal Affiliate Program through PartnerStack after the date any such changes become effective constitutes your acceptance of the new or revised Terms.

### **4. Description of Roles.**

4.1. You will have the ability to post advertisements approved in writing by Toptal to promote Toptal's services to your customer base through your marketing channels. You agree that you will not market or attempt to procure Leads through search engine optimization or any form of paid marketing without Toptal's express written consent. You will then send potential customer information through the third party platform, PartnerStack, or by use of a link directly to Toptal. To be active on PartnerStack you must create a user account in the PartnerStack platform and accept its applicable policies, including terms of service and privacy policy (collectively, "PartnerStack Policies"). Toptal is not a party to such PartnerStack Policies and is not and shall not be liable, in any way, for any liabilities arising from or in connection with such PartnerStack Policies. Nothing in these Terms provides any license to use or distribute (in any manner) Toptal's trademarks, service marks, or logos, including the mark "Toptal" and associated logos and slogans without Toptal's written approval. Any approved advertisements may not be combined with or used in association with any other trademarks, trade names, or logos. You represent and warrant that you will comply with all applicable data protection laws and have approval from such leads to transfer the information provided to both PartnerStack and Toptal for marketing purposes and pursuant to Section 6.

4.2. Toptal curates and operates a proprietary network ("Network") of select independent contractors (individually and collectively, "Talent") who provide software engineering or other professional services to Toptal's clients. Clients then work with Toptal through Toptal's "Platform" which includes (a) Toptal's web site located at <http://www.toptal.com> (the "Site"), (b) Toptal's technology platform that facilitates and tracks Leads provided to Toptal and any associated payments, and (c) all software, data, reports, text, images, sounds, video, and content made available through any of the above (collectively, the "Content"). The Site, Network, Platform, Toptal's Proprietary Information (as defined in Section 9 below), and any other Toptal products or services are collectively referred to in these Terms as "Toptal Properties." "Toptal Properties" include all such elements in whole and in part.

4.3. You represent and warrant that you will: a) ensure that your activities in connection with this Agreement adhere to good professional and industry standards and comply with all applicable laws, rules, and regulations and all relevant licenses, permits, or other governmental authorization required in connection with the execution, delivery, and performance of this Agreement; (b) avoid deceptive, misleading, or unethical practices; and (c) will have consent from the Lead to pass their information, including the personal information of their contacts, to Toptal for marketing purposes.

4.4 Subject to and solely in connection with the Terms, Toptal grants you a limited worldwide, non-exclusive, non-sublicensable, non-transferable license to use the Toptal corporate names, trade names, trademarks, service marks, logos, and domain names of Toptal for the sole purpose of promoting and marketing Toptal to leads in connection with the PartnerStack platform. Toptal may revoke any permission to use such license at Toptal's sole discretion, and you shall cease any use of such license immediately upon Toptal's request.

4.5. To permit Toptal to accurately track, report, and compensate you for Leads, Toptal will provide you with a specific Designated Link. Partner must ensure that each of the links between its advertising and Toptal through the PartnerStack platform properly utilizes the Designated Links provided to you. You are not authorized to alter, modify or change any of the Designated Links or any tracking mechanisms connected to such Designated Links. Toptal is not responsible to you for any failure by you to use Designated Links in accordance with these Terms.

## **5. Lead Process.**

**5.1. Leads.** A "Lead" is a lead that is identified by you as a potential prospective client of Toptal which, (a) is an individual, company, or other legal entity that you have informed of the opportunity to become a Toptal client, (b) is not an actual, prospective, or past client of Toptal, nor an affiliate of such entity, as determined by Toptal in its sole discretion, (c) you (including any representative or authorized signatory of you or the entity you are affiliated with) are not a director, manager, investor, member, employee, contractor, or otherwise involved in the decision making process of such potential client (except where you are a venture capital or similar firm and you make Leads to your portfolio companies), (d) is not a party to any dispute, litigation, threatened dispute or threatened litigation which involves Toptal or any of its members, managers, employees or workers, and (e) is not identified on any Prohibited List (as defined in Schedule B. In addition to the above, a Lead must result in the party being accepted as a Toptal client within sixty (60) days following submission as a Lead and the Lead completing a trial period with Toptal and paying its first invoice in full to Toptal for the party's engagement of Talent(s) (with no conditions, waivers, or contingencies applicable to such payment). Such payment must occur within twelve (12) months of the date the Lead was provided to Toptal. All reporting for Leads will be communicated to you through the PartnerStack platform.

**5.2. Lead Payment.** Toptal will provide a payment through PartnerStack (subject to the terms on the PartnerStack Platform and your agreement directly with Partnerstack (each such credit, a "Lead Payment").

Toptal will provide the Lead Payment within sixty (60) days from the date that the conditions for that Lead Payment have been satisfied in accordance with these Terms.

TOPTAL RESERVES THE RIGHT TO REJECT A LEAD AND OR TO REFUSE TO COMPENSATE YOU FOR A LEAD AT ANY TIME AND FOR ANY REASON, INCLUDING, BUT NOT LIMITED TO, IF TOPTAL, IN ITS SOLE DISCRETION, HAS DETERMINED THAT YOU HAVE PROVIDED SUCH LEAD NOT IN ACCORDANCE WITH THESE TERMS, BELIEVES THAT YOU HAVE MISREPRESENTED INFORMATION TO TOPTAL RELATING TO THE LEAD, HAVE TRIED TO OTHERWISE ABUSE OR "GAME" THE LEAD SYSTEM TO COLLECT MONEY WITHOUT THE EXISTENCE OF A GOOD FAITH LEAD, OR ENGAGED IN OTHER FRAUDULENT ACTIVITY.

## **6. Use of Information.**

You agree that you have the necessary permissions, consents, and rights to provide Toptal and for Toptal to use as is necessary to effectuate the purpose of these Terms all information related to Leads (including the information of any Leads or Qualified Leads provided to Toptal by you), including names and contacts, which are necessary to: (a) confirm any Lead, (b) determine your compliance with these Terms, (c) comply with applicable law and any government or court order, demand, or action, and (d) otherwise perform any function required by a Lead in Toptal's discretion.

## **7. No Duplicate Payments.**

Toptal may offer other programs to compensate individuals and/or entities for Leads. If you participate in any other such program, Toptal will only credit or pay one (1) credit, fee, or other payment for each Lead, regardless of any conflicting provisions in these Terms or the applicable terms and conditions for any other such program or offering. Toptal will determine which fee or credit applies and will pay or credit (and have no obligation to pay/credit any amounts other than) the highest single amount applicable to the relevant Lead.

## **8. Termination.**

These Terms will commence on the date of your acceptance of these Terms or the date that you provide Toptal with a Lead, whichever is earlier, and will continue in effect until terminated. Toptal may terminate these Terms for convenience at any time and for any or no reason, immediately upon notice to you. You may terminate these Terms for convenience with ten (10) business days' written notice to Toptal. Sections 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15 will survive any termination of these Terms. Upon termination of these Terms, Toptal agrees to honor any Lead Payment issued on or prior to the date of such termination or, consistent with the second paragraph of Section 5.2, to issue any yet-unissued Lead Payment scheduled to be issued within the 60-day period after the date of such termination.

## **9. Restrictions on Your Use of Toptal Proprietary Information; Confidentiality.**

All business, technical or financial information disclosed by Toptal that includes or relates to (a) payments made under these Terms, or (b) any information of any client or Talent (whether or not either have been referred by you), is Toptal's "Proprietary Information". You will hold in confidence and not disclose to others any Proprietary Information. You will not use Proprietary Information for any purposes other than to provide Leads to Toptal in accordance with these Terms. You will not be obligated under this Section 9 with respect to information that you can document is or becomes readily publicly available without restriction and through no fault of yours. You may make disclosures of Proprietary Information as required by law or court order provided that you give Toptal advance written notice. When you have stopped providing Leads to Toptal in connection with these Terms, completed your use of the Platform, or when requested by Toptal, you will destroy all items and copies containing or embodying Proprietary Information, except to the extent necessary to comply with applicable law. This Section 9 is in addition to and will not limit any other obligation of confidentiality that you may have to Toptal, including without limitation, in any other agreement.

## **10. Your Representations and Warranties; Indemnification; No Warranties and Disclaimer by Toptal.**

You represent and warrant to Toptal that (a) you have obtained all necessary permissions, consents, and rights necessary to provide Toptal with any Leads or any other third party information under or in connection with these Terms and for Toptal to use such information as contemplated by these Terms, (b) all communications, and Leads provided under these Terms fully comply with Schedule A attached to these Terms, (c) all Leads that you make will be made in compliance with all applicable laws, (d) you are not organized under the laws of, do not do business in, and, will not provide any Leads while you are situated in any Prohibited Region (as defined in Schedule B), (e) you are not identified on any Prohibited List (as defined in Schedule B), and (f) you will not provide a Lead to Toptal regarding any person, business, or entity who is a national of or resides or works in any Prohibited Region or who is identified on any Prohibited List. You shall notify Toptal immediately if your status under this Section 10 changes. You will indemnify and hold harmless Toptal, its subsidiaries, officers, members, employees, agents, and third parties from and against any claims, liabilities, losses, costs, damages or expenses (including attorney's fees) arising, directly or indirectly, in connection with: (a) your acts or omissions under this Agreement, including, without limitation, any claim of a third party resulting from your acts or omissions; (b) your use of the PartnerStack platform; (c) any breach or default of these Terms.

## **NO WARRANTIES AND DISCLAIMER BY TOPTAL.**

THE TOPTAL PROPERTIES, AND PARTICULARLY THE SITE, PLATFORM, CONTENT, PROPRIETARY INFORMATION, THE LEAD PROGRAM AND ALL SERVER AND NETWORK COMPONENTS, ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT ANY WARRANTIES OF ANY KIND, AND TOPTAL EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, INCLUDING ANY IMPLIED

WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, AND ANY REPRESENTATIONS OR WARRANTIES ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. YOU ACKNOWLEDGE THAT TOPTAL DOES NOT WARRANT THAT YOUR ACCESS OR USE OR BOTH OF THE TOPTAL PROPERTIES WILL BE UNINTERRUPTED, TIMELY, SECURE, ERROR-FREE OR VIRUS-FREE, AND TOPTAL DOES NOT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE TOPTAL PROPERTIES, AND NO INFORMATION, ADVICE OR SERVICES OBTAINED BY YOU FROM TOPTAL OR THROUGH THE TOPTAL PROPERTIES WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THESE TERMS.

## **11. LIMITED LIABILITY.**

**11.1. Exclusion of Damages and Limitation of Liability.** YOU AGREE THAT TOPTAL WILL NOT BE LIABLE TO YOU FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS OR THE LIKE) ARISING OUT OF OR RELATING TO THESE TERMS, INCLUDING WITHOUT LIMITATION, YOUR INABILITY TO MAKE LEADS, USE OF PARTERSTACK'S PLATFORM, THE SITE, PLATFORM, CONTENT, PROPRIETARY INFORMATION, OR ANY INTERRUPTION OR DISRUPTION OF SUCH USE, EVEN IF TOPTAL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF THE CAUSE OF ACTION (WHETHER IN CONTRACT, TORT, BREACH OF WARRANTY OR OTHERWISE). THE AGGREGATE LIABILITY OF TOPTAL WITH REGARD TO THESE TERMS WILL IN NO EVENT EXCEED THE CUMULATIVE AMOUNT OF LEAD PAYMENTS ACTUALLY ISSUED TO YOU IN THE 12 MONTHS PRECEDING YOUR CLAIM PURSUANT TO THESE TERMS.

**11.2. Jurisdictional Limitations.** Some states and other jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental or consequential damages, which means that some of the above limitations may not apply to you. IN SUCH STATES AND OTHER JURISDICTIONS, TOPTAL'S LIABILITY WILL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW.

## **12. Relationship of Parties.**

Toptal and you are independent contractors for all purposes under these Terms. You are not authorized to and will not (a) represent yourself as, or allow yourself to be perceived by others as, an agent, employee, contractor, or representative of Toptal, (b) make any representation or statement on Toptal's behalf or give others the impression that you are authorized to make any representation or statement on Toptal's behalf, and (c) bind or attempt to bind Toptal to any contract. Toptal will only be responsible for Lead Payments issuable under these Terms and Toptal's income taxes in connection with these Terms, if any. You will be responsible for all other taxes, third party transaction fees, and assessments including without limitation, sales, value-added, use and similar taxes, and wire transfer fees, if any.

## **13. Dispute Resolution & Class Action Waiver.**

These Terms are made under, and will be governed, construed, and enforced in accordance with, the laws of the State of New York, USA, without giving effect to principles of choice or conflicts of law that would result in the application of the laws of any other jurisdiction. To the maximum extent permitted by law, any dispute, claim, or controversy arising out of or relating to these Terms, including the negotiation, breach, termination, enforcement, interpretation, or validity thereof, or the scope or applicability of this agreement to arbitrate, will be submitted to Judicial Arbitration and Mediation Services, Inc. ("JAMS") for binding arbitration in New York, New York, USA by a single arbitrator. The arbitrator will be selected by JAMS in an impartial manner determined by it. The language of the arbitration will be English. Any arbitration conducted pursuant to these Terms will be governed by the Federal Arbitration Act (FAA) (9 U.S.C. §1 et seq.) and will be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those Rules (or in accordance with the JAMS International Arbitration Rules if applicable). The arbitrator will have complete authority to render any and all relief, legal and equitable, appropriate under the FAA or New York law. This arbitration provision will not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. Without limiting the foregoing and in furtherance thereof, judgment on an arbitration award may be entered in any court of competent jurisdiction. If any matter arising under or related to these Terms, including the breach, termination, enforcement, interpretation, or validity, or the scope or applicability of this agreement to arbitrate, is not

arbitrable as a matter of applicable law (or if a party attempts to assert a claim in court against the other party over any matter arising under or relating to these Terms), then the federal or state courts sitting in New York, New York USA will have exclusive jurisdiction. You and Toptal hereby submit to the exclusive jurisdiction of such federal or state court and irrevocably waive any claim of inconvenient forum. You and Toptal hereby irrevocably waive any right to trial by jury. Notwithstanding any other provision in these Terms, if any portion of this Section 13 is deemed invalid or unenforceable, then the remaining provisions of this Section 13 will be enforced to the maximum extent permitted under applicable law.

#### **14. Limitations on Assignment.**

Neither party will have the right to assign these Terms to another party without the other party's written consent, except that either party may, upon written notice to the other party (and without the other party's consent), assign these Terms in its entirety to a parent company, any subsidiary of a parent company, or an affiliate in a common control group in connection with a corporate reorganization, entity conversion, acquisition, merger, or sale of or substantially all of its assets; provided that such assignee agrees in writing to be bound by the terms and conditions of these Terms.

#### **15. Miscellaneous.**

Except as expressly stated herein, these Terms constitute the entire agreement between you and Toptal with respect to the subject matter of these Terms. You agree that these Terms are solely intended for the benefit of you and Toptal and Toptal's respective successors and permitted assignees and are not intended to benefit, any other entity or person, including without limitation any Lead except as expressly stated in these Terms. These Terms may only be enforced by you and Toptal and not by any other person or entity, including, without limitation, any Lead. Any notices to Toptal in connection with these Terms will be made by email transmitted to [legal@toptal.com](mailto:legal@toptal.com). Notices to you will be made by email or regular mail and will be deemed to have been duly given when sent by Toptal to the email or mailing address associated with your Toptal account. You agree that Toptal is entitled to seek injunctive and other equitable relief to enforce your obligations under these Terms to avoid harm that cannot adequately be remedied by monetary damages. The section and subsection headings used in these Terms are for convenience only and will not be used in interpreting these Terms. In the event that any provision of these Terms is determined to be illegal or unenforceable, that provision will be first revised to give the maximum permissible effect to its original intent or, if such revision is not permitted, that specific provision will be eliminated so that these Terms will otherwise remain in full force and effect and enforceable.

#### **Schedule A**

##### **Prohibited Regions and Prohibited List**

"Prohibited Regions" means any country or region with respect to which U.S. law prohibits transactions, including the payment of funds or the export, re-export, or transfer of items, services, or technology, including but not necessarily limited to: \* the Crimean, Donetsk, and Luhansk regions of Ukraine, and other Russia-controlled regions of Ukraine covered by applicable sanctions; \* Cuba; \* Iran; \* North Korea; and \* Syria.

"Prohibited List" means the individual or entities with which entities are not permitted to transact business, including, but not necessarily limited to, each of the following: \* the Specially Designated Nationals and Consolidated Sanctions Lists (maintained by the Office of Foreign Assets Control, U.S. Department of the Treasury); \* the Denied Persons, Entity, and Unverified Lists (maintained by the Bureau of Industry and Security, U.S. Department of Commerce); and \* the Consolidated List of sanctions designations by the United Nations, European Union and United Kingdom.