

## SOLUTION-PARTNER GENERAL TERMS AND CONDITIONS

BY ACCEPTING THE PARTNER FORM, PARTNER AGREES TO THESE PARTNER GENERAL TERMS AND CONDITIONS FOR SERVICES (“SP-GTC”) AND THAT THEY ARE AN INTEGRAL PART OF PROGRAM TERMS AND THE PROGRAM APPENDICES (COLLECTIVELY, THE “AGREEMENT”).

The Glossary (at the end of this SP-GTC) contains definitions applicable to the Agreement.

**1. NON-EXCLUSIVITY.** The Parties’ obligations under any part of this Agreement are non-exclusive. Optimizely is not precluded from marketing, licensing, positioning, providing and distributing Solutions through other partners and channels. Nothing in this Agreement prohibits or restricts either party’s right to develop, make, use, market, license, position, provide and distribute any other products similar to or competitive with those of the other party as long as it does not breach its confidentiality obligations or any other part of this Agreement.

**2. FREEDOM OF ACTION.** Partner acts in its own name, at its own risk and for its own account for the performance of any activities arising under any part of this Agreement. The Parties are therefore independent contractors and do not act as agents or representatives of each other. Neither Party is entitled, to hold itself out as representing the other Party or to make any statement or give any undertaking on behalf of the other Party.

**3. PARTNER RESPONSIBILITIES. I. Obligation to notify of unauthorized use and distribution.** Partner must inform Optimizely without undue delay if Partner becomes aware of any End-Customer or Third-Party: (a) using or otherwise having unauthorized access to any Solution including, without limitation, if Partner becomes aware of any End-Customer exceeding licensed levels; and/or (b) marketing, licensing, positioning, providing and distributing any Solution without authorization. In such case, Partner must: (i) assist Optimizely and any other member of the Optimizely Group in every reasonable way in the pursuance of their respective rights and, upon consultation with the relevant member of the Optimizely Group, immediately take all steps for the protection of those rights; and (ii) temporarily stop marketing, licensing, positioning, providing and distributing Solutions to any such Third-Party unless and until such ambiguity is resolved to Partner’s and Optimizely Group’s satisfaction. **II. Change of Control.** Partner must inform Optimizely immediately: (a) of any Change of Control regarding Partner; and (b) in case a material part of Partner’s assets or a material part of Partner’s assets utilizing any Optimizely Material, or both being sold or otherwise transferred. Optimizely expects Partner to prevent any conflict of interest and to maintain a policy to identify and disclose potential conflicts. The term “conflict of interest” describes any circumstance that could cast doubt on Partner’s ability to act with objectivity regarding the rights and obligations under this Agreement. **III. No Conflicts.** Partner affirms that none of its owners, directors, employees, and to its knowledge, Third-Parties involved in the performance of this Agreement is a Politically Exposed Person or Government Official or an immediate or close family member of a Government Official (all “Covered Individual”), (a) with the ability, or appearance of ability, to influence the performance of this Agreement; or (b) who will derive any substantial financial benefit in the contractual relationship established by this Agreement. If any of Partner’s owners, directors, employees and, to its knowledge, Third-Parties involved in the performance of this Agreement is such a Covered Individual, Partner affirms that it will disclose and fully describe any such relationship in writing to Optimizely and obtain from Optimizely written acknowledgement of such disclosure. **IV. No Assignment. No Subcontracting.** Partner may not assign, delegate or subcontract its obligations under this Agreement to any Third-Party, unless expressly permitted under the Agreement or with express permission from Optimizely. Partner shall require all subcontractors to agree to terms substantially similar to this Agreement. Partner represents that it shall promptly notify Optimizely in writing if it ever receives a request to take any action that would violate its obligations under this Agreement.

**3. OPTIMIZELY RESPONSIBILITIES.** Optimizely’s obligations to Partner with respect to the Solutions are outlined in the applicable Partner Program Appendix. Notwithstanding Optimizely’s acceptance of a Customer Contract, Optimizely will be entitled to suspend that End-Customer’s Use of the applicable Solutions under any of the following circumstances: (a) on a Resale, if Partner fails to pay Optimizely correctly-invoiced Fees with respect to that Customer Contract; (b) on a Referral, if End-Customer fails to pay Optimizely correctly-invoiced Fees under that Customer Contract; (c) provision of the Solution is inappropriate or impossible due to technical problems outside Optimizely’s responsibility (for example, unresolved defect notices, product liability risks, software production problems, provided these events are not attributable to Optimizely); (d) Optimizely reasonably determines that the laws of the country of the End-Customer are insufficient to protect Optimizely’s Intellectual Property Rights with respect to the Solutions. Except in the cases of emergency or the protection of Optimizely, the Solutions or other customers, Optimizely will reasonably inform Partner of its intention to suspend and discuss the issue/s with Partner, and will inform Partner without any unreasonable delay if Optimizely does suspend any Solution Use.

**4. ADVERTISING MATERIALS.** Partner may add its own material to the information supplied by Optimizely, solely for the purposes of Partner’s own marketing activities. Any material which is added must be clearly marked as Partner’s material. Marketing and promotional materials, including advertising and publicity materials, which are generally made available by Optimizely to Partner Community, will be provided by Optimizely to Partner upon Partner’s request, under Optimizely’s standard Program Terms. All marketing and promotional materials developed by Partner, including, but not limited to, print advertisement, broadcast or telecast commercials, product brochures, sales aids, manuals, displays, and publicity concerning the Solutions resold or provided hereunder and related services must be of good quality. Partner must make no representations regarding the Optimizely Solutions except as consistent with Optimizely’s Documentation or as Optimizely may otherwise approve in writing.

**5. TRADEMARK USE. I.** Subject to Partner’s compliance with all Program Terms, Optimizely grants to Partner a revocable, non-exclusive, non-transferable license to use the Optimizely Partner logo that Optimizely makes available to Partner, depending on the Program participation, in connection with the Agreement in accordance with the terms of this Section (“Program Logos”). Partner is not permitted to grant sublicenses to the Program Logos. No other license to any other Trademark is provided by Optimizely under this Agreement. **II.** When using Program Logos, Partner must adhere to the Branding Guide and Optimizely Trademark Use Notice and otherwise as Optimizely may require. Partner must refrain from permitting Third-Parties to use or otherwise exploit Optimizely’s name, logo or trademark and/or any name, logo or trademark of Optimizely Group. This includes, without limitation, permitting any Partner Affiliate (or other affiliate, or agent) (collectively, “Agent”) to use or otherwise exploit the Program Logos if such Agent is not participating in the applicable Partner Model or is not in compliance with all Program Requirements (e.g., personnel of Partner or

Agent have not completed necessary training or certifications). Optimizely reserves the right to review the use of the Program Logos in Partner's and its Agents' marketing, advertising and other promotional materials and Partner shall comply with all reasonable requests by Optimizely in connection with any exercise by Optimizely of this right. **III.** Partner agrees not to register any Trademark (in whole or in part), or any mark confusingly similar to a Trademark. Partner will not contest the validity of the Program Logos. Partner will reasonably cooperate with Optimizely, at Optimizely's expense, in the defense and protection of the Program Logos. Partner acknowledges the value of the goodwill in the Trademarks, including the Program Logos, and that Optimizely is the exclusive beneficiary of such goodwill.

**6. OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS.** Partner's rights of Optimizely Property (as defined) are entirely and exclusively set out in this Agreement. Each Party owns all rights, title and interest in that Party's Background IP. Neither Party will acquire any right, title, or interest in or to the other Party's Background IP under the Agreement.

**7. PERSONAL DATA PRIVACY.** Each Party is an independent controller of relevant Personal Data, and each will individually determine the purposes and means of any processing of that Personal Data by the other Party. Partner acknowledges however, that Optimizely does not need to process Partner (or End-Customer Personal Data) to perform its obligations under this Agreement; and as such, Partner will not provide Optimizely with Partner or End-Customer Personal Data ("**Applicable Personal Data**"), however, if any processing by Optimizely is required, the Parties will enter into a Data Processing Agreement with Optimizely, in a form acceptable to Optimizely. In all respects, the Parties will comply with their respective obligations under applicable data protection laws regarding the control and processing of any relevant Personal Data.

**8. WARRANTIES AND INDEMNITIES FOR THIRD-PARTY IPR INFRINGEMENT.**

**8.1 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 its Solutions; and (ii) in the case of Partner, Partner's Reselling and Referrals.

**8.2 Disclaimers.** Except for (i) the warranties expressly stated in this Agreement, and (ii) any warranties that cannot be lawfully excluded, the Solutions, and Optimizely Technology are provided on an "AS IS" basis. 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, quality, reliability, availability, accuracy, timeliness, fitness for any particular purpose, non-infringement, results derived from use of or integration with any Third-Party materials utilized by Partner or End-Customer or that the Optimizely Technology will be, secure, uninterrupted, timely, error-free, meet Partner or End-Customer requirements.

**8.5 IP Infringement Claims Against Partner.** Optimizely will, at its sole discretion, either defend Partner against or settle any claim brought against Partner in the Territory if such claim (i) is brought by any owner of the Intellectual Property Right specified below giving rise to the claim and (ii) alleges that the distribution of the Solution by Partner, in accordance with the terms and conditions of any part of this Agreement, constitutes a direct infringement or misappropriation of such owner's patent claim, copyright, trademark or trade secret right. Optimizely will pay damages finally awarded against Partner (or the amount of any settlement Optimizely enters into) with respect to such claims. This obligation of Optimizely does not apply if the alleged infringement or misappropriation results from: (a) use or distribution of the Solution in conjunction with any software or service other than Solutions; (b) use or distribution of Software in conjunction with an apparatus other than a Designated Unit (defined as information technology devices (e.g. hard disks or central processing units) identified by Partner pursuant to any part of this Agreement or in the order for the Software placed for a specific End -Customer that has been previously approved by Optimizely or otherwise officially made known to the public as appropriate for use or interoperation with the Software); (c) failure to promptly use an update provided by a member of the Optimizely Group if such infringement or misappropriation could have been avoided by use of the update; and/or (d) unlicensed activities by Partner, End -Customer and/or a Third-Party, including alterations of the Solutions (other than alterations of the Solution made by a member of the Optimizely Group). This obligation of Optimizely will also not apply if Partner fails to timely notify Optimizely in writing of any such claim; however, Partner's failure to provide or delay in providing such notice shall not relieve Optimizely of its obligations under this Section except to the extent Optimizely is prejudiced by Partner's failure to provide or delay in providing such notice. Optimizely is permitted to control fully the defense and any settlement of any such claim as long as such settlement does not include a financial obligation on or admission of liability by Partner. In the event Partner declines Optimizely's proffered defense or otherwise fails to give full control of the defense to Optimizely's designated counsel, then Partner waives Optimizely's obligations under this Section. Partner must reasonably cooperate in the defense of such claim and provide Optimizely with all relevant information and reasonable support. Partner may appear in any proceedings concerning such claim or legal dispute, at its own expense, through counsel reasonably acceptable to Optimizely. Optimizely expressly reserves the right to cease such defense of any claim(s) in the event the relevant Solution is no longer alleged to infringe or misappropriate, or is held not to infringe or misappropriate, the alleged owner's rights. Optimizely may settle or mitigate damages from any claim or potential claim by (1) procuring for Partner the right to continue distributing the Solution; or (2) substituting alternative substantially equivalent non-infringing programs, services and supporting documentation for the Solution. Partner must not undertake any action in response to any infringement or misappropriation, or alleged infringement or misappropriation of the Solution that is prejudicial to Optimizely's rights. The liability limitations contained in this Agreement apply to all claims made under this Section. Any limitations to the liability and obligations of Optimizely according to this Section will also apply for the benefit of any member of the Optimizely Group and their respective licensors. **The provisions of this Section state the sole, exclusive and entire liability and obligation of Optimizely (and Optimizely Group) and their respective licensors to Partner, and is Partner's sole remedy, with respect to the infringement or misappropriation of Third-Party Intellectual Property Rights.**

**8.6 By Partner.** If a claim is brought against Optimizely Group by a Third-Party (including tax or other authorities) arising from or relating to: (a) any taxes and related costs, interest and penalties that are levied against the Optimizely Group even though they should, according to any part of this Agreement or applicable law, have been borne by Partner in the first place; (b) any member of Partner Group breaching Section 15.4 (Export

Regulations) or Section 15.5 (Compliance Obligations) or both; **(c)** any agreement between Partner and or End-Customer; **(d)** any claim that a product or service which is provided by any member of Partner Group other than the Solution infringes, misappropriates or violates any Intellectual Property Right of any Third-Party; **(e)** an allegation that Partner's or End -Customer's use of the Solution in violation of any part of this Agreement violates, infringes or misappropriates the rights of a Third-Party; and **(f)** a Third-Party's assertion that Partner acted as agent, representative or otherwise on Optimizely's behalf, Partner will defend the affected member of the Optimizely Group, at Partner's expense, and will pay any settlement amounts Partner authorizes and all damages, costs and fees (including, without limitation, attorneys' fees and costs of litigation) finally awarded against such member of the Optimizely Group in the action.

8.7. **Additional Warranties.** The Program Appendices may contain additional warranties that are relevant to Solution Resale.

## 9 LIMITATIONS OF LIABILITY.

9.1 **Not Responsible.** Optimizely Group and their respective licensors will not be responsible under any part of this Agreement **(i)** if a Solution is not used in accordance with the Documentation or **(ii)** if the defect or liability is caused by Partner and/or End-Customer, a Modification or Add-on (other than a Modification or Add-on made by a member of the Optimizely Group which is provided through Maintenance Services or under warranty) or Third-Party software. Optimizely Group and their respective licensors will not be liable for any claims or damages arising from use of any of the Solutions in a manner that is inherently dangerous or outside the scope of the intended and documented use, distributed, positioned or provided under or in connection with any part of this Agreement.

9.2 **Exclusion of Damages; Limitation of Liability.** Except for: **(a)** damages resulting from: **(i)** unauthorized use or disclosure of Confidential Information, **(ii)** death or personal injury or property damage arising from either Party's willful acts or omissions, or gross negligence, **(iii)** Partner's violation of Optimizely Intellectual Property Rights, **(iv)** fraud, including Partner's fraud with respect to any Resale or Referral, **(b)** Optimizely's right to collect fees owned under or in connection with any part of this Agreement, and **(c)** Partner's indemnification obligations under this Agreement, **under no circumstances and regardless of the nature of any claim** will Optimizely or Partner be liable to each other (or their respective Affiliates) or any other Third-Party for an amount in excess of: **(1)** in case of the Resale of any perpetual on-premise Software, the license Fees (including the initial M&S) paid by Partner to Optimizely for the Software directly causing the damages, or **(2)** in case of the Resale of any subscription on-premise Software, the subscription fees paid by Partner to Optimizely in the twelve months period immediately preceding the events giving rise to the claim for the Software directly causing the damages, or **(3)** in case of the Resale of any Solution, the subscription fee paid by Partner to Optimizely in the twelve months period immediately preceding the events giving rise to the claim for the Solution directly causing the damages, or **(4)** in case of the Referral of any Solution, the Referral Fee paid by Optimizely to Partner with respect the Referred Solution, and **(5)** in any other case, for any amount in excess US\$25,000; **and under no circumstances** in any amount for special, incidental, consequential, or indirect damages, loss of good will or profits, work stoppage, data loss, computer failure or malfunction, attorneys' fees, court costs, interest or exemplary or punitive damages.

9.3 **Exclusion of 9.2.** Partner will not have the benefit of the limitations in Section 9.2 above if Partner **(i)** made any unauthorized copies of a Solution, **(ii)** misappropriated a Solution, or **(iii)** distributed, positioned or provided a Solution to a Third-Party in violation of any part of this Agreement.

9.4 **Risk Allocation.** The provisions of this Agreement allocate the risks between Optimizely and Partner. The Fees paid by Partner reflect this allocation of risk and the limitations of liability herein. It is expressly understood and agreed that each and every provision of this Agreement which provides for a limitation of liability, disclaimer of warranties or exclusion of damages, is intended by the Parties to be severable and independent of any other provision and to be enforced as such.

9.5 **Third-Party Software.** Subject to this Section 9, under no circumstances and regardless the nature of the claim, will Optimizely (or Optimizely Group or their respective licensors) be liable for any amount in excess of the fees paid by Partner to Optimizely for any Third-Party Software causing the alleged damages.

9.6 **Initiate Cause of Action.** Partner must initiate a cause of action for any claims arising or relating to this Agreement and its subject matter within one year from the date Partner knew, or should have, or could have, reasonably have known after reasonable investigation of the facts alleged with respect to the claim.

## 10 CONFIDENTIAL INFORMATION.

10.1 **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. Partner shall not disclose any information about the Agreement, its terms and conditions, the pricing, or any other related facts to any Third-Party, including an End-Customer. Confidential Information of either Party disclosed prior to execution of the applicable Agreement will be subject to this Section.

10.2 **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.

**10.3 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.

**10.4 Residuals.** The Receiving Party will not be in violation of this Agreement due to the use of any Residuals (defined below) resulting from authorized access to or work with Confidential Information of the Disclosing Party. **“Residuals”** means information in non-tangible form which may be incidentally retained in the unaided memory of Representatives of the Receiving Party who have had access to the Confidential Information, so long as such persons have not studied the information for the purpose of replicating the same from memory; provided, however, that in no event will Residuals include any information that a reasonable person would know was Confidential Information of the Disclosing Party.

**10.5 Destruction and Return.** Upon Discloser’s request, Receiver shall promptly destroy or return Discloser’s Confidential Information, including copies and reproductions of it. 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.

**11 PRICES AND FEE.** Fees, discounts and credits for Resale and Referral or Solutions are described in the Program Terms. Any prices cited are net prices; and do not include federal, state or local sales, VAT, GST, foreign withholding, use property, excise, services or similar taxes.

**12 INVOICES AND PAYMENT.** Partner will pay all the correctly-invoiced Fees in accordance with the payment terms set out in the Program Terms, including the Program Appendixes. Optimizely reserves the right to charge interest (at the maximum rate under applicable law) for late payment of correctly-invoiced Fees. If Partner fails to pay any correctly-invoiced Fee, Optimizely may at its sole discretion: (a) suspend Partner’s right to market, provide, position and distribute any Solution until such time as any outstanding correctly-invoiced Fee has been received by Optimizely, (b) suspend Partner’s right to use the Optimizely Trademarks; (c) require full payment from Partner for any other amount due by Partner to Optimizely; and (d) avail itself of any other right or remedy existing under any part of this Agreement, in law or in equity. Any fees due to Partner with respect to a Resold or Referred Solution are to its own account (**“End-Customer Fees”**). Fees due to Optimizely under any part of this Agreement are not contingent upon the payment to, or collection of, End -Customer’s Fees. Optimizely may require Partner to settle any invoice in full prior to Optimizely delivery under the respective order if: (A) Partner is at that time in arrears with a substantial amount payable to Optimizely; (b) in the preceding twelve months, Partner failed - several times or for a substantial amount - to settle invoices in full when due and owing; (c) there is no prior business relationship with Partner; (d) Delivery is to be made outside of Territory; or (e) Partner’s registered office is outside of the Territory Optimizely may require all partners in a country (including Partner) to settle any invoice in full prior to Optimizely’s delivery of a Solution if this is – in Optimizely’s reasonable discretion – needed to safeguard Optimizely’s justified financial interests.

**13 TERM, SUSPENSION, AND TERMINATION.** **I. Term.** The Term is as stated in the Partner Form. **II. Suspension.** The Agreement may set out Optimizely’s rights to suspend Partner or End-Customer’s use of Solution. Any suspension will be limited in scope and time according to the underlying purpose of the right to suspend. Notwithstanding any suspension of Use, Partner or End-Customer will still be granted access to retrieve its Personal Data upon request and to the extent Partner or End -Customer is obliged to access and retrieve them under applicable law. **III. Termination (for convenience).** The Program Terms may contain provisions for the Parties to terminate this Agreement for convenience. **IV. Termination (for cause).** Either Party may terminate the applicable Agreement: **(i)** for cause upon ten business-days' prior written notice of the other Party's material breach of any provision of the Agreement unless the breaching Party has cured the breach during that ten day period, or **(ii)** immediately if the other Party files for bankruptcy, becomes insolvent, or makes an assignment for the benefit of creditors, or otherwise materially breaches section 10 (Confidential Information). **V. Other Terminations.** Either Party may also terminate this Agreement as otherwise expressly permitted under this Agreement, with termination effective as provided in the applicable notice. **VI. Effects of Termination.** Upon termination: **(i)** Partner and its End -Customers must immediately cease Using the applicable Solution; and **(ii)** Partner’s right to hold itself out as a partner of Optimizely, use Optimizely Trademarks and other Documentation and marketing programs and materials (and all copies, reproductions, summarize, extracts thereof or based thereon) immediately ends. **VII. Destruction of Confidential Information.** Further to this Section, upon termination, the Parties shall, promptly return or destroy all copies (in whatever form, whether full or partial) of all Confidential Information, which is in a Party's possession or under its control. Within thirty days after termination, Parties shall provide written confirmation to the other Party that all copies of the Confidential Information have been returned or have been destroyed. Parties shall also implement appropriate measures to safeguard the confidentiality of any intangible Confidential Information that cannot be physically returned or destroyed.

**14 DISPUTES, VENUE, GOVERNING LAW AND JURISDICTION.** Excluding claims in relation to 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.

Partner 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
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<b>Governing Law:</b>	New York and controlling U.S. Federal Law	Laws of Sweden	Laws of England and Wales	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
<b>Venue:</b>	The U.S. District Court (Southern District of New York)	Courts of Sweden, Stockholm. English language.	The Courts of United Kingdom, in London	The Courts of United Kingdom, in London	The Courts of Germany, in Berlin	The Courts of the Dubai International Financial Centre. English language.	The Courts of United Kingdom, in 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.

## 15 GENERAL PROVISIONS.

**15.1 Feedback.** Partner may provide or Optimizely may solicit Partner’s Feedback. All Feedback is provided at the sole discretion of Partner. Unless the Parties have entered into a separate agreement that includes a comparable license from Partner to Optimizely regarding Feedback, Partner grants to each member of the Optimizely Group a non-exclusive, perpetual, irrevocable, worldwide, royalty-free license, with the right to sublicense to any licensee or customer of the Optimizely Group, or any Third-Party, under all relevant Partner intellectual property rights, to use, publish, and disclose such Feedback and to display, perform, copy, make, have made, use, sell and otherwise dispose of the Optimizely Group’s and its sublicensees’ products or services embodying Feedback in any manner and via any media any member of the Optimizely Group chooses, without reference to the source (“**Feedback License**”). Except for the license granted above to use Feedback provided by Partner at its sole discretion, Optimizely acquires no title or interest in any pre-existing or independently developed data, information, or intellectual property of Partner under this Feedback License. Partner acknowledges that the Feedback is only provided for information purposes but is not intended to be binding upon Optimizely to any particular course of business, product strategy, service strategy and/or development. If Partner’s Feedback is based on Feedback of an End–Customer, Partner must ensure that the relevant End-Customer grants to each member of the Optimizely Group a Feedback License.

**15.2 Audit.** I. Optimizely shall have the right to once annually conduct an audit to verify the compliance of Partner’s performance of its obligations under any part of this Agreement, with the terms of this Agreement, including Optimizely policies referenced by this Agreement, particularly Partner’s compliance obligations. Notwithstanding the foregoing, in the event Optimizely reasonably believes that a breach of the terms of this Agreement, the referenced policies and in particular the compliance obligations has occurred or will most likely occur, Optimizely shall have the right to perform an audit. II. The audit will be conducted by Optimizely or its nominated independent expert. By choosing the expert, Optimizely will take into account Partner’s legitimate business interests. Optimizely will bear the costs of the audit unless: (i) the expert establishes a breach by Partner in which case Partner must bear the costs, or (ii) Partner does not fully or timely cooperate with reasonable requests relevant to the audit. III. Optimizely will provide one (1) week advance notice of an audit unless (a) Optimizely reasonably believes that evidence to be reviewed will be compromised or (b) required by investigating authorities. IV. The audit will take place during normal business hours and Optimizely will instruct its expert to conduct the audit in such a manner that it will not unreasonably interfere with Partner’s business operations. V. Partner must make full disclosure to Optimizely or its expert, and ensure that (i) any member of Partner Group involved in the performance of obligations under any part of this Agreement and any of (ii) Partner’s Representatives cooperate fully and provide information, grant viewing access to all necessary and useful documents and permit the making of copies of them. Financial records must be readily available for inspection during audits by Optimizely or its expert. Partner also agrees to make its employees, officers, and directors involved in the performance of obligations under this Agreement available for meetings and interviews with Optimizely and/or its expert for the audit. Partner agrees to provide appropriate workspace for the expert. VI. The expert will be bound in writing to confidentiality for the benefit of Optimizely and Partner. The expert will undertake not to disclose information to Optimizely, except for the purpose of providing a report of the audit and, in case of a breach of any part of this Agreement, any information establishing such a breach. VII. Partner’s Confidential Information disclosed during the audit will not be used by Optimizely for any purpose other than to verify and prove if a breach of any part of this Agreement has occurred. Additional audit requirements are, if applicable, set out in the Program Terms or as advised to Partner Community via a Partner Policy, or Partner Policy update. VIII. Partner must include audit terms with its agreements with any Third-Party used by Partner in connection with its activities under this Agreement (“**Intermediaries**”) which are materially as protective as the terms in this Section. Furthermore, Partner must make Optimizely a third-party beneficiary to such audit terms with the right to enforce such provisions directly against the Intermediary at Optimizely’s sole discretion. IX. Optimizely reserves the right to suspend business with Partner in the event of a lack of reasonable and/or timely cooperation by Partner and its representatives in case of an audit. Furthermore, Optimizely may terminate the Agreement and/or any Program participation in accordance with termination provisions of this Agreement in case Partner does not cooperate with Optimizely or its expert during an audit as outlined in this Section.

**15.3 Modifications.** Notwithstanding anything in this Agreement, Optimizely reserves the right to change the Price List without prior written notice. Any change to the Price List will become effective on the date indicated in the Price List or if no such date is indicated, upon the earliest of (i) it being published on Partner Portal or (ii) it otherwise being provided by a member of the Optimizely Group to Partner. With regard to any order for a Solution, the Price List that was effective on that point in time when Partner places a completely and correctly filled-out order for the relevant Solution with Optimizely is definitive. Existing quotes provided by Optimizely to Partner will be honored for the time that the quote is valid or in case the quote does not contain a validity date for the time during which the quote can reasonably be expected to be accepted. Optimizely reserves the right to change any or all parts of this Agreement (in particular by replacing parts of it with an updated version), including, without limitation, any Program, the Program Terms, the then-current SP-GTCs, the Partner Policies, the Branding Guide, and any other guide or agreement concluded under or in

connection with any part of this Agreement as may be reasonably required and consistent with Optimizely's practices. Optimizely will give Partner at least sixty days prior notice in writing or in any other documented form of changes to any or all parts of this Agreement as set out in this Section. Unless otherwise stated in the notice, the notice will become effective after sixty days ("**Change Period**"). If the justified interests of Partner are negatively affected by any of these changes, Partner is entitled to State the affected part of this Agreement with effect to the expiration of the applicable Change Period. If Partner does not terminate within the applicable Change Period, the changes are deemed to be accepted by Partner. Any change that Optimizely reasonably believes to be beneficial to Partner may, at Optimizely's discretion, become effective upon notice by Optimizely. Such changes include, but are not limited to, increased discounts, promotions and program enhancements. Should Partner believe a change not to be beneficial, Partner must notify Optimizely in writing within five days of receipt of such notice that Partner does not agree with Optimizely's assumption and state the reasons why the change would not be beneficial to Partner. Optimizely may elect to discontinue the distribution of any or all components or functionality of any or all of the Solutions and to cancel any or all orders for the discontinued Solutions without liability to Partner. However, Optimizely will return any fee prepaid by Partner for the discontinued Solution, including, without limitation, prepaid fees for any discontinued Solutions, including M&S in each case if applicable less an appropriate amount covering the period of actual use of the discontinued Solution by the End-Customer.

**15.4 Export Regulations.** I. Optimizely Confidential Information is subject to export control laws of various countries, including the laws of the United States, the European Union, Ireland and Germany ("**Export Regulations**"). Partner will not export Optimizely Group Confidential Information to countries, persons, organizations or entities if prohibited by Export Regulations. Partner will take all commercially reasonable precautions to ensure that Partner, and Partner Group and anyone they authorize to provide services to End-Customers complies with the Export Regulations. II. Partner will support Optimizely Group in obtaining any required export and import authorization and/or approval by providing such information as requested by Optimizely. The availability of the Optimizely Property may require prior export and/or import authorizations and this process may delay or prevent the delivery of Optimizely Property, including any Optimizely services to Partner or End-Customer

**15.5 Compliance.** I. **Compliance Obligations.** Partner shall conduct operations in compliance with applicable laws, rules and regulations in exercising rights and obligations under any part of this Agreement. Laws may include but not be limited to the U.S. Foreign Corrupt Practices Act, the U.K. Bribery Act, and local anticorruption legislation that may apply. Partner undertakes that no payments or transfers of value shall be made which have the purpose or effect of public or commercial bribery, or other unlawful or improper means of influencing or obtaining business. Partner agrees that such payment of money, kickback, or anything of value shall be deemed a material breach for purposes of this Agreement. Partner shall comply with Optimizely's Partner Code of Conduct, or Partner may comply with its own code of conduct if comparable standards are established. Partner is not listed by any government agency as debarred, suspended, proposed for suspension or debarment or otherwise determined to be ineligible for government procurement programs. II. **No Prohibited Parties Payments.** In exercising rights and obligations under any part of this Agreement, Partner and anyone acting on Partner's behalf shall not make, offer, promise or authorize payment of anything of value directly or indirectly to any Prohibited Party for the purpose of unlawfully influencing their acts or decisions. Business entertainment conducted for the fulfillment of any part of this Agreement must be appropriate, transparent, compliant with policies of the guest's company, and absent of any appearance of an attempt to influence business decisions.

**15.6 Subcontracting Services.** This Agreement does not grant Partner any rights to act as a contractor or subcontractor to Optimizely for any purpose, including without limitation for the purpose of providing professional services to any End-Customer as Optimizely's agent or otherwise ("**Subcontracted Services**"). Subcontracted Services may only be undertaken under a separate written professional services agreement with Optimizely, in a form acceptable to Optimizely.

**15.7 Integration Services.** This Agreement does not grant Partner any rights to act as integrate Partner's or any Third-Party's application or technology platforms to any Solution ("**Integrations**"). Integrations may only be undertaken under Optimizely's then-current Integrations terms and conditions, including policies.

**15.8 No Assignment.** Partner may not assign, delegate, subcontract its obligations under this Agreement to any Third-Party, unless expressly permitted under the Agreement or with express permission from Optimizely. Partner shall require all subcontractors to agree to terms substantially similar to this Section in writing. Where an End-Customer is a Government Entity, Partner shall not utilize, employ or compensate any Partner Group Company, Third-Party subcontractor, consultant, agent, or other intermediary in connection with the rights or obligations under this Agreement, specifically for the purposes of securing business on behalf of Optimizely without prior written consent by Optimizely's compliance office. Optimizely reserves the right to reject any proposed Third-Party. Partner must disclose to Optimizely and obtain prior written consent Optimizely's Compliance office before engaging and paying any Third-Party a commission, finder's fee, referral fee, success fee, or any similar payment for activities for purposes of securing business on behalf of Optimizely under any part of this Agreement, except pursuant to Partner's standard partner programs. Partner represents that it shall promptly notify Optimizely in writing if it ever receives a request to take any action which would violate its obligations under this Section or if there is any change to the information described herein.

**15.9 Insurance.** During the term of the Agreement, Partner agrees to maintain, at its own expense, for Partner and its personnel, insurance coverage in accordance with any applicable statutory requirements. In addition, Partner shall maintain commercial general and professional liability insurance coverage with adequate scope and limits to cover liabilities for personal injuries, property damages and pure financial losses assumed under the Agreement. Upon request, Partner shall provide Optimizely with a properly executed certificate of insurance evidencing existence of required coverages. None of the insurance coverage requirements described above are intended to, and shall not in any manner, limit, qualify or quantify the liabilities and obligations assumed by Partner under this Agreement.

**15.10 Force Majeure.** Any delay in a Party's performance (excluding Partner's obligation to pay Fees) caused by conditions beyond the reasonable control of the performing Party, including any fire, casualty, flood, earthquake, war, strike, lockout, pandemic, epidemic, labor stoppages or slowdowns or other industrial disturbances, passage of law or any action taken by a governmental or public authority, or material unavailability of Optimizely's

Third-Party Infrastructure or other dependencies, is not a breach of the Agreement; however, the time for performance will be extended for a period equal to the duration of the conditions preventing performance.

**15.11 Non-solicitation.** Both Parties agree that during the term of this Agreement and for a further period of twelve months (“**Restricted Period**”), neither Party will knowingly solicit for employment or hire any person employed by the other. Nothing in this section will be construed to prohibit individual employees from responding to public employment advertisements, postings or job fairs of either Party, provided such response is not prompted by a party intentionally circumventing the restriction of this clause.

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

**15.13 Relationship of Parties.** No joint venture, partnership, employment, or agency or franchise 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. Partner acts in its own name, at its own risk and for its own account for the performance of any activities arising under any part of this Agreement. Parties are therefore, independent contractors and do not act as agents or representatives of each other. Neither Party is entitled to hold itself out as representing the other Party or to make any statement or give any undertaking on behalf of the other Party.

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

**15.15 Notices.** Notices will be in writing and given when delivered to the address set out in the applicable Partner Form. Notices from Optimizely to Partner may be in the form of an electronic notice to Partner’s authorized representative or administrator. All Notices shall be in English.

**15.16 Entire Agreement.** The Agreement constitutes the entire and exclusive agreement between Optimizely and Partner in connection with the Parties’ business relationship related to the Solution. All previous representations, discussions, and writings (including any confidentiality agreements) are superseded by this 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 Partner-issued purchase order shall have no force or effect, even if Optimizely accepts, or does not reject, the purchase order.

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## GLOSSARY

**Add-On** means any development that adds new and independent functionality to the Solution, but does not modify existing Optimizely functionality that allows other software products to communicate with or call on the Solution without explicit written consent from Optimizely.

**Affiliate** means any entity that controls, is controlled by, or is under common control of either Party to this Agreement (and for the purpose of this definition, Optimizely Inc. is an Affiliate of Episerver Inc.), 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.

**Agreement** means the agreement as defined in the Partner Form and in all cases includes the relevant Program Terms and the Program Appendices and this SP-GTC.

**Background IP** means all Intellectual Property owned or licensed by a party either (i) prior to the Effective Date of the applicable Agreement or (ii) independent of this Agreement or any Customer Contract – and it includes its techniques, knowledge and /or work-flows and processes.

**Brand or Branding Guide** means any trademark, logo and brand use guidelines made available by Optimizely - <https://brand.optimizely.com> - as updated from time to time.

**Control** means the power to direct or cause the direction of the affairs of an entity whether by means of direct or indirect ownership of fifty per cent (50%) or more of the voting rights or similar rights of ownership or by means of having the power to direct the management or directors whether conferred by constitutional documents, shareholder agreement or other document regulating the affairs of an entity.

**Change of Control** means that a Party is no longer under Control by the same persons or entities that had Control on the Effective Date set out in the Agreement.

**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.

**Customer Contract** means (i) in the case of Referrals, the written agreement between Optimizely and the End-Customer, and (ii) in the case of a Resale, (a) the written agreement between Optimizely and Partner and where End-Customer is named as an additional user, or (b) the written agreement between End-Customer and Partner under the written agreement between Optimizely and Partner with respect to the Resale by Partner.

**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 End-Customer.

**Data Processing Agreement (or “DPA”)** means Optimizely’s then-current standard personal data processing agreement for Partners.

**End-Customer** means a person or entity to which Partner distributes, positions or provides access to a Solution in compliance with the applicable Program Appendix and which will be granted a right by Optimizely or Partner to use a Solution in, but excluding Partner.

**Export Law** means all constitutions, laws, statutes, codes, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, restrictive measures, trade sanctions, embargos and other legally binding requirements of all federal, country, international, state and local governmental authorities relating to export, re-export or import

**Fees** means the fees set out in a Customer Contract or for the Solution or a Partner Program Appendix for referrals.

**Feedback** means input, comments or suggestions regarding Optimizely’s business and technology direction, and the possible creation, modification, correction, improvement or enhancement of the Solution.

**Intellectual Property or IP** means anything protected or protectable by an Intellectual Property Right.

**Intellectual Property Right (or “IPR”)** 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 and service marks 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.

**Government Entity** means any entity directly or indirectly owned or controlled by the government, a government organization; any entity created by law or decree; any entity whose principal source of funds comes from the government; or any department, agency, or instrumentality of a government or a public international organization

**Government Official** means any appointed or elected official, officer, or employee who works at the expense of taxpayers or the government or state-owned, controlled or funded companies, or any person working in specific functions or industries who are defined or regulated as a government official by local law.

**Lead** has the meaning ascribed in the Program Terms and Program Appendices.

**Maintenance Services** or “M&S” means Optimizely’s then-current Software maintenance and / or support

**Modification** means (i) a change to the delivered source code or metadata; or (ii) any development, other than a change to the delivered source code or metadata, that customizes, enhances, or changes existing functionality of the Solution including, but not limited to, the creation of any new application program interfaces, alternative user interfaces or the extension of Optimizely data structures; or (iii) any other change to the Solution, other than an Add-on, utilizing or incorporating any Optimizely Materials.

**Optimizely Group** means Optimizely North America Inc, Optimizely AB and their respective Affiliates.

**Optimizely Material** means any material (including statistical reports) provided, developed or made available by Optimizely prior to the Effective Date or independent of this Agreement, in each case without reference to or use of Confidential Information or IPRs of End-Customer.

**Optimizely Property** means: (a) the Solutions and all other software, hardware, technology, documentation, and information provided by Optimizely in connection with the Solutions, including, without limitation, documentation, training materials, and other information with respect to the Program, the Partner Models, or the Partner Levels, whether set out online Partner Portal or elsewhere; (b) Optimizely Confidential Information; (c) Optimizely Trademarks; and (d) all worldwide IPRs in and to the property described in the immediately foregoing clauses (a) and (b).

**Optimizely Technology** means (i) Optimizely’s Background IP, (ii) all Intellectual Property Rights and know-how applicable to Optimizely products and services, and (iii) tools, code, algorithms, modules, materials, documentation, reports and technology developed in connection with the Services that have general application to Optimizely’s other customers, including derivatives of and improvements to Optimizely’s Background IP. Optimizely Technology does not include Partner’s Background IP or Partner’s Confidential Information.

**Partner Community** means Optimizely’s community of Solution-partners participating in the Partner Program

**Partner Form** or **Partner Order** means Optimizely’s Solution-partner Engagement Form referencing this SP-GTC that a Partner completes and executes as part of this Agreement.

**Politically Exposed Person** means any individuals connected to any prominent public functions, as well as their immediate family members and close associates.

**Price List** means any price list(s) issued by Optimizely for the applicable Program setting out the available Solutions and fees.

**Program** means Optimizely’s Solution-partner program.

**Program Terms** means the then-current Partner Program terms and conditions, as published at <https://www.optimizely.com/legal/solution-partner-program-terms/>, as updated from time to time.

**Program Appendices** means the Referral Appendix and the Resale Appendix, and **Program Appendix** means either

**Personal Data** is defined in the Data Processing Agreement or in the applicable data protection laws.

**Program Requirements** means Program requirements that Partner has to fulfill certain as describe in detail in the applicable Partner Program Appendix.

**Partner Model** means a Program model, including level within the Program.

**Partner Code of Conduct** means then-current Partner code of conduct, as published at <https://www.optimizely.com/legal/partner-code-of-conduct/>, as updated from time to time.

**Partner Portal** means the website and content maintained by Optimizely at <https://partnercenter.optimizely>.

**Program Policies** means the Program guidance documents, the Price Lists, and any other policies, as adopted and modified by Optimizely from time to time in accordance with the terms of the Agreement and made available to Partner, which may include, without limitation, posting by Optimizely on the Partner Portal. Program Policies may cover, but are not limited to, personnel certification requirements, methodologies, or best practices prescribed by Optimizely. Program Policies may apply to the Program as a whole or may apply to specific Partner Models, as context requires.

**Prohibited Parties** means (i) employees, consultants, or representatives of a Lead, (ii) Government officials or employees, (iii) political party officials or candidates, (iv) officers or employees of any public international organization, (v) Immediate family member of such persons (or any other person) for the benefit of such persons.

**Referral Appendix** means Optimizely’s then-current terms with respect to Partner Referrals as published at <https://www.optimizely.com/legal/solution-partner-referral-appendix/>, as updated from time to time

**Representatives** means (a) in case of Partner (i) employees, consultants, and (sub)-contractors of Partner and any Partner Affiliate and (ii) attorneys, accountants or other professional business advisors of Partner or any Partner Affiliate; and (b) in case of Optimizely (i) employees, consultants, and (sub)-contractors of Optimizely or any Optimizely Group and (ii) attorneys, accountants, or other professional business advisors of Optimizely or any Optimizely Group, who are in the case of both subclauses (a) and (b) actively and directly involved in the performance of obligations under any part of this Agreement or who otherwise need to know the Confidential Information for the purpose of a party’s performance under any part of this Agreement and are put under obligations of confidentiality substantially similar to those set forth in Section 10 (Confidentiality) above.

**Referral** is defined in the Program Terms.

**Resale** is defined in the Program Terms.

**Resale Appendix** means Optimizely’s then-current terms with respect to Partner Resales as published at <https://www.optimizely.com/legal/solution-partner-resale-appendix/>, as updated from time to time

**Software** means Optimizely’s on-premise software (whether sold as a perpetual license or a subscription)

**Services** means any Optimizely professional services.

**Software Services** means Optimizely’s software services (whether SaaS or PaaS)

**Solutions** means Optimizely's Software (perpetual and subscription) and Software Services

**Term** has the meaning set forth in the Partner Form.

**Third-Party** means any third party other than Optimizely Group.

**Third-Party Software** means (i) any and all software products listed on the Price List which are provided by Optimizely or its Affiliate to Partner or to an End-Customer (either directly or indirectly via Partner) under any part of this Agreement all as developed by or for companies other than the Optimizely Group; (ii) any new releases, updates or versions thereof made available through unrestricted shipment pursuant to Maintenance Services or warranty obligation by any member of the Optimizely Group; and (iii) any complete or partial copies of any of the foregoing.

**Trademarks** means the trademarks, service marks, trade names, service names, proprietary words, symbols and other logos of Optimizely, Optimizely Group, and their respective Affiliates and licensors.

**Trademark Use Notice** means the trademarks identified in the trademark notice and trademark use guidelines at <https://www.optimizely.com/legal/trademarks/>, as updated from time to time.

**Use** means access to and use of the Solution

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