



SOFTWARE SERVICE GENERAL TERMS & CONDITIONS

CUSTOMER AGREES THAT THESE GENERAL TERMS AND CONDITIONS FOR THE SOFTWARE SERVICE (“SOFTWARE SERVICE GTC” or “GTC”) ARE AN INTEGRAL PART OF ITS SOFTWARE SUBSCRIPTION AGREEMENT AND ITS USE OF THE SOFTWARE SERVICE. CUSTOMER REAFFIRMS ITS AGREEMENT TO THIS GTC UPON EACH USE OF THE SOFTWARE SERVICE.

The Glossary at the end of this GTC contains definitions applicable to the Software Subscription Agreement.

1. RIGHT TO USE

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

2. OPTIMIZEZY RESPONSIBILITIES

2.1 Provisioning, Onboarding and Support. Optimizely will provide access to the Software Service as described in the Documentation. Optimizely will provide onboarding to the Software Service as described in the Order, and also the Documentation. Optimizely will provide Support as outlined in the Support Policy.

2.2 Security. Optimizely will maintain appropriate administrative, physical, and technical measures for the security, confidentiality, and integrity of Customer Data (“TOMs”), as published by Optimizely at <https://www.optimizely.com/legal/toms>. Optimizely’s programs with respect to its TOMs, including updates and its controls and auditing are set out in its DPA. The TOMs are subject to update from time to time for purposes of continuous improvement. Comparable or better levels of security will be maintained. Individual measures may be replaced by new measures that serve the same purpose without diminishing the security level protecting Customer Data. Optimizely shall notify Customer, without undue delay, and in no case more than twenty-four hours of a confirmed accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Customer Data transmitted, stored, or otherwise Processed by Optimizely or its Sub-processors. (“Security Incident”). Customer may, subject to the confidentiality obligations under the Agreement, exercise the audit rights set out in the DPA in order to review the TOMs maintained by Optimizely as it relates to Processing within the Software Service. Optimizely will make available to Customer, upon request information necessary to demonstrate compliance with its Processing obligations. This information includes the most recent reports, certificates and/or extracts (“**Information**”) prepared by an independent auditor, including SOC 2 and ISO reports.

3. PERMISSIONS AND RESTRICTIONS

3.1 Permissions. Customer may only Use the Software Service (including Documentation and Optimizely Material) for its and its Affiliates’ internal business operations, including developing, supporting, and launching public-facing websites. Only Authorized Users may Use the Software Service. Customer must respect all Third-Party Intellectual Property Rights Optimizely makes known, or of which Customer is otherwise, or becomes, aware.

3.2 Restrictions. Customer must not: **(i)** use the Software Service as a service bureau¹, timeshare², rental or BPO outsourced service³; **(ii)** decompile, disassemble, copy (except for archival purposes), modify, or reverse engineer the Software Service, Documentation, or Optimizely Material, except as permitted by law; **(iii)** resell, distribute, or encumber rights to the Software Service; **(iv)** use the Software Service to build or assist in building competing products; **(v)** bypass or endanger the operation or security of the Software Service; **(vi)** use the Software Service unlawfully or in a manner that infringes Third-Party rights; or **(vii)** damage, disrupt, disable or impair the Software Service.

4. OWNERSHIP AND INTELLECTUAL PROPERTY

4.1 Optimizely Ownership. As between Optimizely and Customer, Optimizely has sole and exclusive ownership of all rights, title, and interest in the Software Service, Optimizely Software, Documentation, and Optimizely Material, including all copies, improvements, adaptations, and derivative works. Third-Party Software is owned by the applicable Third Party. All rights not expressly granted are reserved to Optimizely.

¹ Using the Software Service to provide processing services to Third-Parties.

² Allowing Third-Parties — people or entities outside the Customer and its Affiliates — to Use the Software Service on a shared, rotating, or time-divided basis.

³ Delegation by a Third-Party to Customer of an entire business function of that Third-Party to — not just a discrete task — to Customer to run that end-to-end on behalf of the Third-Party Using the Software Service.



4.2 Customer Data Ownership. As between Optimizely and Customer, Customer owns (or has the lawful right to) its Customer Data and custom code solely developed by Customer without Optimizely contribution (subject to open-source licensor rights and excluding derivatives of Optimizely's IP and Confidential Information). Customer grants Optimizely a fully paid-up, royalty-free, worldwide, non-exclusive license to use Customer Data as necessary to provide the Software Service in accordance with the Agreement.

5. DATA PRIVACY AND PROTECTION

5.1 Customer Responsibilities. Customer is responsible for its Customer Data, including accuracy, manner of capture, and compliance with applicable laws, Policies and Third-Party rights. Customer will maintain reasonable security standards for Authorized Users' Use of the Software Service.

5.2 Personal Data. Customer will collect and maintain Personal Data in accordance with applicable data protection, privacy laws, and its obligations under the DPA. Optimizely will process Personal Data in accordance with the DPA, and applicable laws.

6. THIRD-PARTY ACKNOWLEDGEMENTS

6.1 Underlying Services. The Software Service includes Underlying Services. Underlying Service Providers are Optimizely non-Affiliate Sub-Processors. The Underlying Services are part of the Software Service. Customer acknowledges it is aware of the Underlying Services utilized in Optimizely's deployment and operation of the Software Service and consents to Optimizely's use of those Underlying Service Providers.

6.2 Optimizely Enhancements. Optimizely may recommend within Documentation or elsewhere make available within the Software Service additional Optimizely Software as an Enhancement to the Software Service. Optimizely Enhancements are optional. Upon Use by Customer, Optimizely Enhancements become part of the Software Service for all purposes of the Agreement. Customer must comply with any published open-source license terms ("OSLT") applicable to an Optimizely Enhancement.

6.3 Third-Party Enhancements. Optimizely may identify Third-Party Enhancements in the Documentation or within the Software Service. Third-Party Enhancements are optional and are not Optimizely Software, nor part of the Software Service for any purpose of the Agreement. Customer must comply with any published Third-Party terms. Optimizely's reference to any Third-Party Enhancement is not an endorsement and is provided as a convenience only. Customer assumes all risk of Third-Party Enhancement use and is solely liable (vis-à-vis Optimizely) for any loss or damage suffered by Customer or its Authorized Users from the Third-Party Enhancement.

6.4 Third-Party Material. Third-Party Material is not part of the Software Service. Subject to any loss caused by a defect in the Software Service, Customer assumes all risk of, and is solely liable for, any loss or damage arising from possession or use of Third-Party Material.

7. WARRANTIES, INDEMNITIES, AND LIABILITY

7.1 Law Compliance. Each Party warrants compliance with all laws applicable to it: Optimizely regarding operation as it relates to the Software Service; Customer regarding its Use of the Software Service and its Customer Data.

7.2 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 in nature and complexity to the Software Service. Customer's sole and exclusive remedy, and Optimizely's entire liability, for breach of this warranty, is: **(A)** correction of the non-conforming Software Service; and **(B)** if Optimizely fails to correct the non-conforming Software Service using reasonable commercial efforts, Customer may terminate its Subscription for the affected Software Service and receive a refund for prepaid unused Fees in accordance with Section 11.3. This remedy does not apply to trivial or non-material non-conformance. Any termination must occur within three months of Optimizely's failure to correct.

7.3 Disclaimers. Except as expressly stated in this Agreement, and for warranties that cannot be excluded by law, the Software Service is provided "as is." Optimizely disclaims all other warranties, express or implied, including merchantability, fitness for purpose, non-infringement, uninterrupted or error-free operation, results derived from use of or integration with any Third-Party material utilized by Customer in its Use, or that of the Software Service, including



that the Underlying Services is, or will be, uninterrupted, timely, or error-free, or meets the Customer's requirements. Optimizely is not responsible under the Agreement where: **(a)** the Software Service was not used in accordance with the Documentation; **(b)** a defect or liability was caused by Customer or Third-Party Material; or **(c)** Customer's activity was not permitted under the Agreement.

- 7.4 No Consequential Damages.** In no case will either Party (or its respective Affiliates or Optimizely's subcontractors) be liable to the other Party for any special, incidental, consequential, or indirect damages, loss of goodwill or business profits, work stoppage or for exemplary or punitive damages. Optimizely shall not be liable for any damages caused by any Software Service provided for no fee.
- 7.5 Liability Cap.** Except as set out in Section 7.6 below, the maximum aggregate liability of either Party (or its respective Affiliates or Optimizely's subcontractors) to the other or to any other person or entity for all events (or series of connected events) arising in any twelve-month period will not exceed the annual Subscription Fees paid for the applicable Software Service associated with the damages for that twelve-month period. Any 'twelve-month period' commences on the Subscription Term start date or any of its yearly anniversaries.
- 7.6 Exclusions.** Neither Party's liability is capped for damages resulting from: **(a)** the Parties' obligations under Section 7.7 and 7.8 (excluding Optimizely's obligation under Section 7.7 below where the Third-Party claim relates to Software Services not developed by Optimizely); **(b)** death or bodily injury arising from either Party's gross negligence or willful misconduct; **(c)** Customer's unauthorized use of any Software Service, **(d)** either Party's fraud, and / or **(e)** any failure by Customer to pay any Fees due under any Order.
- 7.7 IP Claims Against Customer.** Optimizely will defend Customer against Third-Party claims brought against Customer alleging the Software Service infringes or misappropriates such Third-Party's Intellectual Property Rights in the US, EU, UK, or Australia ("IP Claim Against Customer") and will indemnify Customer against all damages finally awarded against Customer (or the amount of any settlement Optimizely enters) with respect to any IP Claim Against Customer. Optimizely's obligations under this Section do not apply where the claim arises from: **(i)** use by Customer or its Authorized Users not permitted under the Agreement; **(ii)** Customer Data; **(iii)** Optimizely modifications to the Software Service based on Customer specifications; **(iv)** Customer modifications; **(v)** Third-Party Enhancements; or **(vi)** Third-Party Material (each a "Customer Indemnity Responsibility"). Also excluded: beta/trial/free services, and Customer not being current with Fees. Customer must provide timely written notice of any claim subject to this Section. **Remedy.** If an IP Claim Against Customer is made or in Optimizely's reasonable opinion, likely to be made, Optimizely may: **(A)** procure the right for Customer to continue using the Software Service; or **(B)** replace or modify it to be non-infringing without material loss of functionality. If neither is available, either Party may terminate the affected Subscription and receive a refund for prepaid unused Fees in accordance with Section 11.3. This Section is Customer's sole and exclusive remedy for an IP Claim Against Customer, and Optimizely's entire liability with respect to IP Claim Against Customer.
- 7.8 IP Claims Against Optimizely.** Customer will defend Optimizely against Third-Party claims brought against Optimizely arising out of the Customer Indemnity Responsibilities or alleging Customer did not have consent to process Personal Data provided to Optimizely ("IP Claim Against Optimizely") and will indemnify Optimizely against all damages finally awarded against Optimizely (or the amount of any settlement Customer enters) with respect to any IP Claim Against Optimizely. This does not apply where the Software Service is the source of an infringement claim. Optimizely must provide timely written notice of any claim subject to this Section. This Section is Optimizely's sole and exclusive remedy for an IP Claims Against Optimizely, and Customer's entire liability with respect to IP Claim Against Optimizely.
- 7.9 Claims Procedure.** The named Party will promptly notify the defending Party in writing. The named Party will reasonably cooperate. The defending Party controls the defense. Settlements will not impose financial obligations on, or constitute admissions by, the named Party.

8. CONFIDENTIALITY

- 8.1 Obligations.** The receiving Party ("Receiver") must: **(i)** protect the disclosing Party's ("Discloser") Confidential Information in strict confidence; **(ii)** restrict disclosure to Representatives who need access and are bound by equivalent obligations; **(iii)** not use Confidential Information outside the Agreement's scope; and **(iv)** preserve all confidentiality notices. Customer must not disclose the Agreement's terms, conditions, or pricing to Third Parties.



8.2 Compelled Disclosure. Receiver may disclose Confidential Information as required by law, regulation, or court order, provided Receiver gives Discloser reasonable prior notice (where permitted), assists in contesting disclosure, and limits disclosure to what is legally required.

8.3 Exceptions. Confidentiality obligations do not apply to information that: **(i)** was independently developed without reference to Confidential Information; **(ii)** became publicly available through no fault of Receiver; **(iii)** was known to Receiver free of restrictions at disclosure; **(iv)** was lawfully obtained from a Third Party with no duty of confidentiality; or **(v)** Discloser agrees in writing is unrestricted.

8.4 Return and Destruction. On request, Receiver must promptly destroy or return Confidential Information, except where: **(i)** legal proceedings require retention; **(ii)** held in backup systems under standard policies; or **(iii)** Receiver is legally entitled or required to retain.

9. TERM, SUSPENSION, AND TERMINATION

9.1 Term. Each Agreement will continue until terminated in accordance with this Section 9. The Subscription Term is as stated in the Order Form.

9.2 Suspension. Optimizely may suspend access if: **(i)** Customer breaches any Use rights or restrictions; **(ii)** Customer's use causes material harm to the Software Service, or other customers; or **(iii)** required by law. Except in emergencies, Optimizely will provide advance notice and a reasonable cure period. Suspension will be limited in time and scope. Customer retains the right to retrieve Personal Data during suspension. Where Optimizely suspends Use by reason of **(iii)**, and that suspension continues for longer than two weeks, either Party may (as its sole and exclusive remedy) terminate the affected Software Service by notice to the other Party (email acceptable), terminating the applicable the Subscription, and Optimizely's sole liability will be to refund Customer prepaid unused Fees in accordance with Section 11.3.

9.3 Termination. Either Party may terminate a Subscription: **(i)** for cause on fourteen days' written notice of material breach, unless cured during the notice period; or **(ii)** immediately on written notice for material breach of Section 8 (Confidentiality) or insolvency. A Party may also terminate as permitted under Sections 7.2, 7.7, 9.2, 11.2, the DPA, or the SLA (effective fourteen days after notice unless otherwise specified). Upon termination, Customer must immediately cease using the applicable Software Service.

10. DISPUTES AND GOVERNING LAW

Excluding **(i)** urgent relief with respect to Confidential Information (including Intellectual Property) and **(ii)** unpaid correctly-invoiced Fees, all other disputes ("**Disputes**") must first be submitted to non-binding mediation (costs shared equally). If unresolved **within sixty days**, either Party may submit the dispute to the applicable court listed below based on Customer's domicile. Each Party consents to exclusive jurisdiction and venue and waives its right to a jury trial.

Jurisdiction Table

| Customer Domicile | Governing Law | Venue |
|----------------------------------|----------------------------|-----------------------------|
| USA, CA, MX | New York / US Federal Law | US District Court, S.D.N.Y. |
| Sweden, Norway, Denmark, Finland | Laws of Sweden | Courts of Stockholm |
| UK & Ireland | Laws of England and Wales | Courts of London |
| Netherlands | Laws of Netherlands | Courts of Amsterdam |
| DACH | Laws of Germany | Courts of Berlin |
| Rest of EU | Laws of England and Wales | Courts of London |
| UAE | Laws of England and Wales | DIFC Courts |
| KSA | Laws of England and Wales | Courts of London |
| Australia & NZ | New South Wales, Australia | Courts of NSW, Sydney |
| APJ | Singapore | Courts of Singapore |
| Rest of World | New York / US Federal Law | US District Court, S.D.N.Y. |

The UN Convention on Contracts for the International Sale of Goods, UCITA, and conflict of law principles do not apply.



11. GENERAL PROVISIONS

- 11.1 Feedback.** Customer may optionally provide Feedback. Optimizely Group may freely use or incorporate Feedback without restriction, compensation, or attribution.
- 11.2 Modifications.** To provide an evolving standardized Software Service, Optimizely may improve or modify the Software Service (including Software, Support, scheduled downtime and planned maintenance windows under the SLA, and other Policies) (collectively, “**Modify**” and “**Modification**”). Modification includes removal of features, functionality, or capabilities (“**Features**”), provided Optimizely supplies a functional equivalent or the Modification does not materially reduce the Features (“**Substituted Features**”). New Features beyond the initial Subscription scope (“**New Features**”) are optional and may be subject to additional terms. Modifications are communicated via the Optimizely releases portal, with release notes published on World and/or the Support Portal, and as may also be communicated via 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 and exclusive remedy is to terminate its Subscription of the affected Software Service by providing written notice to Optimizely within thirty days of Optimizely’s notice of the Modification, and Optimizely’s entire liability with respect to Customer’s termination of the affected Software Service, will be to refund Customer its prepaid unused Fees in accordance with Section 11.3. If Optimizely does not receive timely notice, Customer is deemed to have accepted the Modification.
- 11.3 Refunds.** For any termination under Sections 7.2, 7.7, 9.2, 11.2, 11.11, or comparable DPA/SLA provisions, Customer is entitled to: (i) a pro-rata refund of unused prepaid Fees (unless prohibited by Export Laws); and (ii) release from Fees for periods after termination. Refunds will be paid by Optimizely without any unreasonable delay. In lieu, Optimizely may apply the refund (or part thereof), with Customer’s agreement, to any outstanding (or future) Fees of Customer.
- 11.4 Force Majeure.** Delay caused by conditions beyond reasonable control is not a breach. Performance time extends for the duration of the force majeure event.
- 11.5 Waiver.** Waiver of any breach is not a waiver of any other breach.
- 11.6 Relationship.** No joint venture, partnership, employment, or agency relationship exists between the Parties.
- 11.7 Survival.** All sections that by their nature should survive expiry or termination will survive.
- 11.8 Assignment.** Customer may not assign, delegate, or transfer the Agreement (or any of its rights or obligations) without Optimizely’s prior written consent, which shall not be unreasonably withheld and may be granted conditionally. Any assignment by Customer (including by operation of law) is a material breach. Optimizely may assign within the Optimizely Group.
- 11.9 Subcontracting.** Optimizely may subcontract any element of the Software Service (including hosting) to Affiliates and Third Parties. Optimizely remains responsible for its subcontractors’ performance.
- 11.10 Notices.** Notices must be in writing, delivered to the Order Form address. Optimizely may provide notices electronically. Modification notices may be via Documentation, the Support portal, or release notes.
- 11.11 Time Material.** Prescribed notice periods (e.g., non-renewal) are material and must be observed by Customer.
- 11.12 Trade Compliance.** Both Parties must comply with applicable Export Laws. Optimizely may terminate this Agreement or an Order immediately if Export Laws prohibit providing the Software Service, and provide Customer with a refund of unused prepaid Fees in accordance with Section 11.3.
- 11.13 Entire Agreement.** The Agreement is the entire agreement between the parties regarding the Software Service, superseding all prior discussions and agreements. Modifications require mutual written agreement. Vendor codes of conduct imposed after the Effective Date have no force or effect. Purchase orders, vendor registration terms, or similar documents are for convenience only and all terms and conditions (pre-printed or otherwise) will be void and of no effect.

GLOSSARY

The following definitions apply to this GTC and the Agreement.



SOFTWARE SERVICE GENERAL TERMS & CONDITIONS

Affiliate means any entity controlling, controlled by, or under common control of a Party - ('control' meaning majority voting stock, contract, or other authority over management).

Authorized User means any legal entity or a natural person 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 requiring Software Service Use in connection with Customer's internal operations.

Confidential Information means information designated or reasonably understood as confidential. Optimizely's includes the Software Service and Agreement terms/pricing. Customer's includes Customer Data (excluding publicly available data).

Customer Data means data, information, or material submitted or collected by Authorized Users through the Software Service.

Documentation means Optimizely's current technical and functional documentation, including Service Descriptions and user guides.

DPA means the Data Processing Agreement referenced in the Order.

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 of the US, UK, and EU.

Feedback means suggestions, enhancement requests, or other feedback regarding the Software Service.

Intellectual Property Right means patents, copyrights, trade secrets, trademarks, and all other intangible property rights, whether registered or not.

Optimizely Group means Optimizely and its Affiliates.

Optimizely Material means materials provided or developed by Optimizely in performing under the Agreement (e.g., configuration workbooks, training materials, project plans).

Optimizely Software means Optimizely-developed software.

Personal Data is defined in the DPA.

Policies means the Support Policy and other operational policies published by Optimizely.

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 is referenced in the Order Form.

Representatives means a Party's Affiliates, employees, contractors, legal representatives, and professional advisors.

Sensitive Information is defined in the DPA.

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

SLA means the Service Level Agreement referenced in the Order Form.

Software means application software in any form.

Sub-Processor is defined in the DPA.

Subscription Term / Term has the meaning in the Order.

Support means support for the Software Service as identified in the Order.

Support Portal means support.optimizely.com.

Third Party means any party other than Optimizely, Customer, and their 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. The Software Service excludes Third-Party Material; Third-Party Material is not part of the Software Service.

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

Third-Party Software means any Third-Party software (including open-source software) not owned or otherwise developed by Optimizely.

Trust means optimizely.com/trust-center/.

Underlying Service means Third-Party cloud hosting and infrastructure services (e.g., Google Cloud Platform, AWS, Microsoft Azure); content delivery network (e.g., Cloudflare); network and application monitoring and analytics (e.g., DataDog); single sign-on (e.g., OKTA); database (e.g., Snowflake, MongoDB); email service (e.g., Twilio/SendGrid); analytics (e.g., Google Analytics); data modelling and visualization (e.g., Looker); and others — collectively, the providers of such services are **Underlying Service Providers**.

Use is defined in the Order Form. **Utilize** has a corresponding meaning.

World means world.optimizely.com and sub-sites.

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