

## OPTIMIZEY END USER LICENSE AGREEMENT (“EULA”)

READ THE FOLLOWING TERMS, CONDITIONS, DISCLAIMERS AND RESTRICTIONS OF THIS END USER LICENSE AGREEMENT (“AGREEMENT”) BEFORE YOU (“LICENSEE” or “CUSTOMER”) INSTALLS AND/OR USES THE SOFTWARE IN ANY WAY. BY INSTALLING, COPYING, DOWNLOADING, OR IN ANY OTHER WAY USING THE SOFTWARE, CUSTOMER FULLY ACCEPTS THIS AGREEMENT, WHICH BECOMES A BINDING OBLIGATION ON AND ENFORCEABLE AGAINST LICENSEE. IF LICENSEE DOES NOT AGREE TO THE TERMS OF THIS AGREEMENT, CUSTOMER MAY NOT USE, INSTALL, COPY, DOWNLOAD, OR IN ANY OTHER WAY USE THE SOFTWARE. Optimizely and Customer are individually referred to as a “Party” and collectively as the “Parties”.

Any Software provided by Optimizely is licensed, not sold, and only in accordance with the terms of this Agreement. Licensee may also have another written and signed agreement directly with Optimizely (example, Master License Agreement) that supplements or supersedes portions of this Agreement. Use of Optimizely and non- Optimizely materials and services included in or accessed through the Software may be subject to additional terms and conditions.

### 1. DEFINITIONS

- 1.2 **“Agreement”** means this End User License Agreement.
- 1.3 **“Applied Software”** means the third-party software listed in Section 12 below.
- 1.4 **“Development License(s)”** means a limited License Type that can only be used for non-commercial purpose(s). They cannot be used for any public facing Site or Server and are typically labeled as, but not limited to, “Partner”, “Developer”, “Demo”, “Demonstration” or “Evaluation” license(s). Developer Licenses are limited to Site, Server and/or usage restrictions.
- 1.5 **“Entitlement”** means the collective set of applicable documents, including, but not limited to, all (including digital) agreement(s), exhibit(s), attachment(s), addendum(s), schedule(s), and/or invoice(s) authorized and provided by Optimizely evidencing Customer’s obligations within this Agreement.
- 1.6 **“Optimizely”** means *Optimizely AB* (formerly Episerver AB), or *Optimizely North America, Inc.* (formerly Episerver Inc.), or *Episerver GmbH*.
- 1.7 **“Implemented Software”** means the implemented third-party software listed in Section 11 below.
- 1.8 **“Instance(s)”** means a single (1) web application with a single (1) database running on a Virtual Server, not bound by a media access control address (“MAC”) or internet protocol (“IP”) address, primarily meant to be used in a cloud hosting environment, which must be able to persistently contact the Optimizely license service.
- 1.9 **“Licensee”** means the customer licensing the Software in accordance with this Agreement.
- 1.10 **“License Type”** means the license types provided by Optimizely from time to time.
- 1.11 **“Physical Server(s)”** means a physical hardware system capable of running server software. A hardware partition or blade is considered to be a separate single physical hardware system. Thus, one (1) Physical Server, for purposes of Optimizely licensing, is equal to one (1) Server.
- 1.12 **“Product(s)”** means the product Optimizely CMS or Customized Commerce license editions (for example ‘Social Commerce’), Search & Navigation and Supplemental Products provided by Optimizely as further described in Section 2.1 and 2.2 below.
- 1.13 **“Server(s)”** means either a Physical Server or a Virtual Server. As they are treated equally in terms of Optimizely licensing, the term Server can reference either. Server(s) must provide a MAC or IP address to which the Software License(s) is bound.
- 1.14 **“Site(s)”** is a unique collection of content associated with one or more domain names, using the same start page, also defined under the Optimizely root node. This can be found under the [CMS] tab, then [Admin], then [Config], then [Manage Websites]. In this view, under [Manage Websites], each Site listed under [Websites] constitutes one (1) Site.
- 1.15 **“Software”** means (i) all of the contents of the data, files or other media in machine-readable form provided under this Agreement, including (a) all software developed and provided by Optimizely (b) Applied Software, (c) Implemented Software (ii) related explanatory written material or files (“Documentation”); but excluding any part of the original source code of the Implemented Software.
- 1.16 **“Third-Party Product(s)”** means third-party software provided by a third-party which may be installed together with the Software.

**1.17 "Use"** means to access, install, download and/or execute the Software in order to utilize the functionality of the Software.

**1.18 "Virtual Server(s)"** mean a virtual operating system environment where the operating system instance is used to run hardware virtualization software (e.g. Microsoft Virtual Server, VMWare or similar) or to provide hardware virtualization services (e.g. Microsoft virtualization technology or similar) and is considered equal to a single physical operating system environment. A virtual operating system environment is configured to run on a virtual (or otherwise emulated) hardware system and thus one (1) Virtual Server.

## **2. SOFTWARE LICENSE**

For so long as the Licensee complies with the terms of this Agreement and makes full and timely payment of all fees and charges due, Optimizely grants Licensee a non-exclusive, non-transferable, non-sublicensable, limited license to use the Software solely by Licensee (and its employees) for Licensee's business purposes and in accordance with the following conditions:

**2.1 General Use of Products.** Each Product has its own capability, functionality, and fees. Further additional definitions, terms, conditions and restrictions shall apply depending on the Product's License Type as described below:

(i) DXP Subscription License. The Licensee may install and Use the Software in machine-readable, object code form on the number of Server(s) or Instance(s) for the number of Site(s) for the Product(s) purchased.

(ii) Optimizely Development License(s). The Licensee may install Development License(s) of the Software in machine-readable, object code form on non-public facing physical developer computer(s) or on non-public facing virtual developer instance in a virtual operating system environment for non-production, non-commercial Use in a non-Server environment for a single named user and development purposes only. Development License(s) are not subject to a fee, are limited to a maximum of one (1) year, and, with the exception of Section 6.6, are not subject to Section 6 herein, they are provided AS—IS.

(iii) Optimizely Demonstration License(s). The Licensee may install Demonstration License(s) of the Software in machine-readable, object code form on non-public facing physical developer computer(s) or on non-public facing virtual developer instance in a virtual operating system environment for non-production, non-commercial Use and for demonstration purposes only. Demonstration License(s) are not subject to a fee, are limited to a maximum of thirty (30) days, and, with the exception of Section 6.6, are not subject to Section 6 herein, they are provided AS—IS.

(iv) Optimizely Intranet License(s). The Licensee may install Optimizely Intranet License(s) in machine-readable, object code form on the number of Server(s) or Instance(s) for the number of Site(s) purchased. Optimizely Intranet License(s) are a limited License Type that can only be used for internal purposes by Licensee and only by personnel within Licensee's organization. They cannot be used for any public facing Site, Server or Instance and are typically labeled as, but not limited to, "Intranet" licenses.

(iv) Optimizely Find Virtual Appliance/RAW License(s). The Licensee may install Optimizely Find Virtual Appliance/RAW License(s) for the number of index(s) on the number of Virtual Server(s) purchased. Optimizely Find Virtual Appliance/RAW may not be used to create a hosted index for third-parties. Optimizely Find Virtual Appliance/RAW License(s) must allow Optimizely remote administrative access at all times.

**2.2 General Use of Supplemental Products.** All Supplemental Products developed by Optimizely, and all derivative works shall remain the property of Optimizely. Further, Optimizely offers the following Supplemental Products on the following conditions:

(i) Add-Ons, Modules, Connectors, and Packages of software. The Licensee may install the Software in machine-readable, object code form on Server(s) or Instance(s) for the number of Site(s) purchased. Add-Ons, Modules, Connectors, and Packages of software can only be used in combination with a Product, may include Third-Party Product(s) and may require acceptance of additional and/or third-party license and/or service agreements.

(ii) Developer Add-Ons and Open-Source Packages. The Licensee may install Developer Add-Ons and Open-Source Packages in machine-readable, object code form which may be limited by Server, Instance Site, other usage restriction, and may require acceptance of additional license agreements.

**2.3 Backup copy.** The Licensee may make one (1) backup machine-readable, object code copy of the Software it has purchased for non-productive, archiving purposes.

**2.4 Modifications.** The Licensee may modify the disclosed parts of the Software solely in connection with Licensee's internal business purposes. Optimizely has no liability for any such modifications or for any faults or errors caused by it (see Section 6.4 below).

**2.5 Third-Party Products.** The Software may be installed together with Third Party Product(s). With regards to Third-Party Products, the relevant third-party license terms and conditions shall apply. Optimizely makes no warranties regarding Third-Party Products and disclaims any and all liability for such products.

**2.6 Service Channel.** The Optimizely Software has a build-in service channel used for license key activation, installation, verification and/or updates, security announcements and other information. Information shall be transmitted and stored at Optimizely, including but not limited to License key information, software version, hostname (website URL), host IP/MAC-address and machine name. Failure to allow such service channel to operate correctly will impede Use of the Software.

### 3. RESTRICTIONS

**3.1 Transfer.** Except as expressly authorized in this Agreement, Licensee shall not hire out, lease, lend, assign, sublicense, distribute (electronically or otherwise), resell, sell, create any derivative works of, or otherwise transfer all or any portion of the Software to a third-party.

**3.2 Decompilation.** Except as expressly authorized in this Agreement, explicit contract bound permission given by Optimizely, or to the extent expressly permitted by applicable law, Licensee shall not copy, modify, reverse engineer, decompile, disassemble, translate, make works derivative of the Software or otherwise attempt to discover the source code of the Software. Any violation of this clause shall result in immediate revocation of this license. Licensee may request permission from Optimizely to decompile the Software for purposes of fault analysis, integration planning and other internal business purposes, such permission to be expressly granted by Optimizely in writing and at its sole discretion.

**3.3 Redirect.** The Products shall not be used in solutions that use an internal redirect (automatic server side or client side re-routing of traffic) for purposes of circumventing Optimizely license restriction software, code, processes, and/or methods.

**3.4 Export.** The Software may be subject to Swedish, U.S. and foreign export and import control laws, including without limitation the U.S. Export Administration Act. Licensee agrees to comply with all such regulations and acknowledges that Licensee is responsible for obtaining any necessary licenses to import and re-export the Software outside the United States of America and Sweden.

### 4. OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS

**4.1** Optimizely shall have sole and exclusive ownership of all right, title and interest in and to the Software, the Documentation, all copies and derivative works thereof (regardless of form or media in or on which the original and other copies may exist), including all copyright, trademark, patent, trade secret, know-how, source code, object code, sample code, libraries, application protocols ("API"), designs, documentation and other intellectual property rights pertaining thereto, subject solely to the limited right and license expressly granted to Licensee herein. Optimizely shall retain all rights to its name and trademarks. With regard to Applied Software or Implemented Software included in Products all the above mentioned rights shall be owned by the third-party from whom Optimizely has acquired the right to use the Applied or Implemented Software, subject solely to the limited right and license expressly granted to Licensee herein. The structure and code of the Software are valuable trade secrets of Optimizely and remain the sole property of Optimizely or, respectively the third-party who owns the Applied Software or Implemented Software.

**4.2** The Software, owned by Optimizely, is protected by Swedish, United States, and international copyright legislations. Customer warrants it shall not infringe on Optimizely's Software intellectual property rights.

**4.3** This license is not a sale of the Software or any updates or new releases, or any copy. Except for the limited license granted under this Agreement, the Licensee obtains no other rights in or to the Software. There are no implied licenses under this Agreement and Optimizely reserves any rights not expressly granted to Licensee under this Agreement. This Section 4 shall survive termination of this Agreement.

### 5. UNITED STATES GOVERNMENT USERS

The Software is a "Commercial Item", as that term is defined at 48 C.F.R. § 2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," as such terms are used in 48 C.F.R. § 12.212 and 48 C.F.R. § 227.7202, as applicable. Consistent with 48 C.F.R. §§ 12.212, 227.7202-1 through 227,7202-4, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end-users (a) only as Commercial Items and (b) with only those rights as are granted to all other end-users pursuant to the terms and conditions herein.

### 6. LIMITED WARRANTY, LIMITATION OF LIABILITY AND INDEMNIFICATION

**6.1** For a period of ninety (90) days following delivery of paid-for Software, Optimizely warrants that the Software will perform substantially in accordance with the Documentation supplied by Optimizely with the Software. Optimizely's sole and exclusive obligation for breach of this limited warranty shall be to use its commercially reasonable efforts to remedy or supply a temporary fix, or make an emergency bypass. To the extent Optimizely cannot perform its obligations according to the forgoing sentence, Optimizely shall refund to Licensee the fee paid for such Software. This limited warranty shall not be valid if the Software was subjected to abuse, misuse, accident, alteration or unauthorized modification or installation, or for free/non-paid for Software. Other than this limited warranty, the Software is provided AS IS.

**6.2** EXCEPT AS SET FORTH IN THIS AGREEMENT AND TO THE EXTENT ALLOWED BY LAW, OPTIMIZEZY AND ITS RESELLERS MAKE NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, CUSTOM, USAGE OR OTHERWISE AS TO ANY MATTERS, AND SPECIFICALLY DISCLAIM ANY WARRANTY OF MERCHANTABILITY, INTEGRATION, NON-INFRINGEMENT, SATISFACTORY QUALITY, OR FITNESS FOR ANY PARTICULAR PURPOSE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, OPTIMIZEZY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES THAT THE SOFTWARE WILL OPERATE UNINTERRUPTED OR ERROR FREE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY OPTIMIZEZY, ITS DEALERS, DISTRIBUTORS, RESELLERS, AGENTS, OR EMPLOYEES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THIS WARRANTY, AND LICENSEE MAY NOT RELY ON ANY SUCH INFORMATION OR ADVICE.

**6.3** UNDER NO CIRCUMSTANCES SHALL OPTIMIZEZY, NOR ANYONE ELSE WHO HAS BEEN INVOLVED IN THE CREATION, PRODUCTION OR DELIVERY OF THE SOFTWARE OR PRODUCTS, HAVE ANY LIABILITY OF ANY KIND TO LICENSEE, ANY AUTHORIZED USER OR ANY OTHER PERSON FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL (INCLUDING LOST PROFITS OR REVENUES), PUNITIVE OR OTHER INDIRECT LOSSES OR DAMAGES (EVEN IF OPTIMIZEZY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE) RESULTING FROM OR ARISING OUT OF (WHETHER DIRECTLY OR INDIRECTLY) ANY ACT OR OMISSION OF ANY KIND HEREUNDER BY OPTIMIZEZY, ANY ACCESS TO OR USE BY LICENSEE OR ANY OTHER PERSON OF THE SOFTWARE, WHETHER BASED ON BREACH OF CONTRACT, WARRANTY, TORT, PRODUCT LIABILITY, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE. UNDER NO CIRCUMSTANCES SHALL OPTIMIZEZY'S AGGREGATE LIABILITY TO LICENSEE AND ANY OTHER PERSON FOR LOSSES OR DAMAGES OF ANY KIND ARISING OUT OF OR PURSUANT TO THIS AGREEMENT EXCEED THE AGGREGATE OF ALL FEES PAID BY LICENSEE FOR THE SOFTWARE OR PRODUCT AT ISSUE.

**6.4** With respect to faults and errors in any Third-Party Products, the relevant third-party terms and conditions shall apply. Optimizely shall not be liable for any faults or errors in any Third-Party Products or related to use of the Software in conjunction with any such Third Party Product(s). The Licensee shall contact the relevant third-party supplier regarding all matters relating to such Third-Party Product(s).

**6.5** Except as otherwise set forth in this Agreement and except in the event Licensee is in material breach of this Agreement, Optimizely shall indemnify, defend and hold Licensee harmless (including Licensee's officers, director, agents, representatives and employees) from: any direct claim, direct liability, direct loss, direct expense or demand, including legal fees and direct costs and including without limitation third-party claims based on infringement caused solely by the Software owned by Optimizely. This indemnity requires that Optimizely receive notice immediately of any third-party claims and is in sole control of the defense of such claim, including but not limited to any settlement arrangement.

**6.6** Licensee agrees to indemnify, defend and hold Optimizely harmless (including Optimizely's officers, director, agents, representatives and employees) from: any direct claim, direct liability, direct loss, direct expense or demand, including legal fees and direct costs and including without limitation claims based on copyright infringement, related to Licensee's modifications of the Software or Licensee's merging or including the Software with other software or other violation of this Agreement by the Licensee.

## **7. MAINTENANCE AND SUPPORT**

**7.1** No maintenance, support, upgrades or updates are provided under this Agreement. Maintenance and Support may be provided by Optimizely through purchase, details can be found at <https://www.optimizely.com/legal/ms-description/>. Additional support for the Software may be provided by Optimizely or Optimizely partner reseller, pursuant to a separate support agreement.

## **8. TERMINATION**

**8.1** This Agreement is effective until terminated. In the case that Licensee is in material breach of any of the provisions in this Agreement, Optimizely shall have the right to terminate this Agreement, such termination to be effective immediately. Upon such termination, the Licensee shall delete all copies of the Software and will provide Optimizely certification of destruction of the Software, all copies thereof, and all materials and Documentation related thereto, at the request of Optimizely.

**8.2** If Optimizely, by any reason, no longer should have the necessary licenses for the Implemented Software or the Applied Software Optimizely shall within reasonable time and with reasonable effort provide a substitute for such software. If no such substitute may be found, Optimizely may, at its own option, terminate this license and return any license fee to the user minus any depreciation in the value of such software.

## **9. GOVERNING LAW AND DISPUTE RESOLUTION**

**9.1 *General.*** Governing Law and Jurisdiction depend on where Customer is domiciled. In all cases, the Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

**9.2 *Alternative Dispute Resolution.*** The Parties agree that any and all disputes, claims or controversies arising out of or related to this Agreement, including any claims under any statute or regulation ("Disputes"), shall be submitted first to non-binding mediation. If the Disputes are not resolved through mediation within sixty (60) days, then, upon the election of either Party, the Disputes shall be submitted for binding arbitration.

**9.3 Unresolved Disputes.** Any unresolved controversy or claim arising out of or relating to the Agreement, except for any such controversies or claims arising out of Optimizely’s intellectual property rights for which a provisional remedy or equitable relief is sought, shall be submitted to arbitration in accordance with rules based on the Domicile of the Customer, indicated below. The arbitration shall take place based on the Domicile of the Customer, indicated above, in accordance with the rules indicated below, and judgment upon any award rendered in such arbitration will be binding and may be entered in any court having jurisdiction thereof. Each Party will bear its own costs with respect to any disputes arising under this Agreement. Each of the Parties to the Agreement consents to personal jurisdiction for any equitable or other action sought in the location indicated above, based on the domicile of the Customer.

Customer Domicile	USA, CA and MX	Sweden, Denmark, Finland, and Norway	UK and Ireland	EU (ex Ireland)	DACH	UAE	Australia & NZ	APJ (ex AU & NZ)	Rest of the World
<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	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 Stockholm. English language	The Courts of London	The Courts of London	The Courts of Berlin	Courts of the Dubai International Financial Centre. English language.	The courts of New South Wales, in Sydney	The courts of Singapore	The U.S. District Court (Southern District of New York)

## 10. GENERAL PROVISION

**10.1** Amendments or supplements to this Agreement must be made in written form and executed by both Parties hereto in order to be valid between the Parties.

**10.2** This Agreement is valid for the version(s) of the Software released after April 14<sup>th</sup>, 2016. Optimizely may amend the terms and conditions of this Agreement for any upcoming versions of the Software.

**10.3** Licensee shall not assign or sublicense this Agreement without Optimizely’s prior written consent, which consent may be withheld for any or no reason. Either Party may assign all or part of its rights under this Agreement to an affiliate or to any entity that succeeds to or acquires all or substantially all of the business or assets of such Party through merger, consolidation, or acquisition of stock or assets. This Agreement is binding on any permitted assignees or sub licensees.

**10.4** Licensee shall be subject to all fees and penalties for non-payment as defined in the Entitlement(s) attached to the Software.

## 11. IMPLEMENTED SOFTWARE

**11.1** The following software has been implemented as a part of the Products, under either a permissive or open source license - (i) Private port of Lucene dot net, Open Source, (Apache Software License); (ii) Log4net, Open Source, (Apache Software License Version 2.0); (iii) Simple CSS Parser, (Code Project Open License 1.02); (iv) CommonServiceLocator, (Microsoft Public License (Ms-PL)); (v) Structure Map, (Apache Software License Version 2.0); (vi) NuGet Packet Manager, (Apache Software License Version 2.0); (vii) Castle Project - Core 2.5.2, (Apache Software License Version 2.0); (viii) SGML Reader (Microsoft Public License (Ms-PL)); and (ix) EFExtensions, (Microsoft Limited Public License).

**11.2** By agreeing to this Agreement the Licensee also acknowledges that the license agreements for the above listed software and MIT/BSD licensed components have been made available at <https://world.optimizely.com/services/implemented-software/>; that the Licensee has taken notice of said license agreements; and that the Licensee hereby accepts the terms and conditions of these license agreements to be, when applicable, binding to the Licensee.

## 12. APPLIED SOFTWARE

**12.1** JW Player is considered to be a part of the Product however constructed by a third-party (the "Applied Software"). In addition to Section 3.1 above, Optimizely is not permitted to give authorization to a third-party according to said section with respect to the Applied Software.

## 13. COMPATIBILITY

As between Optimizely and the Licensee Section 6, 7, 8 and 10 shall also apply with respect to the Implemented Software, unless the license on the specific Implemented Software explicitly states otherwise.

**14. AUDIT AND RECORDS**

During the Agreement term and for one (1) year following its termination, Licensee shall maintain records regarding Use and installation of Software (collectively "Records"). Upon request, Licensee shall promptly provide such Records to Optimizely, for the purpose of verifying compliance with the Agreement and any other agreement, terms and conditions with Optimizely. In the event that Optimizely determines that Customer has underpaid any payment due under this Agreement, Optimizely shall notify Customer in writing of this alleged discrepancy. Any undisputed underpayment by Customer shall be paid to Optimizely (plus interest at the rate of eight and a half (8.5 %) percent per annum above the reference rate under London Interbank Offered Rate (LIBOR) for the US Dollar within thirty (30) days of such determination.

**15. SUBPOENA**

Optimizely is authorized to comply with any subpoena or similar order related to the data in its possession, provided that Optimizely notifies Customer promptly upon receipt thereof, unless such notice is prohibited by law. Customer shall pay Optimizely's applicable charges on a time and materials basis at Optimizely's then-current fees for such compliance. Optimizely will cooperate with Customer's efforts to quash or limit any subpoena, at Customer's expense.