

ONLINE SOFTWARE SUBSCRIPTION TERMS

THESE SOFTWARE SUBSCRIPTION TERMS APPLY TO EVERY ORDER THAT REFERENCES AND INCORPORATES THESE ONLINE SUBSCRIPTION TERMS. THE ORDER AND THESE ONLINE SUBSCRIPTION TERMS CONSTITUTE TOGETHER THE CUSTOMER'S SOFTWARE SUBSCRIPTION AGREEMENT.

1. SUPPORT AND SERVICE LEVELS

- 1.1 Support for the Software Services is described in Optimizely's [Support Policy](#).
- 1.2 The technical availability of the Software Services is described in Optimizely's [Service Level Agreement](#).

2. FEES, PAYMENT, TAXES & PO'S

- 2.1 **Non Cancellation** – Subject to the respective rights of termination, all Subscriptions are non-cancellable, and all Fees are non-refundable.
 - 2.2 **Overage** – Customer will monitor its own Use of the Software Service and report any Use in excess of the agreed Usage Volume. Certain Software may provide functionality facilitating Customer's management of its Use. That functionality may require Customer to opt-in the reporting. 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 will be calculated against the applicable Usage Volumes and will be two times the Usage Volume unit price. Overage Fees will be invoiced on a monthly basis, in arrears.
 - 2.3 **Price Increase** – For each Extended Subscription Term, Optimizely may increase the Subscription Fee ("**Fee Adjustment**"). Any such proposed Fee Adjustment will be implemented as follows: (i) Optimizely will provide Customer with **one hundred and twenty days** prior written notice (email acceptable) ("**Price Adjustment Notice**"), and (ii) the proposed new Subscription Fee will be effective from the start of Extended Subscription Term. **Optimizely's Price Adjustment Notice will be in the form of a notice marked as a 'pro forma' invoice or it may be marked 'renewal notice', and it will be sent electronically to the nominated Finance Contract (on page 1 of the Order), as may be updated by Customer in the Customer record at Optimizely for the Subscription). If Customer objects to the proposed Fee Adjustment, Customer has the right to cancel its Subscription for that Extended Subscription Term in accordance with the Renewal cancellation provisions in the Order.**
 - 2.4 **Suspension and Interest** – Customer shall pay all correctly-invoiced Fees in accordance with this Agreement. If any correctly-invoiced Fee remains unpaid twenty (20) days after the date due payment, Optimizely may (in addition to any other rights) suspend Customer's access to the applicable Software Service. Optimizely will provide Customer with reasonable prior written notice (email sufficient) before any such suspension. Optimizely will not suspend the Software Service if Customer has given prompt written notice (email sufficient) 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. Unpaid Fees will accrue interest at the maximum legal rate under the applicable law of this Agreement.
 - 2.5 **Metric / Usage Review**. Optimizely may review Customer's Use at any time during the Subscription, and Customer shall comply with all reasonable Usage review requests. Optimizely is however not obliged to review Customer's Use. Upon Optimizely becoming aware of any Overage, Optimizely shall notify Customer in writing (email acceptable) of that Overage, and may invoice Customer for that Overage in accordance with the Order Form and this Agreement.
 - 2.6 **Taxes** – Fees and other charges imposed with the respect of Subscriptions 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 the Order Form. 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.
 - 2.7 **Purchase Orders** – Customer's purchase orders are for Customer's administrative convenience only. Optimizely may issue an invoice and collect payment without a corresponding purchase order. This Order Form 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.
 - 2.8 **No Withholding or Set Off** – Customer may not withhold, reduce or set-off Fees owed.
 - 2.9 **No Reduction of Usage Volume** – Customer may not reduce Usage Volume during the Subscription Term.
3. **UPDATES TO CUSTOMER DETAILS**. Optimizely may update your Customer details with respect to (i) your Customer name in the case of error or your change of your Customer name and address with appropriate direction (email sufficient) from your Chief Financial Officer or General Counsel, Vice President or Senior Director (or comparable) of finance, legal or procurement, and (ii) your contact details with direction (email sufficient) from an appropriately-authorized person to request those changes, without the Parties having to prepare and sign any written amendment to this Agreement or change Order for the Subscription.

4. **PERMITTED USE OF LOGO.** Optimizely may use Customer's name, logo and any trademark on Optimizely's public-facing website and in external marketing materials identifying Customer is a customer of Optimizely ("**Logo Permission**"). Optimizely's Logo Permission will not include any description of the Customer's Software Services Subscription or any other Customer Confidential Information. Customer may withdraw Optimizely's Logo Permission at any time by delivering written notice by email to Optimizely at customerlogouse@optimizely.com. Optimizely will also follow any Logo Permission guidelines provided by customer. Any testimonials by Customer shall only be with Customer's prior written approval.

5. **ADDITIONAL CONTRACTUAL DOCUMENTS.** The following documents are also part of this Agreement with respect to the Subscription, and apply in a descending order of precedence after the Order: (a) Optimizely's [Product Use Terms](#) ("**PUT**"), (b) Optimizely's [Data Processing Agreement](#) ("**DPA**"), and (c) Optimizely's [Software Service General Terms & Conditions](#) – ("**GTC**"). The online versions published as of the Effective Date (of the Order) are the versions that apply to the Subscription for the Subscription Term notwithstanding that Optimizely may later update those online versions. Customer should download a copy of those documents for its own records.

DEFINITIONS GLOSSARY

"Agreement" means the Order, and the Product Use Terms the SLA, the DPA, the GTC and all other incorporated schedules, exhibits and other appendices.

"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 a 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.

"Contract Year" means the one-year period from (and including) the Subscription start date stated in the Order Form, or if no date given, then from the Effective Date, and each anniversary.

"Fees" means all fees set out in an Order for Software Services, and any included Optimizely-provided professional services.

"GTC" means the [Software Service General Terms & Conditions](#).

"Onboarding" is reference to pre-paid pre-defined scope-limited professional service that Optimizely provides Customer as part of the Software Service if Subscribed, and which provides for a technical overview for configuration, implementation support, and a pre-launch checklist.

"Order Form" (or "**Order**") means any Optimizely ordering documentation, online sign-up, or subscription flow that references these Online Subscription Terms.

"Overage" means Use over and above the applicable Usage Volume for the Subscription as set out in the Order.

"Overage Fees" are the Fees for Overage.

"Product Use Terms" means additional product terms for the applicable Software Service, as identified in, and incorporated into, the Order.

"Software Service" means the cloud-based software-as and/or platform-as services as detailed in the Order.

"Software Subscription Agreement" or ("**SSA**") means this Agreement.

"Support" means the support provided by Optimizely for the applicable Software Service, as outlined in the Support Policy.

"Subscription" means Customer's subscription for the Software Service as specified in the Order, and "**Subscribed**" shall have a corresponding meaning.

"Subscription Term" (or "**Term**") means either the Initial Subscription Term, or the later Extended Subscription Term.

"Tax" means all transactional taxes, levies, and similar charges (and any related interest and penalties) such as federal, state or local sales tax, value added tax, goods and services tax, use tax, excise tax, service tax or similar taxes.

"Usage Volume" means the Usage Metric volume for the applicable Software Service.

"Usage Metric" means the standard of measurement for determining the permitted Use, and calculating the Fee for the applicable Software Service, as set out in the Order, and as otherwise described in the Product Use Terms.

"Use" means access to, and to otherwise activate the processing capabilities of the Software Service, including to load, execute, access, employ in the Software Service, or display information resulting from such capabilities, and Use may occur through an interface delivered with or as a part of the Software Service, or a third-party interface deployed by Customer, or another intermediary system.

End Notes. The singular includes the plural. Defined words include their grammatical forms.

END OF THIS AGREEMENT