

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

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

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

2. **OPTIMIZEZELY RESPONSIBILITIES** ***Provisioning.*** Optimizely will provide Customer access to the Software Service as described in the Agreement, including Documentation. ***Support.*** Optimizely will provide Support for the Software Service as outlined in the Support Policy. ***Security.*** Optimizely will implement, and will maintain, appropriate administrative, physical and technical measures for the protection of the security, confidentiality and integrity of Customer Data Processed by Optimizely (the “TOMs”) as outlined at <https://www.optimizely.com/legal/toms/>. ***Personal Data.*** Optimizely will Process Personal Data in accordance with applicable Personal Data protection and privacy law.

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

4. **OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS**

4.1 ***Optimizely Ownership.*** Subject to this Section 4.1, as between Optimizely and Customer, Optimizely shall have sole and exclusive ownership of all rights, title, and interest in and to the Software Service, including all Optimizely Software, Documentation and Optimizely Material, all copies, improvements, adaptations, translations and derivative works, including all copyright, trademark, patent, trade secret, know-how, and all other associated Intellectual Property Rights. Third-Party Software is owned by the Third-Party from whom Optimizely acquired the right to utilize in the Software Service or make available to Customer for Customer’s Use. Other than the Limited Rights, all other rights in the Software Service, including the Optimizely Software, Documentation and Optimizely Material, are expressly reserved to Optimizely.

4.2 ***Customer Data Ownership; Optimizely Right to Use.*** As between Optimizely and Customer, Customer represents that it owns (or has the lawful right to): (i) its Customer Data, and (ii) custom coding solely developed by Customer and/or its Authorized Users without any contribution from Optimizely (subject always to the rights of applicable open-source software licensors and excluding any adaptation, translation or derivative work of Optimizely’s Intellectual Property Rights and Confidential Information). Customer hereby grants to Optimizely a fully paid-up, royalty-free, worldwide, non-exclusive right and license to use the Customer Data as necessary to provide the Software Service to Customer, and as otherwise permitted by the Agreement.

5. **DATA PRIVACY, PROTECTION, AND PROCESSING**

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

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

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

6. **THIRD-PARTY ACKNOWLEDGEMENTS AND RESPONSIBILITIES**

6.1 ***Third-Party Services Acknowledgement.*** The Software Service includes Underlying Services. Underlying Service Providers are Optimizely non-Affiliate Sub-Processors. The Underlying Services are part of the Software Service. Customer acknowledges that it is aware of the Underlying Services proposed to be utilized in Optimizely’s deployment and operation of the Software Service for Customer. Customer consents to Optimizely’s utilization of those Underlying Service Providers.

6.2 Optimizely Enhancements. Optimizely may recommend in Documentation, and/or make available within the Software Service, additional Optimizely Software for Customer to consider utilizing as an Enhancement in its Use of that Software Service. Optimizely Enhancements are entirely optional for Customer Use. Optimizely Enhancements are, upon Use by Customer, part of the Software Service for the further purposes of this Agreement. Should an Optimizely Enhancement have any published open-source license terms (“OSLT”), Customer will comply with any published OSLT in its Use of that Optimizely Enhancement.

6.3 Third-Party Enhancements. Optimizely may identify in Documentation, and/or make available with the Software Service, Third-Party Enhancements for Customer to consider utilizing as an optional Enhancement in its Use of that Software Service. Third-Party Enhancements are optional for Customer Use. Third-Party Enhancements are not Optimizely Software, nor part of the Software Service for any purpose of this Agreement. Should an Third-Party Enhancement have a published open-source license terms (also, “OSLT”), Customer will comply with any published OSLT in its Use of that Third-Party Enhancement. Optimizely’s referral in Documentation to any Third-Party Enhancement is not an endorsement of that Third-Party Enhancement, and any such reference in Documentation or with that Software Service, is provided as a convenience only. Customer assumes all risk with respect to its Use of any Third-Party Enhancement, and shall be solely liable (vis-à-vis Optimizely) for any loss or damage that Customer (or any of its Authorized Users) suffers by reason of Use of the Third-Party Enhancement.

6.4 Third-Party Material. Customer’s Responsibility. Third-Party Material is not part of the Software Service. Subject to any loss being caused by a defect in the Software Service, Customer assumes all risk of, and is solely liable for, any loss or damage that it or any of its Authorized Users suffers or incurs as a result of the possession or use of Third-Party Material.

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

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

7.2 Documentation and Good Industry Practices Warranty. Optimizely warrants it will provide the Software Service: (i) in substantial conformance with Documentation and relevant Optimizely Material; and (ii) with the degree of skill and care reasonably expected from a skilled and experienced supplier of software-as and platform-as services substantially similar to the nature and complexity of the Software Service. Customer’s sole and exclusive remedy and Optimizely’s entire liability for breach of this warranty will be: (A) correction of the deficient Software Service; and (B) if Optimizely fails to correct the deficient Software Service using reasonable commercial efforts, Customer may terminate its subscription for the affected Software Service. This remedy does not apply to trivial or non-material cases of nonconformance. Any termination must occur within **three months** of Optimizely’s failure to correct the deficient Software Service. Section 11.3 applies with respect to the refund of any prepaid Fees.

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

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

7.5 LIMITATION OF MONETARY DAMAGES. Except for (i) the Parties’ respective obligations and liability to the other arising under Sections 7.6 and 7.8, (ii) Customer’s liability to Optimizely for the payment of Fees, (iii) Customer’s liability to Optimizely for any breach of the restrictions under Section 3, (iv) damages arising from either Party’s fraud, and (v) death, bodily injury or property damage arising from either Party’s willful misconduct or gross negligence - **the maximum aggregate liability of either Party (and its respective Affiliates) to the other or any other person or entity for all events (or series of connected events) arising in any twelve-month period is absolutely limited, and will not exceed the annual Subscription Fees paid by Customer for the applicable Software Service associated with the damages for that twelve-month period.**

7.6 IP INFRINGEMENT CLAIMS AGAINST CUSTOMER. Optimizely will defend Customer against claims brought against Customer (and its Affiliates (as are Authorized Users) by any Third-Party alleging the Optimizely Software, Documentation and/or Optimizely Material infringes or misappropriates that Third-Party’s Intellectual Property Right in the U.S., European Union member countries, the United Kingdom or Australia (“**IP Claim Against Customer**”). Optimizely will indemnify Customer against all damages finally awarded against Customer (or the amount of any settlement Optimizely enters) with respect to any IP Claims Against Customer. Optimizely’s obligations under this Section are subject to any of the following not being the source or cause of the IP Claim Against Customer: (i) the Software Service was being Used by Customer in a manner not permitted under the Agreement (including Documentation), (ii) Customer Data, (iii) to a modification of the Software Service by Optimizely based upon specifications furnished by Customer, (iv) to any unauthorized modification of the Software Service by Customer (including any Authorized User), (v) any Customer-Utilized Third-Party Enhancement, and (vi) any Customer-utilized Third-Party Material – (i) through (vi) each a “**Customer Indemnity Responsibility**”. Optimizely’s obligations to defend and indemnify are also dependent upon: (vii) the Software Service not being made available to Customer as beta or pre-

production (that is, not a general release) version, or on a proof-of-concept or trial basis, or for no Fee, and (viii) Customer being then-current with Fees. Optimizely's obligations to defend and indemnify are subject to Customer notifying Optimizely (in writing) of the IP Claim Against Customer in a timely manner, and Optimizely not being materially prejudiced by any delay of failure to timely notify.

7.7 REMEDIES. If a Third-Party makes an IP Claim Against Customer, or in Optimizely's reasonable opinion is likely to make an IP Claim Against Customer, Optimizely may (at its sole option and expense): (i) procure for Customer the lawful right to continue its Use of the affected Software Service; or (ii) replace or modify the affected Software Service to be non-infringing without a material decrease in functionality or features. If these options are not reasonably available, Optimizely or Customer may terminate the Subscription to the affected Software Service upon written notice to the other Party. Optimizely expressly reserves the right to cease such defense of any claim if the applicable Software Service is no longer alleged to infringe or misappropriate the Third-Party's rights. Section 11.3 applies with respect to the refund of any Fees. Sections 7.6 and 7.7 state the sole, exclusive, and entire liability of Optimizely, and is Customer's sole and exclusive remedy, with respect to covered IP Claim Against Customer, and to the infringement or misappropriation of Third-Party Intellectual Property Rights.

7.8 CLAIMS AGAINST OPTIMIZEZY. Customer will defend Optimizely against claims brought against Optimizely Group by any Third-Party alleging the infringement or misappropriation of such Third-Party's Intellectual Property Rights in the U.S., European Union member countries, the United Kingdom or Australia with respect to any Customer Indemnity Responsibility - each an "IP Claim Against Optimizely". Customer will indemnify Optimizely against all damages finally awarded against Optimizely (or the amount of any settlement Customer enters into) with respect to any IP Claims Against Optimizely. Customer's obligations under this Section are subject to the Optimizely Software, including any Optimizely Enhancement, or any Documentation or Optimizely Material, not being the source or cause of the IP Claim Against Optimizely. Customer's obligations to defend and indemnify are subject to Optimizely notifying Customer (in writing) of the IP Claim Against Optimizely in a timely manner, and Customer not being materially prejudiced by any delay or failure to timely notify. This Section 7.8 states the sole, exclusive, and entire liability of Customer, and is Optimizely's sole and exclusive remedy, with respect to any IP Claim Against Optimizely, and to the alleged infringement or misappropriation of Third-Party Intellectual Property Rights.

7.9 THIRD-PARTY CLAIMS PROCEDURE. All Third-Party claims under Sections 7.6 and 7.8 shall be conducted as follows: (i) the Party against whom a Third-Party claim is brought (the "Named Party") will timely notify the other Party (the "Defending Party") in writing of any claim; (ii) the Named Party shall reasonably cooperate in the defense and may appear (at its own expense) through counsel reasonably acceptable to the Defending Party subject to this Section; and (iii) the Defending Party will have the right to fully control the defense. Any settlement of a claim will not include a financial or specific performance obligation on, or admission of liability by the Named Party.

8. CONFIDENTIAL INFORMATION

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

8.2 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.

8.3 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.

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

9. TERM, SUSPENSION, AND TERMINATION

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

9.2 Suspension. Optimizely may suspend, or postpone, access to the Software Service if: (i) Customer (including any Authorized User) breaches the Use rights, including any restrictions to the Software Service in this Agreement; (ii) Use by Customer (including any Authorized User) is causing harm (other than in any immaterial sense) to the Software Service or other customer (and its users); or (iii) required to comply with laws applicable to Optimizely in its operation of the Software Service. Except in cases of emergency where the security of the Software Service or the customer data of any other customer is at material risk, Optimizely will give advance notice to Customer of its intention to suspend or postpone access to the Software

Service and provide Customer with a reasonably appropriate time to cure the issue underlying Optimizely's need to suspend the Software Service. The suspension or postponement will be limited in time and extent as is reasonable and appropriate in relation to the risk, breach or other relevant impact. Notwithstanding any suspension of Use, Customer will still be granted access to retrieve its Personal Data upon request and to the extent Customer is obliged to access and retrieve them under applicable law.

9.3 Termination. A Party may terminate the Agreement: **(i)** for cause on **fourteen days'** written (and signed) notice of the other Party's breach of any material provision of the Agreement unless the breaching Party has cured the breach during such notice period; or **(ii)** immediately upon written (and signed) notice with respect to: **(a)** any material breach of Section 8 (Confidentiality) or **(b)** if the other Party files for bankruptcy/insolvency protection, files for bankruptcy including the appointment of an administrator and liquidator, a receiver is appointed to any material asset/s, or enters into an arrangement for the benefit of any creditor (or its creditors generally). A Party may also terminate this Agreement, or its Subscription to a relevant Software Service, as permitted under Sections 7.2 and 7.7 above, or Section 11.2 below or under the DPA or the SLA, with termination effective **fourteen days** after receipt of notice in each of these cases, except where otherwise specified. Upon termination, Customer must immediately cease Using the applicable Software Service.

10. DISPUTES, VENUE, GOVERNING LAW AND JURISDICTION Excluding **(i)** claims by a Party alleging a breach by the other Party of that Party's Confidential Information for which urgent relief is sought ("CI Relief"), **(ii)** claims by Optimizely alleging a breach by the Customer (or any Authorized User) of Optimizely's Intellectual Property Rights for which urgent relief or a provisional remedy is sought ("IP Relief"), and **(iii)** Optimizely's collection of unpaid disputed correctly-invoiced Fees, 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** (of commencement of such Mediation), then, upon the election of either Party, the Dispute shall be submitted to the applicable court in the Jurisdiction ("Venue") and subject to the Governing Law below ("Court Proceedings"). Each Party consents to mandatory, sole and exclusive 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. Each Party irrevocably and unconditionally waives any right it may have in any Court Proceedings to a jury trial for any claim or cause of action arising out of or in relation to the Agreement, including its existence, validity or termination.

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

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

11. GENERAL PROVISIONS

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

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

11.3 Refund and Payments. For any termination under Sections 7.2, 7.7, 11.2 and 11.12 of this GTC, or under comparable provisions in the SLA or the DPA where Customer has the right to cancel a Subscription and/or terminate the Agreement, Customer will be entitled to: **(i)** a *pro rata* refund in the amount of the unused portion of prepaid Fees for the terminated Subscription calculated as of the effective date of termination (unless such refund is prohibited by Export Laws); and **(ii)** a release from the obligation to pay Fees due for periods after the effective date of termination.

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

- 11.5 Waiver.** A waiver of any breach or default of the Agreement is not deemed a waiver of any other breach or default.
- 11.6 Relationship of Parties.** No joint venture, partnership, employment, or agency relationship exists between the Parties as a result of entering into the Agreement, and neither Party has any authority of any kind to bind the other in any respect.
- 11.7 Survival.** All Sections of this GTC that by their nature should survive the expiry (or earlier termination) of the Agreement or any earlier termination, will survive.
- 11.8 Assignment.** Customer may not assign, delegate or otherwise transfer the Agreement (or any of its rights or obligations). Any assignment (or purported assignment), including by operation of law, by Customer is a material breach of this Agreement. Optimizely may assign this Agreement within the Optimizely Group.
- 11.9 Subcontracting.** Optimizely may subcontract any element of the Software Service to its Affiliates and Third-Parties. Subcontracting includes the hosting of the Software Service. Optimizely is responsible for the performance of those subcontractors, and remains responsible for any breaches of the Agreement by its subcontractors.
- 11.10 Notices.** Notices will be in writing and given when delivered to the address set out in the applicable Order Form. Notices from Optimizely to Customer may be in the form of an electronic notice to Customer's authorized representative or administrator. Optimizely may provide notice of Modifications to the Software Service via Documentation, the Support portal, and also release notes and publications at World and/or the Support Portal. Notifications relating to the operation, including Support, of the Software Service may also be provided within the Software Service, made available via World and /or the Support Portal, and as otherwise described in the Support Policy. The Order Form may also provide relevant notice details with respect to Subscription non-renewals.
- 11.11 Time Important.** Any provision in an Order Form or this GTC where a time is stipulated for a Customer to notify Optimizely (for example, to give notice of the non-renewal of the Subscription under a relevant Order), those prescribed time periods within which to deliver any such notice is important, and material, and must be observed by Customer for a compliant notice.
- 11.12 Trade Compliance.** Optimizely and Customer shall comply with all applicable Export Laws in their performance of their respective obligations under this Agreement. Customer is solely responsible for compliance with Export laws related to Customer Data. Customer shall not permit any Use of the Software Service from a US, UK or EU embargoed or sanctioned country or in violation of any Export Law. Upon Optimizely's reasonable request, Customer shall, without unreasonable delay, provide information reasonably necessary to support obtaining any export authorization. Optimizely may terminate this Agreement immediately upon notice if Export Laws prohibit Optimizely from providing the Software Services to the Customer (and in that event, Optimizely shall, as its sole liability, refund to Customer any unused prepaid Fees).
- 11.13 Entire Agreement.** The Agreement constitutes the entire and exclusive agreement between Optimizely and Customer in connection with the Parties' business relationship related to the Software Service. All previous representations, discussions, and writings (including any confidentiality agreements) are superseded by the Agreement, and the Parties disclaim any reliance on them. The Agreement may only be modified in writing, signed by both Parties, except as permitted under the Agreement. Code/s of conduct that Customer may require Optimizely to accept in its vendor/supplier registration process initiated by Customer after the Effective Date of the Agreement shall have no force or effect, even if Optimizely accepts, or does not reject, such code.

GLOSSARY. In addition to the definitions in the Order Form, the following definitions apply to this GTC, and the Agreement -

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

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

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

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

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

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

DPA (or **Data Processing Agreement**) is referenced in, and part of the Order Form.

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

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

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

Intellectual Property Right means patents of any type, design rights, utility models or other similar invention rights, copyrights and related rights, trade secret, know-how or confidentiality rights, trademarks, trade names, service marks, logos, taglines, and any other intangible property rights, whether registered or unregistered, including

applications (or rights to apply) and registrations for any of the foregoing, in any country, arising under statutory or common law or by contract and whether or not perfected, now existing or hereafter filed, issued, or acquired.

Limited Rights means the licenses, rights and other entitlements expressly granted to Customer with respect to Software Service under this GTC, including applicable Order Forms, and the Agreement.

Optimizely Group means Optimizely and its Affiliates.

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

Optimizely Software means Optimizely-developed software.

Personal Data is defined in the Data Processing Agreement.

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

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

Product Supplement is referenced in the Order Form.

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

Sensitive Information is defined in the DPA.

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

SLA (or **Service Level Agreement**) is referenced in, and part of, the Order Form.

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

Sub-Processor is defined in the DPA.

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

Support means the support provided by Optimizely for the applicable Software Service, as identified in, and incorporated into, an Order Form.

Support Portal is a reference to the website published by Optimizely at <https://support.optimizely.com/hc/en-us>, where Optimizely publishes information on Support, as updated from time to time.

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

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

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

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

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

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

Underlying Service means Third-Party cloud hosting and infrastructure services (for example, Google Cloud Platform, Amazon Web Services, or Microsoft Azure); content delivery network (for example, Cloudflare); network and application monitoring and analytics (for example, DataDog); single sign-on (for example, OKTA); database (for example, Snowflake and MongoDB); email service (for example, Twilio (formerly SendGrid)); analytics (for example, Google Analytics); data modelling and visualization (for example, Looker (a Google company)); and others - (collectively the providers of such services, "Underlying Service Providers").

Use is defined in the Order Form and **Utilize** shall be interpreted as having a corresponding meaning accordingly.

World (also referred to as the **Development Portal**) is a reference to the website published by Optimizely at <https://world.optimizely.com>, and its sub-sites, including <https://world.optimizely.com/releases>, where Optimizely publishes Documentation, and information about releases and related information of the Software Services as updated from time to time.

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