

OPENVPN AFFILIATE PROGRAM AGREEMENT

This agreement sets out the terms of the OpenVPN Affiliate Program under which OpenVPN will pay commissions to Affiliates for sales leads generated by those Affiliates. To participate in that program as an Affiliate, you will need to agree to these terms as provided below.

We periodically update these terms. We might also choose to replace these terms in their entirety if, for example, the Affiliate Program changes, ends, or becomes part of an existing program, including our partner programs. If we update or replace the terms we or the Affiliate Tool will let you know via electronic means, which may include an in-app notification or by e-mail. If you don't agree to the update or replacement, you can choose to terminate as we describe below.

Definitions

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

"Affiliate Lead" means a customer prospect who clicks on the Affiliate Link that we have made available to you via the Affiliate Tool.

"Affiliate Link" means the unique tracking link you place on your site or promote through other channels.

"Affiliate Policies" means the policies applicable to you and other participants in our Affiliate Program that we may make available to you from time to time.

"Affiliate Tool" means the tool that we make available to you upon your acceptance into the Affiliate Program and for you to use in order to participate in the Affiliate Program.

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

"Commission" means an amount described in the Affiliate Tool (or if applicable, in the Program Policies) for each Customer Transaction.

"Customer" means the authorized actual user of the OpenVPN Products who has purchased the OpenVPN products after being an Affiliate Lead.

"Customer Transaction" means a transaction by an Affiliate Lead that is eligible for Commission pursuant to the 'Customer Transactions' section of this Agreement. A Customer Transaction may include customer purchases, as further described in the Affiliate Tool.

"Customer Data" means all information that the Customer submits or you collect in connection with generating a lead that leads to a sale of OpenVPN Products.

"OpenVPN Products" means *Access Server*, *CloudConnexa®*, and other of our products that we may designate from time to time as being eligible for inclusion in the Affiliate Program.

“Program Policies” means the guidelines and policies for the Affiliate Program, which are at <https://openvpn.net/legal/.com>, and which we may modify from time to time.

“Subscription” means a license to use one or more OpenVPN Product that is granted to a Customer.

"We", "us", “our”, and “OpenVPN” means OpenVPN, Inc.

“You” and “Affiliate” means the party, other than OpenVPN, entering into this Agreement and participating in the Affiliate Program as an Affiliate.

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.

You will comply with the terms and conditions of this Agreement at all times, including any applicable Program Policies.

Acceptance as Affiliate

Your right to participate in the OpenVPN Affiliate Program is subject to the condition that you sign an Affiliate Acceptance Agreement in a form we specify and that we countersign that Affiliate Acceptance Agreement.

Customer Transactions

1. Affiliate Program Limits. Each accepted Affiliate Lead will expire according to the information provided in the Affiliate Tool (or if applicable, in the Program Policies) from the date the Affiliate Lead clicked on the Affiliate Link that was made available by you. We will pay you Commission as described in the Affiliate Tool (or if applicable, in the Program Policies) for each new Customer who completes an applicable Customer Transaction after clicking on an Affiliate Lead made available by you, provided that you remain eligible to receive Commissions pursuant to the terms of this Agreement. The start of the Customer’s subscription is determined by the date of the first purchase or sign up (as applicable) of the Subscription by the Customer and you will receive a Commission payment for that Customer Transaction only, regardless of any additional purchases made by that Customer during the term of their subscription.

2. Eligibility. To be eligible for Commission (i) an Affiliate Lead must be accepted and valid in accordance with Section 5 “Acceptance and Validity”, (ii) a Customer Transaction must have occurred, (iii) a Customer must remain a customer during the locking period in the Affiliate Tool (or if applicable, in the Program Policies). You are not eligible to receive Commission or any other compensation from us based on transactions for Other Products or if: (i) such compensation is disallowed or limited by federal, state or local law or regulation in the United States or the laws or regulations of your jurisdiction; (ii) the applicable Customer objects to or prohibits such compensation or excludes such compensation from its payments to us; (iii)

the Customer has paid or will pay such commissions, referral fees, or other compensation directly to you, or (iv) the Commission payment has been obtained by fraudulent means, misuse of the Affiliate Link, in violation of any Affiliate Program Policies that we make available to you, misuse of the Affiliate Tool or by any other means that we deem to breach the spirit of the Affiliate Program, or (v) the Customer participates in any of our other partner programs and is eligible to receive a commission in relation to the Customer Transaction under any of these programs. If at any point you are eligible to receive a revenue share payment or commission under another Program at OpenVPN, that payment amount will not change based on your participation in the Affiliate Program. We may discontinue Commission payments should any of the eligibility criteria set forth in this subsection fail to be met at any time.

3. Acceptance and Validity. You will only be eligible for a Commission payment for any Customer Transactions that derived from Affiliate Leads generated by the Affiliate Link that we make available to you and are accepted by OpenVPN. An Affiliate Lead will be considered valid and accepted if, in our reasonable determination: (i) it is a new potential customer of ours, and (ii) is not, at the time of submission or sixty (60) days prior, one of our pre-existing customers, or involved in our active sales process. Notwithstanding the foregoing, we may choose not to accept an Affiliate Lead in our reasonable discretion. If an Affiliate Lead does not purchase the Subscription within the time period described on the Affiliate Tool (or if applicable, in the Program Policies) of their first click on the Affiliate Link, you will not be eligible for a Commission payment, even if the Affiliate Lead decides to purchase after the time period has expired. An Affiliate Lead is not considered valid if its first click on the Affiliate Link is after this Agreement has expired or terminated.

4. Engagement with Prospects. Once we have received the Affiliate Lead information, we may elect to engage with the prospect directly, regardless of whether or not the Affiliate Lead is valid. If an Affiliate Lead is not valid then we may choose to maintain it in our database and we may choose to engage with such Affiliate Lead. Any sale to or other engagement between OpenVPN and an Affiliate Lead will be at OpenVPN's discretion, and we are free to decide not to sell or otherwise grant Subscriptions to or otherwise engage with any Affiliate Lead if we decide not to do so.

5. Commission and Payment. In order to receive payment under this Agreement, you must have: (i) completed all steps necessary to create your account in the Affiliate Tool in accordance with our directions, (ii) have a valid and up-to-date payment method in the Affiliate Tool with such account (iii) completed any and all required tax documentation in order for the Affiliate Tool to process any payments that may be owed to you.

6. Commission Payment. We or the Affiliate Tool will determine the currency in which we pay the Commission, 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). Taxes. You are responsible for payment of all taxes and fees (including bank fees) applicable to the Commission. All amounts payable by us to you are subject to offset by us against any amounts owed by you to us. Commission Amounts. We reserve the right to alter or change the Commission amount as per the Affiliate Tool.

7. Forfeiture of Right to Payment. **If you do not complete all of the actions described in Section 5 above within six (6) months after the close of a Customer Transaction, your right to receive Commission arising from any and all Customer Transactions with the associated Customer will be forever forfeited (each, a “Forfeited Transaction”).** We will have no obligation to pay you Commission associated with a Forfeited Transaction. Once you comply with all of the requirements in Section 5, then you will be eligible to receive Commission on Customer Transactions, as long as these Customer Transactions do not involve the same Customer associated with a Forfeited Transaction.

Training and Support

We may, but will not be required to, make available to you, without charge, training materials and other resources made available as part of our Affiliate Program. If we make such resources available to you, you will encourage your sales representatives and/or other relevant personnel to participate in training and/or other certifications as we recommend and may make available to you from time-to-time. We may change or discontinue any or all parts of the Affiliate Program benefits or offerings at any time without notice.

Trademarks

You grant to us a nonexclusive, nontransferable, royalty-free right to use and display your trademarks, service marks and logos (“Affiliate Marks”) in connection with the Affiliate Program and this Agreement.

During the term of this Agreement, if we make any of our trademarks available to you within the Affiliate Tool, you may use our trademark as long as you follow the usage requirements in this section. You must: (i) only use the images of our trademark that we make available to you, without altering them in any way; (ii) only use our trademarks in connection with the Affiliate Program and this Agreement; (iii) comply with our Trademark Usage Guidelines; and (iv) immediately discontinue use of our trademarks if you . You must not: (i) use our trademark in a misleading or disparaging way; (ii) use our trademark in a way that implies we endorse, sponsor or approve of your services or products; or (iii) use our trademark in violation of applicable law or in connection with an obscene, indecent, or unlawful topic or material.

Proprietary Rights

1. OpenVPN’s Proprietary Rights. No license to any OpenVPN Product is granted by this Agreement. The OpenVPN Products are protected by intellectual property laws. The OpenVPN Products belong to and are the property of us or our licensors (if any). We retain all ownership rights in the OpenVPN Products. You agree not to copy, rent, lease, sell, distribute, or create derivative works based on the OpenVPN Products in whole or in part, by any means, except as expressly authorized in writing by us. The OpenVPN trademarks that we use are our trademarks and you may not use them without our prior written permission, except as otherwise specifically set forth in this Agreement.

2. Customer’s Proprietary Rights. As between you and the Customer, the Customer retains the right to access and use the Customer portal associated with the OpenVPN Products. For the avoidance of doubt, the Customer will own and retain all rights to the Customer Data.

Confidentiality

As used in this Agreement, “Confidential Information” means all confidential information disclosed by a party (“Disclosing Party”) to the other party (“Receiving Party”), (i) whether orally or in writing, that is designated as confidential, and (ii) OpenVPN customer and prospect information, whether or not otherwise designated as confidential. Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party or (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party. The Receiving Party shall: (i) protect the confidentiality of the Confidential Information of the Disclosing Party using the same degree of care that it uses with its own confidential information, but in no event less than reasonable care, (ii) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, (iii) not disclose Confidential Information of the Disclosing Party to any third party, and (iv) limit access to Confidential Information of the Disclosing Party to its employees, contractors and agents. The Receiving Party may disclose Confidential Information of the Disclosing Party if required to do so under any federal, state, or local law, statute, rule or regulation, subpoena or legal process.

Opt Out and Unsubscribing

You will comply promptly with all opt out, unsubscribe, "do not call" and "do not send" requests. For the duration of this Agreement, you will establish and maintain systems and procedures appropriate to effectuate all opt out, unsubscribe, "do not call" and "do not send" requests.

Term and Termination

1. Term. This Agreement will apply for as long as you participate in the Affiliate Program, until terminated.
2. Termination Without Cause. Both you and we may terminate this Agreement on thirty (30) days written notice to the other party without cause in the terminating party’s discretion.
3. Termination for Agreement Changes. If we update or replace the terms of this Agreement, you may terminate this Agreement on five (5) days written notice to us, provided that you send us written notice within ten (10) days after we send you notice of the change.
4. Termination for Cause. We may terminate this Agreement: (i) upon ten (10) days’ notice to you of a material breach if such breach remains uncured at the expiration of such period; (ii) immediately, if you become the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors, (iii) immediately, if you breach the terms applicable to your subscription with us (if you have one), including if you default on your payment obligations to us or our affiliate, or (iv) immediately, if we determine that you are acting, or have acted, in a way that has or may negatively reflect on or affect us, our prospects, or our customers.
5. Effects of Termination. Termination of this Agreement: (i) without cause by us, (ii) by you with cause, (iii) by you according to Section 3 “Termination for Agreement Changes” shall not affect our obligation to pay you a Commission, so long as the related payment by the

Customer Transaction is recognized by us within thirty (30) days after the date of such termination. We will not pay you fees on Customer Transactions recognized by us after thirty (30) days after the date of such termination set out above. Provided however, in the event of termination without cause by you, or for cause by us, our obligation to pay and your right to receive any Commission will terminate upon the date of such termination, regardless of whether you would have otherwise been eligible to receive Commission prior to the date of termination. Except as expressly set forth in this section, you are not eligible to receive a Commission payment after termination of this Agreement. Upon termination, you will discontinue all use of and delete the Affiliate Tool that we make available to you for your participation in the Affiliate Program. Upon termination, an Affiliate Lead is not considered valid, and we may choose to maintain it in our database and engage with such a prospect. Upon termination, you will immediately remove our trademark and references to this Affiliate Program from your website(s) and other marketing collateral. For the avoidance of doubt, termination of this Agreement will not cause a Customer's Subscription to be terminated.

Affiliate Representations and Warranties

You represent and warrant that: (i) you have all sufficient rights and permissions to participate in the Affiliate Program and to provision OpenVPN with Affiliate Leads for our use in sales and marketing efforts or as otherwise set forth in this Agreement, (ii) your participation in this Affiliate Program will not conflict with any of your existing agreements or arrangements; and (iii) you own or have sufficient rights to use and to grant to us our right to use the Affiliate Marks.

You further represent and warrant that: (i) you will ensure that you are compliant with any trade or regulatory requirements that may apply to your participation in the Affiliate Program (for example, by clearly stating you are a OpenVPN Affiliate on any website(s) you own where you make an Affiliate Link available); (ii) you will accurately provide in the Affiliate Tool all websites and domains you own where you intend to use Affiliate Links to generate Affiliate Leads; (iii) you will not purchase ads that direct to your site(s) or through an Affiliate Link that could be considered as competing with OpenVPN's own advertising, including, but not limited to, our branded keywords; (iv) you will not participate in cookie stuffing or pop-ups, false or misleading links are strictly prohibited; (v) you will not attempt to mask the referring URL information; (vi) you will not use your own Affiliate Link to purchase OpenVPN products for yourself; and (vii) you will not use any mechanisms to deliver leads other than through an intended consumer. This includes sourcing leads through compilations of personal data such as phonebooks, using fake redirects or other tools or automation devices to generate leads, or offering incentives to encourage purchases or signups.

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, (b) our use of the prospect data you provided us, (c) your noncompliance with or breach of this Agreement, (d) your use of the Affiliate Tool, or (e) our use of the Affiliate

Marks. We will: notify you in writing within thirty (30) days of our becoming aware of any such claim; give you sole control of the defense 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 defense 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.

Disclaimers; Limitations of Liability

1. Disclaimer of Warranties. WE AND OUR AFFILIATED COMPANIES AND AGENTS MAKE NO REPRESENTATIONS OR WARRANTIES ABOUT THE SUITABILITY, RELIABILITY, AVAILABILITY, TIMELINESS, SECURITY OR ACCURACY OF THE OPENVPN PRODUCTS, THE AFFILIATE PROGRAM OR THE AFFILIATE TOOL FOR ANY PURPOSE. APPLICATION PROGRAMMING INTERFACES (APIs) AND THE AFFILIATE TOOL MAY NOT BE AVAILABLE AT ALL TIMES. TO THE EXTENT PERMITTED BY LAW, THE OPENVPN PRODUCTS AND AFFILIATE TOOL ARE PROVIDED "AS IS" WITHOUT WARRANTY OR CONDITION OF ANY KIND. WE DISCLAIM ALL WARRANTIES AND CONDITIONS OF ANY KIND WITH REGARD TO THE OPENVPN PRODUCTS AND THE AFFILIATE TOOL INCLUDING ALL IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.
2. 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.
3. 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.
4. Affiliate Tool. WE DISCLAIM ALL LIABILITY WITH RESPECT TO THE AFFILIATE TOOL THAT YOU USE. WE DO NOT PROMISE TO MAKE THE AFFILIATE TOOL AVAILABLE TO YOU, AND WE MAY CHOOSE TO DO SO, OR NOT TO DO SO, IN OUR DISCRETION.
5. Cookie Duration. COOKIES USED AS PART OF THE AFFILIATE TOOL HAVE A SET DURATION. IF A POTENTIAL CUSTOMER CLEARS THEIR COOKIES DURING THIS PERIOD, OPENVPN SHALL NOT BE LIABLE FOR ANY COMMISSIONS THAT MAY HAVE BEEN OWED TO YOU.

General

1. Amendment; No Waiver. We may amend this Agreement, including by replacing it in its entirety, at any time in our discretion. If we amend this Agreement, that amended Agreement

will be made available to you via the Affiliate Tool and/or by e-mail. The amended Agreement will become effective and binding ten (10) business days after we or the Affiliate Tool have notified you of that amendment. When we change this Agreement, the "Last Modified" date above will be updated to reflect the date of the most recent version at <https://openvpn.net/legal/>. No delay in exercising any right or remedy or failure to object will be a waiver of such right or remedy or any other right or remedy. A waiver on one occasion will not be a waiver of any right or remedy on any future occasion.

2. Applicable Law. This Agreement shall be governed by the laws of the State of California, excluding conflicts of laws principles of that state that would apply the laws of any other state. In the event either of us initiates an action in connection with this Agreement or any other dispute between the parties, the exclusive venue and jurisdiction of such action shall be in the state and federal courts in Alameda County, California.

3. 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.

4. Relationship of Parties. Both you and we agree that the relationship between us will be that of independent contractors. No partnership, employment, joint venture, or principal-agent relationship is or will exist between us as a result of your participation in the Affiliate Program.

5. Compliance with Applicable Laws. You shall comply, and shall ensure that all third parties performing sales or referral activities on your behalf comply, with all applicable laws in connection with your sales and marketing efforts. You shall not engage in any deceptive, misleading, illegal or unethical marketing activities, or activities that otherwise may be detrimental to us, our customers, or to the public. Export laws and regulations of the United States and any other relevant local export laws and regulations may apply to the OpenVPN Products. You will comply with the sanctions programs administered by the Office of Foreign Assets Control (OFAC) of the US Department of the Treasury. You will not directly or indirectly export, re-export, or transfer the OpenVPN Products to prohibited countries or individuals or permit use of the OpenVPN Products by prohibited countries or individuals.

6. 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.

7. Notice will be sent to the contact address below (as such may be changed by notice given to the other party), and will be deemed delivered as of the date of actual receipt.

To OpenVPN: OpenVPN, Inc., 6200 Stoneridge Mall Road, 3rd Floor, Pleasanton, CA 94588
Attention: Director of Compliance, gary@openvpn.com.

To you: your address as provided in our affiliate account information for you.

We may give electronic notices specific to you by e-mail to your e-mail address(es) on record in our account information for you. We may give notice to you by telephone calls to the telephone numbers on record in our account information for you.

8. 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, including those contained in your purchase order, acceptance or website. Our obligations are not contingent on the delivery of any future functionality or features of the OpenVPN Products or dependent on any oral or written public comments made by us regarding future functionality or features of the OpenVPN Products.

9. Assignment. You will not assign or transfer this Agreement, including any assignment or transfer by reason of merger, reorganization, sale of all or substantially all of its assets, change of control or operation of law, without our prior written consent. We may assign this Agreement to any affiliate or in the event of merger, reorganization, sale of all or substantially all of our assets, change of control or operation of law.

10. 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.

11. Program Policies Page. We may change the Program Policies from time to time. Your participation in the Affiliate Program is subject to the Program Policies, which are incorporated herein by reference

12. No Licenses. We grant to you only the rights and licenses expressly stated in this Agreement, and you receive no other rights or licenses with respect to us, the OpenVPN Products, our trademarks, or any other property or right of ours.

13. Sales by OpenVPN. This Agreement shall in no way limit our right to sell the OpenVPN Products, directly or indirectly, to any current or prospective customers.

14. Authority. Each party represents and warrants to the other that it has full power and authority to enter into this Agreement and that it is binding upon such party and enforceable in accordance with its terms.

15. Survival. The following sections shall survive the termination of this Agreement: ‘Commission and Payment’, ‘Proprietary Rights’, ‘Confidentiality’, ‘Effects of Termination’, ‘Indemnification’, ‘Disclaimers; Limitation of Liability’, ‘Non-Solicitation’ and ‘General’.

16. Data Processing and Protection. The parties acknowledge that in connection with the Affiliate Program, each party may provide or make its personal data available to the other party. To the extent that any personal data is obtained in connection with the Affiliate Program, the terms set forth in the OpenVPN General Data Processing Agreement (posted at: <https://openvpn.net/legal/> - the “OpenVPN DPA” are hereby incorporated by reference and shall apply. Each party shall process the copy of the personal data in its possession or control: (i) in accordance with the OpenVPN DPA (ii) as an independent controller (not as a joint controller

with the other party) (iii) for the purposes described in this Agreement; and/or (iv) as may otherwise be permitted under Applicable Data Protection Law. For the avoidance of doubt and without prejudice to the foregoing, OpenVPN shall be an independent controller of any personal data that it receives or shares with you.

Latest Revision: 8.9.24