



ONLINE ORDER & SOFTWARE SUBSCRIPTION

[SEARCH & NAVIGATION / FIND]

BY ACCEPTING THE TERMS OF THE APPLICABLE ORDER FORM, AND USING THE SOFTWARE SERVICE, CUSTOMER ACCEPTS THE TERMS AND CONDITIONS OF THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THESE ONLINE SOFTWARE SUBSCRIPTION TERMS (“**ONLINE ORDER & SUBSCRIPTION**” OR “**SUBSCRIPTION TERMS**”) (THIS “**AGREEMENT**”). THIS AGREEMENT IS MADE BETWEEN CUSTOMER (AS IDENTIFIED IN THE ORDER) AND THE APPLICABLE OPTIMIZELY CONTRACTING ENTITY SPECIFIED BELOW IN SECTION 14. THIS AGREEMENT IS DESIGNED FOR THE ONLINE SUBSCRIPTION OF OPTIMIZELY’S SEARCH & NAVIGATION (AKA, FIND) SOFTWARE SERVICE. THIS AGREEMENT MAY ALSO BE USED BY OPTIMIZELY AS THE APPLICABLE TERMS & CONDITIONS FOR ANY OTHER ONLINE PURCHASE (FOR A SUBSCRIPTION FEE, OR OTHERWISE (INCLUDING ACCESS TO AND USE OF CERTAIN ONLINE SOFTWARE SERVICES THAT MAY BE OFFERED UNDER A FREEMIUM PROGRAM) AND WHICH UTILISE THIS URL AS THE TERMS AND CONDITIONS THAT APPLY TO THAT SUBSCRIPTION, PURCHASE OR TRIAL.

The Glossary at the end of these Subscription Terms contains definitions applicable to the Agreement.

For the purposes of this Online Order & Subscription, the Agreement means the Order Form, and all incorporated terms and conditions, schedules, exhibits and other appendices - and the following order of precedence shall apply with respect to any conflict within the Agreement: (i) the Order Form (and each subsequent Order), (ii) the Product Use Terms, (iii) the Service Level Agreement, (iv) the Support Policy, (v) the Data Processing Agreement, and (vi) these Subscription Terms.

1. TERM

1.1 Term. Each Subscription commences on the Effective Date of each Order, and continues for the period specified in the Order, or until cancelled, or this Agreement is otherwise terminated, in accordance with the Agreement.

1.2 Initial Subscription Term. The Subscription term as stated in each Order, from (and including) a specified date within the Order, or if no date given, then the Effective Date (“Initial Subscription Term”).

1.3 Auto Renewal. Subject to Section 3.1, upon expiry of the Initial Subscription Term, the Subscription will automatically renew for successive periods of twelve months (“Extended Subscription Term”), on the same terms and conditions (subject to section 1.4 below).

1.4 Price Increase. For each Extended Subscription Term, Optimizely may increase the Subscription Fee. Any such increase will be as follows: **(i)** Optimizely will provide Customer with 120 days’ prior written notice (email acceptable), and **(ii)** the proposed new Subscription Fee will be effective from the start of Extended Subscription Term. If Customer objects to the proposed increase, Customer has the right to cancel its Subscription for that Extended Subscription Term in accordance with the Non-Renewal terms herein.

2. FEES, PAYMENT, TAXES & PO’s

2.1 Fees. Customer’s Use of the Software Service is subject to the Agreement, including the applicable Usage Metrics, and the Usage Metric volumes (“Usage Volumes”). The Usage Metrics are set out in the Product Supplement. The Usage Volumes are set out in the Order. Customer shall pay Optimizely all agreed Fees, including Overage Fees. All Orders are non-cancellable, except as expressly agreed otherwise, and all Fees are non-refundable. Although some Subscription Fees may be expressed in monthly terms in an Order Form, this is for Customer’s convenience only; but Fees are payable as set out in this Agreement, including for Overage, and are to be paid accordingly.

2.2 Overage. Customer will monitor its own Use of the Software Service and report any Use in excess of the agreed Usage Volume. Optimizely may monitor Customer’s Use to verify compliance with Usage Volume and this Agreement. Overage Fees accrue from the date the Overage first occurs. Overage Fees be calculated against the applicable Usage Volumes and will be two times (2x) Usage Volume unit price. Overage Fees will be invoiced on a monthly basis, in arrears.

2.3 Payment. If Customer pays by credit card, all fees are payable at the time of completing the Order. If Customer is invoiced, all Fees are payable with a net thirty (30) days from the issue date of the invoice.

2.4 Suspension and Interest. Customer shall pay all correctly-invoiced Fees in accordance with this Agreement. If Customer fails or refuses to pay Fees, Optimizely may, in addition to all other available remedies, suspend Customer’s Use of the applicable Software Service under section 3.3 below until payment is made. Optimizely will provide Customer with reasonable prior written notice (email sufficient) before any such suspension. Unpaid Fees will accrue interest at the maximum legal under the applicable law of this Agreement.



2.5 Taxes. Fees and other charges imposed under this Agreement will not include Taxes, all of which will be for Customer's account. Customer is responsible for all Taxes. Customer must provide to Optimizely any valid tax-exempt certificates or such similar document prior to signing this Agreement. If Optimizely is required to pay Taxes, Customer will reimburse Optimizely for those amounts attributable to those Taxes. Customer will provide any reasonably required information or documentation to Optimizely necessary to **a)** satisfy informational reporting requirements; **b)** determine whether Optimizely is obligated to collect applicable Taxes or **(c)** claim an available exemption from or credit for any applicable Tax.

2.6 Purchase Orders. Customer's purchase orders are for Customer's administrative convenience only. Optimizely may charge Fees, issue an invoice and collect payment without a corresponding purchase order. This Agreement shall take precedence over any additional terms in any purchase order, and no terms included in any such purchase order shall apply to the Subscription.

2.7 No Withholding or Set Off. Customer may not withhold, reduce or set-off Fees owed.

2.8 No Reduction of Usage Volume. Customer may not reduce Usage Volume during a Subscription Term.

3. NON-RENEWAL

3.1 Renewal Cancellation. A Party may cancel its Subscription for the next Extended Subscription Term by written notice to the other Party at least ninety (90) days prior to the end of the Subscription Term. Upon delivery and receipt of correct notice, the applicable Subscriptions will end on the last day of the then-current Subscription.

3.2 Cancellation/Termination. At the conclusion of the Subscription Term, (A) Customer must immediately: (A1) stop using the applicable Software Service; and (A2) cease accessing any Customer Data in the applicable Software Service and (B) Optimizely may delete all Customer Data at any time after thirty (30) days from the last date of the expired Subscription. Any outstanding correctly-invoiced Fees for the active Subscription Term remain payable.

3.3 Non-Payment of Fees / Suspension. If any correctly-invoiced Fee remains unpaid ten days after the date due payment of Optimizely's invoice or if any Fees paid by credit card are not finalized, Optimizely may (in addition to any other rights) suspend Customer's access to the applicable Software Service. However, Optimizely will not suspend the Software Service if Customer has given prompt notice of a dispute, and the dispute is made in good faith, and cooperates diligently to resolve the dispute. If the Software Service is suspended, Optimizely may charge a reasonable re-activation fee appropriate for the reinstatement of the Software Service.

4. RIGHT TO USE For the Subscription Term, Optimizely grants Customer a non-transferable, non-exclusive, worldwide right to Use the Software Service, subject to the payment of correctly-invoiced Fees, and the terms of these Subscription Terms.

5. OPTIMIZELY RESPONSIBILITIES Provisioning. Optimizely will provide Customer access to the Software Service as described in the Agreement, including the Documentation. **Support.** Optimizely will provide Support for the Software Service as outlined in the Support Policy. **Security.** Optimizely will implement, and will maintain, appropriate administrative, physical and technical measures for the protection of the security, confidentiality and integrity of Customer Data Processed by Optimizely as outlined in the DPA. **Personal Data.** Optimizely will Process Personal Data in accordance with applicable Personal Data protection and privacy law.

6. PERMISSIONS & RESTRICTIONS Permissions. Customer shall only Use the Software Service (including the Documentation and Optimizely Material) for its (and its Affiliates') internal business operations (which may include the development, support, and launching of public-facing websites). Customer may only permit Authorized-Users to Use the Software Service. **Respect of Third-Party Intellectual Property Rights.** Customer shall respect, observe and comply with all Third-Party Intellectual Property Rights Optimizely makes known, or Customer is otherwise aware. **Restrictions.** Customer shall not: **(i)** use the Software Service as a service bureau, timeshare or similar service; **(ii)** decompile, disassemble, copy (except for archival or Optimizely-authorized purposes) modify, translate, create derivative works or reverse engineer the Software Service, Documentation or any Optimizely Material; **(iii)** resell, distribute, or otherwise transfer or encumber rights to the Software Service; **(iv)** use, or otherwise utilize, the Software Service, or any Documentation or Optimizely Material to build, and/or assist any Third-Party in building or supporting, software products that compete with Optimizely; **(v)** bypass or endanger the operation or security of the Software Service; **(vi)** Use the Software Service (including Documentation or Optimizely Material) in any way that is unlawful, harmful to the Software Service, Optimizely's rights or to any Third-Party, or infringing, misappropriates or otherwise violates any Third-Party Intellectual Property Right; or **(vii)** damage, destroy, disrupt, disable, impair or impede the Software Service.

7. OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS

7.1 Optimizely Ownership. Subject to this Section 7.1, as between Optimizely and Customer, Optimizely shall have sole and exclusive ownership of all right, title, and interest in and to the Software Service, including all Optimizely Software, Documentation and Optimizely Material, all copies, improvements, and derivative works, including all copyright, trademark, patent, trade secret, know-how, and all other associated Intellectual Property Rights. Third-Party Software is owned by the Third-Party from whom Optimizely has acquired the right to utilize in the Software Service or make available to Customer for Customer's Use. Other than the Limited Rights, all other rights in the Software Service, including the Optimizely Software, Documentation and Optimizely Material, are expressly reserved to Optimizely.

7.2 Customer Ownership. As between Optimizely and Customer, Customer represents that it owns (or has the lawful right to): **(i)** its Customer Data, and **(ii)** custom coding solely developed by Customer and/or its Authorized-Users without any contribution from Optimizely (subject always to



the rights of applicable open-source software licensors and excluding any derivative work of Optimizely's Intellectual Property Rights and Confidential Information). Customer hereby grants to Optimizely a fully paid-up, royalty-free, worldwide, non-exclusive right and license to use the Customer Data as necessary to provide the Software Service to Customer, and as otherwise permitted by the Agreement.

8. DATA PRIVACY, PROTECTION, AND PROCESSING

8.1 *Customer Data Responsibilities; Security.* Customer is solely liable for its Customer Data, including the authenticity, accuracy and manner of capture, publication and removal of Customer Data, and Authorized-User alterations, customizations, edits, modifications, and custom coding.

8.2 *Customer Data; Third-Party Rights.* Customer is solely liable for ensuring its Customer Data does not breach applicable Policies, or constitute infringement of a Third-Party right. Customer is solely responsible for any infringement, misappropriation, libel, defamation, privacy or human rights-related claims with respect to its Use and Processing of its Customer Data. Information or material displayed, generated or collected through Customer's Use of Software Service, and any code or software used by Customer not provisioned by Optimizely is entirely within Customer's control. Customer will maintain reasonable security standards for its Authorized-Users' Use of the Software Service.

8.3 *Personal Data.* The DPA contains the Parties' agreement with respect to the Processing of Personal Data. Customer will collect and maintain all Personal Data that it Processes in its Use of the Software Service in accordance with applicable personal data protection and privacy laws.

9. THIRD-PARTY ACKNOWLEDGEMENTS AND RESPONSIBILITIES

9.1 *Third-Party Services Acknowledgement.* The Software Service may include Underlying Services. Underlying Service Providers are Optimizely Sub-Processors. The Underlying Services are part of the Software Service. Customer acknowledges that it is aware of the Underlying Services proposed to be utilized in Optimizely's deployment and operation of the Software Service for Customer, and has made its own assessment with respect to the Underlying Services for its Use purposes. Customer consents to Optimizely's utilization of those Underlying Service Providers.

9.2 *Optimizely Enhancements. Customer's Responsibility.* For some Software Service, Optimizely may recommend in the Documentation additional Optimizely Software for Customer to consider utilizing as an optional Enhancement in its Use of the Software Service. Optimizely Enhancements are, upon Use by Customer, part of the Software Service. Customer will comply with any open-source license terms that Optimizely publishes with respect to any Optimizely Enhancement.

9.3 *Third-Party Enhancements. Customer's Responsibility.* For some Software Service, Optimizely may identify in the Documentation, Third-Party Enhancements from Third-Parties for Customer to consider utilizing as an optional Enhancement in its Use of the Software Service. Third-Party Enhancements are optional for Customer Use. Third-Party Enhancements are not Optimizely Software, nor part of the Software Service. Third-Party Enhancements may require Customer to accept license terms for the Use of a Third-Party Enhancement as may be published by the Third-Party. Optimizely's referral in the Documentation to any Third-Party Enhancement is not an endorsement of that Third-Party Enhancement, and any such reference in the Documentation to that Third-Party Enhancement is provided as a convenience only. Customer should satisfy itself before utilizing any Third-Party Enhancement. Customer assumes all risk in its utilization of any Third-Party Enhancements. Optimizely is not responsible for any Customer Data loss or damage sustained or incurred by Customer, nor any Authorized User, from Customer's utilization of Third-Party Enhancements.

9.4 *Third-Party Material. Customer's Responsibility.* Third-Party Material is not part of the Software Service. Customer assumes all risk in its utilization of any Third-Party Material with its Use of the Software Service. Optimizely is not responsible for any damage sustained or incurred by Customer, nor to any Third-Party, arising out of, or related to, Customer's utilization of any Third-Party Material.

10. WARRANTIES, DISCLAIMERS, INDEMNITIES, AND LIMITATIONS OF LIABILITY

10.1 *Law Compliance Warranty.* The Parties warrant current, and continuing, compliance with all laws applicable to it in connection with: **(i)** in the case of Optimizely, the operation of Optimizely's business as it relates to the Software Service; and **(ii)** in the case of Customer, Customer's Use of the Software Service and its Customer Data.

10.2 *Documentation and Good Industry Practices Warranty.* Optimizely warrants it will provide the Software Service: **(i)** in substantial conformance with the Documentation and relevant Optimizely Material; and **(ii)** with the degree of skill and care reasonably expected from a skilled and experienced supplier of software-as and platform-as services substantially similar to the nature and complexity of the Software Service. Customer's sole and exclusive remedy and Optimizely's entire liability for breach of this warranty will be: **(A)** correction of the deficient Software Service; and **(B)** if Optimizely fails to correct the deficient Software Service using reasonable commercial efforts, Customer may terminate its subscription for the affected Software Service. This remedy does not apply to trivial or non-material cases of nonconformance. Any termination must occur within three (3) months of Optimizely's failure to correct the deficient Software Service. Section 15.3 applies with respect to the refund of any prepaid Fees.

10.3 *DISCLAIMERS.* Except **(i)** as expressly stated in this Agreement, and **(ii)** for warranties that cannot be excluded by law, the Software Service, including the Underlying Services are provided 'as is'. Optimizely makes no other representations or warranties, and expressly disclaims all express or implied warranties, statutory or otherwise, regarding any other matter, including merchantability, suitability, originality or quality, or reliability, or availability, or accuracy, or timeliness, or fitness for any particular purpose, non-infringement, future features, capabilities or other functionality, or results to be derived from use of or integration with any Third-Party Material utilized by Customer in its Use, or that the Software Service, including the Underlying Services is, or will be, secure, uninterrupted, timely, or error-free, or meets the Customer's requirements. In no event will Optimizely be liable for any damages, liabilities, costs, or expenses resulting from or related to an internet disruption or the acts, omissions, or delays of the Underlying Service Providers. Optimizely and its licensors will not be responsible under the Agreement: **(A)** if the Software Service is not used in



accordance with the Documentation, or **(B)** if the defect or liability is caused by Customer or any Third-Party Material or Use of the Software Service in conjunction with any product or service not provided by Optimizely, or **(C)** for any Customer activities not permitted under this Agreement.

10.4 NO CONSEQUENTIAL DAMAGES. Neither Party shall be liable under any legal or equitable theory or doctrine of law, whether under contract, tort, negligence, strict liability or otherwise, for any indirect or consequential loss and damage, whether classified or called exemplary, punitive, special, indirect, consequential, remote or speculative damages, including loss of profit, loss of revenue or any other special or incidental damages, however caused or arising, on any other liability not expressly stated, and any claims arising out of or related to this Agreement or its subject matter, even if such Party has been advised of the possibility of such loss or damage.

10.5 LIMITATION OF MONETARY DAMAGES. Except for **(i)** the Parties' respective obligations and liability to the other arising under sections 10.6 and 10.8, **(ii)** Customer's liability to Optimizely for the payment of Fees, **(iii)** Customer's liability to Optimizely for any breach by Customer of the restrictions under Section 2, **(iv)** damages arising from either Party's fraud, and **(v)** death, bodily injury or property damage arising from either Party's willful misconduct or gross negligence - **the maximum aggregate liability of either Party (and its respective Affiliates) to the other or any other person or entity for all events (or series of connected events) arising in any twelve-month period is absolutely limited, and will not exceed the annual Subscription Fees paid by Customer for the applicable Software Service associated with the damages for that twelve month period.**

10.6 IP INFRINGEMENT CLAIMS AGAINST CUSTOMER. Optimizely's obligations under this Section are subject to any of the following not being the source or cause of the IP Claim Against Customer: **(i)** the Software Service was being Used by Customer in a manner not permitted under the Agreement (including Documentation), **(ii)** Customer Data, **(iii)** to a modification of the Software Service by Optimizely based upon specifications furnished by Customer, **(iv)** to any unauthorized modification of the Software Service by Customer (including any Authorized User), **(v)** any Customer-Utilized Third-Party Enhancement, and **(vi)** if any Customer-Utilized Third-Party Material— **(i)** through **(vi)** each a "**Customer Indemnity Responsibility**". Optimizely's obligations to defend and indemnify are also dependent upon: **(vii)** the Software Service not being made available to Customer as beta or pre-production (that is, not a general-release) version, or on a proof-of-concept or trial basis, or for no Fee, and **(viii)** Customer being then-current with Fees. Optimizely's obligations to defend and indemnify are subject to Customer notifying Optimizely (in writing) of the IP Claim Against Customer in a timely manner, and Optimizely not being materially prejudiced by any delay of failure to timely notify.

10.7 REMEDIES. If a Third-Party makes an IP Claim Against Customer, or in Optimizely's reasonable opinion is likely to make an IP Claim Against Customer, Optimizely may (at its sole option and expense): **(i)** procure for Customer the lawful right to continue its Use of the affected Software Service; or **(ii)** replace or modify the affected Software Service to be non-infringing without a material decrease in functionality or features. If these options are not reasonably available, Optimizely or Customer may terminate the Subscription to the affected Software Service upon written notice to the other Party. Optimizely expressly reserves the right to cease such defense of any claim if the applicable Software Service is no longer alleged to infringe or misappropriate the Third-Party's rights. Section 15.3 applies with respect to the refund of any Fees. Sections 10.6 and 10.7 state the sole, exclusive, and entire liability of Optimizely, and is Customer's sole and exclusive remedy, with respect to covered IP Claim Against Customer, and to the infringement or misappropriation of Third-Party Intellectual Property Rights.

10.8 CLAIMS AGAINST OPTIMIZEZY. Customer will defend Optimizely against claims brought against Optimizely Group by any Third-Party alleging the infringement or misappropriation of such Third-Party's Intellectual Property Rights in the U.S., European Union member countries, or the United Kingdom with respect to any Customer Indemnity Responsibility - each an "**IP Claim Against Optimizely**". Customer will indemnify Optimizely against all damages finally awarded against Optimizely (or the amount of any settlement Customer enters into) with respect to any IP Claims Against Optimizely. Customer's obligations under this Section are subject to the Optimizely Software, including any Optimizely Enhancement, or any Documentation or Optimizely Material, not being the source or cause of the IP Claim Against Optimizely. Customer's obligations to defend and indemnify are subject to Optimizely notifying Customer (in writing) of the IP Claim Against Optimizely in a timely manner, and Customer not being materially prejudiced by any delay of failure to timely notify. This Section 10.8 states the sole, exclusive, and entire liability of Customer, and is Optimizely's sole and exclusive remedy, with respect to any IP Claim Against Optimizely, and to the alleged infringement or misappropriation of Third-Party Intellectual Property Rights.

10.9 THIRD-PARTY CLAIMS PROCEDURE. All Third-Party claims under sections 10.6 and 10.8 shall be conducted as follows: **(i)** the Party against whom a Third-Party claim is brought (the "**Named Party**") will timely notify the other Party (the "**Defending Party**") in writing of any claim; **(ii)** the Named Party shall reasonably cooperate in the defense and may appear (at its own expense) through counsel reasonably acceptable to the Defending Party subject to this section; and **(iii)** the Defending Party will have the right to fully control the defense. Any settlement of a claim will not include a financial or specific performance obligation on, or admission of liability by the Named Party.

11. CONFIDENTIAL INFORMATION

11.1 Use of Confidential Information. The receiving Party ("**Receiver**") shall: **(i)** maintain all Confidential Information of the disclosing Party ("**Discloser**") in strict confidence, taking steps to protect the Discloser's Confidential Information substantially similar to those steps that Receiver takes to protect its own Confidential Information, which shall not be less than a reasonable standard of care; **(ii)** not disclose or reveal any Confidential Information of Discloser to any person other than its Representatives whose access is necessary to enable it to exercise its rights or perform its obligations under the Agreement and who are under obligations of confidentiality substantially similar to those in this section; **(iii)** not use or reproduce any Confidential Information of Discloser for any purpose outside the scope of the Agreement; and **(iv)** retain any and all confidential, internal, or proprietary notices or legends which appear on the original and on any reproductions. Customer shall not disclose any information about the Agreement, its terms and conditions, the pricing, or any other related facts to any Third-Party. Confidential Information of either Party disclosed prior to execution of the Agreement will be subject to this section.



11.2 Compelled Disclosure. Receiver may disclose Discloser's Confidential Information to the extent required by law, regulation, court order or regulatory agency; provided that Receiver required to make such a disclosure uses reasonable efforts to give Discloser reasonable prior notice of such required disclosure (to the extent legally permitted) and provides reasonable assistance in contesting the required disclosure, at the request and cost of Discloser. Receiver and its Representatives shall use commercially reasonable efforts to disclose only that portion of the Confidential Information that is legally requested to be disclosed and shall request that all Confidential Information that is so disclosed is accorded confidential treatment.

11.3 Exceptions. The restrictions on use or disclosure of Confidential Information will not apply to any Confidential Information that: **(i)** is independently developed by Receiver without reference to Discloser's Confidential Information; **(ii)** has become generally known or available to the public through no act or omission by Receiver; **(iii)** at the time of disclosure, was known to Receiver free of confidentiality restrictions; **(iv)** is lawfully acquired free of restriction by Receiver from a Third-Party having the right to furnish such Confidential Information; or **(v)** Discloser agrees in writing is free of confidentiality restrictions.

11.4 Destruction and Return. Upon Discloser's request, Receiver shall promptly destroy or return Discloser's Confidential Information, including copies and reproductions. The obligation to destroy or return Confidential Information shall not apply: **(i)** if legal proceedings related to the Confidential Information prohibit its return or destruction, until the proceedings are settled or a final judgment is rendered; **(ii)** to Confidential Information held in archive or back-up systems under general systems archiving or backup policies; or **(iii)** if Receiver is legally entitled or required to retain.

12. TERM, SUSPENSION, AND TERMINATION

12.1 Subscription Term. The Subscription Term is as stated in the applicable Order Form.

12.2 Suspension. Optimizely may suspend, or postpone, access to the Software Service if: **(i)** Customer (including any Authorized User) breaches the Use rights, including any restrictions to the Software Service in this Agreement; **(ii)** Use by Customer (including any Authorized User) is causing harm (other than in any immaterial sense) to the Software Service or other customer (and its users); or **(iii)** required to comply with laws applicable to Optimizely in its operation of the Software Service. Except in cases of emergency where the security of the Software Service or the customer data or any other customer is at material risk, Optimizely will give advance notice to Customer of its intention to suspend access to the Software Service and provide Customer with a reasonably appropriate time to cure the issue underlying Optimizely's need to suspend the Software Service. The suspension or postponement will be limited in time and extent as is reasonable and appropriate in relation to the risk, breach or other relevant impact. Notwithstanding any suspension of Use, Customer will still be granted access to retrieve its Personal Data upon request and to the extent Customer is obliged to access and retrieve them under applicable law.

12.3 Termination. A Party may terminate the Agreement: **(i)** for cause on fourteen (14) days' written (and signed) notice of the other Party's breach of any material provision of the Agreement unless the breaching Party has cured the breach during such notice period; or **(ii)** immediately upon written (and signed) notice with respect to: **(a)** any material breach of Section 11 (Confidentiality) or **(b)** if the other Party files for files for bankruptcy/insolvency protection, files for bankruptcy including the appointment of an administrator and liquidator, a receiver is appointed to any material asset/s, or enters into an arrangement for the benefit of any creditor (or its creditors generally). A Party may also terminate this Agreement, or its Subscription to a relevant Software Service, as permitted under sections 10.2 and 10.7 above, or section 15.2 below or under the DPA or the SLA, with termination effective fourteen (14) days after receipt of notice in each of these cases. Upon termination, Customer must immediately cease Using the applicable Software Service.

13. DISPUTES, VENUE, GOVERNING LAW AND JURISDICTION Excluding claims arising out of Optimizely's Intellectual Property Rights for which a provisional remedy or equitable relief is sought ("IP Relief"), all other disputes related to this Agreement ("Disputes") shall be first submitted to non-binding mediation ("Mediation"). Mediation will be undertaken in a timely manner, in good faith and costs will be shared equally. If the Dispute is not resolved through Mediation within sixty days, then, upon the election of either Party, the Dispute shall be submitted to an applicable court in the Jurisdiction ("Venue") and subject to the Governing Law below. Each Party consents to exclusivity of Venue. The Parties waive all objections to Venue. Except with respect to unpaid Fee Disputes and IP Relief, each Party will otherwise bear its own costs with respect to all other Disputes.

Customer Domicile	USA, CA and MX	Sweden, Denmark, Finland, and Norway	UK and Ireland	The Netherlands	Rest of EU	DACH	UAE	Kingdom of Saudi Arabia	Australia & NZ	APJ	Rest of the World
Governing Law:	New York and controlling U.S. Federal Law	Laws of Sweden	Laws of England and Wales	Laws of Netherlands	Laws of England and Wales	Laws of Germany	Laws of England and Wales	Laws of England and Wales	New South Wales, Australia	Singapore	New York and controlling U.S. Federal Law
Venue:	The U.S. District Court (Southern District of New York)	Courts of Stockholm	The Courts of London	The Courts of Amsterdam, North Holland	The Courts of London	The Courts of Berlin, Brandenburg	Courts of the Dubai International Financial Centre	The Courts of London	The Courts of New South Wales, in Sydney	The Courts of Singapore	The U.S. District Court (Southern District of New York)



Exclusions. The United Nations Convention on Contracts for the International Sale of Goods and any conflicts of law principles and the Uniform Computer Information Transactions Act (where enacted) will not apply to the Agreement.

14. OPTIMIZELY CONTRACTING ENTITY. The Optimizely contracting entity is set out in the table below depending on Customer's domicile.

Customer Domicile	USA, CA and MX	Sweden, Denmark, Finland, and Norway	UK and Ireland	EU	DACH	UAE	Kingdom of Saudi Arabia	Australia & NZ	APJ	Rest of the World
Optimizely contracting entity	Optimizely North America Inc	Optimizely AB	Optimizely Ltd.	Optimizely AB	Optimizely GmbH	Optimizely AB	Optimizely AB	Optimizely North America Inc	Optimizely North America Inc	Optimizely North America Inc
Address	119 5th Avenue, 7th Floor, New York, NY 10003, United States of America	Hamngatan 26, Floor 4 111 47, Stockholm, Sweden	60 St Martins Lane, Floor 4 London WC2N 4JS England	Hamngatan 26, Floor 4 111 47, Stockholm, Sweden	Wallstrasse 59, 10179 Berlin, Germany, with corporate registration number HRB 88738	Hamngatan 26, Floor 4 111 47, Stockholm, Sweden	Hamngatan 26, Floor 4 111 47, Stockholm, Sweden	119 5th Avenue, 7th Floor, New York, NY 10003, United States of America	119 5th Avenue, 7th Floor, New York, NY 10003, United States of America	119 5th Avenue, 7th Floor, New York, NY 10003, United States of America

15. GENERAL PROVISIONS

15.1 Feedback. Customer may at its sole discretion and option provide Optimizely with Feedback. In such instance, Optimizely Group may in their sole discretion retain and freely use, incorporate or otherwise exploit such Feedback without restriction, compensation or attribution to the source of the Feedback.

15.2 Modifications. So as to provide an evolving standardized Software Service over time, Optimizely may improve or modify the Software Service (including any Software), and including, Support, scheduled downtime and planned maintenance windows under the SLA, and other Policies – (“**Modify**” and “**Modification**”). Modification includes the removal of features, functionality and /or capabilities (collectively, “**Features**”) from the Software Service; on the condition that Optimizely provides a functional equivalent or where the Modification does not materially reduce the Features of the Software Service (“**Substituted Features**”). New Features, beyond the initial scope of the Software Service (“**New Features**”) are optional for the Customer, and may be subject to additional terms; and Customer's Use of New Features shall be subject to those terms. Modifications to the Software Service are communicated in the Optimizely releases portal and the associated release-notes published on Opti-World and /or the Support Portal, as updated from time to time; and as may also be communicated under the RSS feed and email subscription. **Customer's Right to Terminate.** If a Modification materially degrades the overall functionality of the affected Software Service, Customer's sole remedy is to terminate its subscription to the affected Software Service by providing written notice to Optimizely within one (1) month of Optimizely's applicable notice. If Optimizely does not receive timely notice, Customer is deemed to have accepted the Modification.

15.3 Refund and Payments. For any termination under sections 10.2, 10.7 or 15.2 of these Subscription Terms, or under comparable provisions in the SLA or the DPA where Customer has the right to cancel a Subscription and/or terminate the Agreement, Customer will be entitled to: (i) a *pro rata* refund in the amount of the unused portion of prepaid Fees for the terminated Subscription calculated as of the effective date of termination (unless such refund is prohibited by Export Laws); and (ii) a release from the obligation to pay Fees due for periods after the effective date of termination.

15.4 Force Majeure. Any delay in a Party's performance caused by conditions beyond the reasonable control of the performing Party (“**Force Majeure Event**”) is not a breach of the Agreement. The time for performance will be extended for a period equal to the duration of the Force Majeure Event. Customer is not however excused from its obligations to pay Fees by reason of any Force Majeure Event, subject to applicable law.

15.5 Waiver. A waiver of any breach or default of the Agreement is not deemed a waiver of any other breach or default.

15.6 Relationship of Parties. No joint venture, partnership, employment, or agency relationship exists between the Parties as a result of entering into the Agreement, and neither Party has any authority of any kind to bind the other in any respect.

15.7 Survival. All sections of the Agreement that by their nature should survive the expiry of the Agreement or any earlier termination, will survive.

15.8 Assignment. Customer may not assign, delegate or otherwise transfer the Agreement (or any of its rights or obligations). Any assignment (or purported assignment), including by operation of law, by Customer is a material breach of this Agreement. Optimizely may assign this Agreement within Optimizely Group, or to any Third-Party in connection with a solvent merger, acquisition or sale of all or substantially all of its assets..

15.9 Subcontracting. Optimizely may subcontract any element of the Software Service to its Affiliates and Third-Parties. Subcontracting includes the hosting of the Software Service. Optimizely is responsible for the performance of those subcontractors, and remains responsible for any breaches of the Agreement by its subcontractors.

15.10 Notices. Notices will be in writing and given when delivered to the address set out in the applicable Order Form. Notices from Optimizely to Customer may be in the form of an electronic notice to Customer's authorized representative or administrator. Optimizely may provide notice of



Modifications to the Software Service via the Documentation, the Support portal, and also release notes and publications at Opti-World and /or the Support Portal. Notifications relating to the operation, including Support, of the Software Service may also be provided within the Software Service, made available via Opti-World and /or the Support Portal, and as otherwise described in the Support Policy. The Order Form may also provide relevant notice details with respect to Subscription non-renewals.

15.11 Export Compliance. Optimizely and Customer shall comply with all applicable Export Laws. Customer shall not permit any Use of the Software Service from a US, UK or EU embargoed or sanctioned country or in violation of any US, UK or EU export law or regulation. Upon Optimizely's reasonable request, Customer shall provide information to support obtaining any export authorization.

15.12 US Government End-User Notice. If Customer is a U.S. Government entity, the Software Service, is a 'Commercial Item', as defined in US Code of Federal Regulation 48 C.F.R. (§ 12.212 and. § 227.7202, as applicable). To the extent applicable, that Commercial Computer Software and the Commercial Computer Software Documentation are being licensed to U.S. Government end-users only as Commercial Items, and with those rights as are granted to all other Customers (and their respective Authorized-Users).

15.13 Entire Agreement. The Agreement constitutes the entire and exclusive agreement between Optimizely and Customer in connection with the Parties' business relationship related to the Software Service. All previous representations, discussions, and writings (including any confidentiality agreements) are superseded by the Agreement, and the Parties disclaim any reliance on them. The Agreement may only be modified in writing, signed by both Parties, except as permitted under the Agreement. Terms and conditions of any Customer-issued purchase order shall have no force or effect, even if Optimizely accepts, or does not reject, the purchase order.

GLOSSARY

Affiliate means any entity that controls, is controlled by, or is under common control of either Party to the Agreement, and the term "**control**" means the power or authority to direct influence over the management and policies of an entity, whether through the holding of a majority share of the voting stock, by contract, or otherwise.

Authorized-User means any individual to whom Customer grants access authorization to use the Software Service that is an employee, agent, contractor or representative of Customer, Customer's Affiliates, or Customer's and Customer's Affiliates' Business Partners.

Business Partner means any legal entity that requires use of a Software Service in connection with Customer's and its Affiliates' internal business operations, which may include service providers and customers and/or suppliers of Customer and its Affiliates.

Confidential Information means all information which the disclosing Party protects against unrestricted disclosure to others that the disclosing Party or its Representatives designates as confidential, internal and/or proprietary at the time of disclosure, and that should reasonably be understood to be confidential at the time of disclosure given the nature of the information and the circumstances surrounding its disclosure. Confidential Information of Optimizely includes the Software Services (but excluding Customer Data) and the terms of this Agreement and all Order Forms (including pricing). Confidential Information of Customer includes Customer Data (excluding Customer Data that Customer otherwise has made, or makes, available or publishes publicly). Confidential Information of each party includes business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party.

Customer Data means any data, information or other material that Authorized-Users submit, collect or otherwise provide in the course of Using the Software Service, including information regarding Customer's social networking interactions or other contacts activated through Use of the Software Service, and Customer's visitors and their data.

Documentation means Optimizely's then-current technical and functional documentation, including Service Descriptions, user-guides, developer-guides, and any roles and responsibilities descriptions, that Optimizely makes available to Customer.

DPA (or Data Processing Agreement) means Optimizely's Data Processing Agreement, currently published at <https://www.optimizely.com/trust-center/data-processing-agreement/>.

Enhancement means any optional Software, configuration, features, functionalities and/or capabilities, including integrations, that a Customer may utilize in its Use of the Software Service.

Export Laws means all applicable import, export control and sanctions laws, including the laws of the United States, the UK, and the EU.

Feedback means any suggestion, enhancement request, recommendation, correction or other feedback with respect to the Software Service.

Intellectual Property Right means patents of any type, design rights, utility models or other similar invention rights, copyrights and related rights, trade secret, know-how or confidentiality rights, trademarks, trade names, service marks, logos, taglines, and any other intangible property rights, whether registered or unregistered, including applications (or rights to apply) and registrations for any of the foregoing, in any country, arising under statutory or common law or by contract and whether or not perfected, now existing or hereafter filed, issued, or acquired.

Limited Rights means the licenses, rights and other entitlements expressly granted to Customer with respect to Software Service under these Subscription Terms, including applicable Order Form/s and the Agreement.

Optimizely Group means Optimizely and its Affiliates.



Optimizely Material means any material (including statistical reports) provided, developed or made available by Optimizely, independently or with Customer's cooperation, in the course of performance under the Agreement, including in the delivery of Support or Optimizely-provided professional services relevant to the implementation, onboarding and/or configuration of the Software Service, and which may include (by way of example) configuration workbooks, training materials, projects plans, assessments and questionnaires, quick reference guides, playbooks, data set up presentations, data set up mapping templates, and configuration videos.

Opti-Trust is a reference to the website published by Optimizely at <https://www.optimizely.com/trust-center/>, where Optimizely publishes information on privacy, security and compliance at that site and its sub-sites, and the published content on those sites, as updated from time to time.

Opti-World (also referred to as the Optimizely **Development Portal**) and the Optimizely **Support Portal** are references to the websites published by Optimizely at <https://world.optimizely.com>, and its sub-sites including <https://world.optimizely.com/releases>, and <https://support.optimizely.com/hc/en-us>, where Optimizely publishes Documentation, information on releases and related Software information, and other relevant information about the Software Service, as updated from time to time.

Online Order & Subscription means these online Subscription Agreement terms.

Optimizely Software means Optimizely-developed software (including the underlying programs and code) utilized by Optimizely in the Software Service.

Order Form or **Order** means any Optimizely ordering documentation, online sign-up, or subscription form that references this Agreement.

Personal Data is defined in the Data Processing Agreement.

Policies means the Support Policy and the other operational policies with respect to Use of the Software Service as published by Optimizely from time to time at Opti-World, Opti-Trust, at Support Portal, and within the Service Descriptions.

Process means an operation or set of operations performed on Customer Data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

Product Use Terms means Optimizely's product use terms for the Software Service, currently published at [Product Use Terms](#).

Representatives means a Party's Affiliates, employees, contractors, sub-contractors, legal representatives, accountants, or other professional advisors.

Sensitive Information is defined in the DPA.

Service Descriptions means the Documentation describing the features, functions, capabilities and limitations of the Software Service, which are published by Optimizely, and as updated from time to time, at Opti World (or such other alternate site that Optimizely makes available Documentation to its customers).

SLA (or Service Level Agreement) means the service level agreement for the Software Service, currently published at Optimizely's [SLA](#), as updated from time to time.

Software means application software, including implementation of algorithms, models and methodologies, whether in source code, object code, human readable or other form.

Sub-Processor is defined in the DPA.

Subscription Term or **Term** has the meaning set forth in the Order Form.

Support and **Support Policy** means Optimizely's support for the Software Service, currently published at Optimizely's [Support Policy](#), and as updated from time to time.

Third-Party means any third party other than Optimizely and Customer, and their respective Affiliates.

Third-Party Enhancement means optional Third-Party Software and/ or optional integrations to Third-Party Platforms.

Third-Party Material means any product or service made available to Customer by any Third-Party installed, enabled and/or utilized by Customer in its Use of the Software Service; and for clarity, the Software excludes Third-Party Material. Third-Party Material is not part of the Software Service.

Third-Party Platform means any Third-Party technology platform, including website.

Third-Party Software means any Third-Party owned, licensed and /or developed software.

Underlying Service means the Third-Party hosting infrastructure (and associated services), Third-Party networks and Third-Party content providers (collectively, "**Underlying Service Providers**").

End Note. Words denoting the singular includes the plural and vice versa. Defined words include their grammatical forms.