# GENERAL TERMS AND CONDITIONS FOR OPTIMIZELY PROFESSIONAL SERVICES

BY ACCEPTING THE ORDER FOR PROFESSIONAL SERVICES, CUSTOMER AGREES THAT THESE GENERAL TERMS AND CONDITIONS ("**GTC**") ARE AN INTEGRAL PART OF THE ORDER AND THE AGREEMENT.

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

**1.**　　　OPTIMIZELY RESPONSIBILITIES. *Services*. Optimizely will provide Services to Customer in accordance with its undertaking under the Order and its obligations under this GTC, subject to Customer fulfilling its obligations under the Order and associated Scope and its obligations under this GTC. *Personnel*. Optimizely will　personnel with the requisite skills, experience, and qualifications necessary to perform the Services. Optimizely will determine which personnel will perform the Services.

**2.**　　　CUSTOMER RESPONSIBILITIES. *Cooperation*. Customer shall provide reasonable and prompt cooperation in connection with Optimizely's provision of the Services. Optimizely will not be liable for any delay caused by Customer's failure to provide Optimizely with information, materials, consents or access to Customer facilities, networks or systems required for Optimizely to perform the Services. If Optimizely informs Customer of such failure and Customer does not cure the failure within ten (10) days, then: **(a)** Optimizely may terminate any incomplete Services and **(b)** in addition to any fees due under the applicable Agreement, Customer will pay actual costs incurred by Optimizely for the cancelled Services.

**3.**　　　OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS

**3.1**　　*Background Intellectual Property*.　Customer owns all rights, title and interest in Customer's Background IP.　Optimizely owns all rights, title and interest in Optimizely's Background IP.　Customer grants Optimizely a right to use Customer's Background IP for the purpose of delivery of the Services, including the right to allow Optimizely Affiliates (and their respective subcontractors) to use that Background IP for that purpose. Except for the rights granted under Sections 3.2 and 3.3 below, neither Party will otherwise acquire any right, title, or interest in or to the other Party's Background IP. The Services are not work *made for hire* under copyright law.

**3.2**　　*Ownership*.　Optimizely owns all Intellectual Property Rights in the Work Product and all Deliverables. Subject to payment of the Fees, Customer owns any Unique Output. Unique Output is Customer Confidential Information. Customer shall not remove Optimizely's copyright and authorship notices in any Work Product.

**3.3**　　*Work Product License*.　Subject to payment of the Fees, Optimizely grants Customer a limited, worldwide, non-exclusive, royalty-free, right to use the Work Product and Deliverables, including any incorporated Optimizely Technology and Optimizely Background IP, for Customer's internal business purposes ("**Right-to-Use**"). The Right-to-Use includes the right to reproduce any Work Product.　The Right-to-Use term is limited to the term of the associated Software Subscription Agreement ("**Right-to-Use Term**").　The Right-to-Use does not include any right to re-license, sub-license, sell, transfer, otherwise make available to any Third-Party any Work Product, or otherwise deal with Work Product, including modifying or making derivatives, without Optimizely's prior written consent. The Right-to-Use excludes any rights to commercialize any Work Product except as expressly permitted under this Agreement.

**3.4**　　*Optimizely Technology*.　Further to Sections 3.2 and 3.3, Optimizely owns all rights, title and interest in Optimizely Technology. To the extent Optimizely Technology is incorporated into any Work Product (including any Deliverable or Unique Output), Optimizely grants Customer a limited right to use the Optimizely Technology in connection with that Work Product on the same terms as the Right-to-Use for the Right-to-Use Term.

**3.5**　　*Pre Agreement Services.* If no Order is completed, all Work Product must be returned or deleted, and must not be used.

**4.**　　　PERSONAL DATA PRIVACY

**4.1**　　*Independent Controller*.　Each Party is an independent controller of Relevant Personal Data and will individually determine the purposes and means of its processing of Relevant Personal Data; and each will comply with its obligations in that respect under applicable law regarding the control and processing (including export, transfer and import) of Relevant Personal Data.

**4.2**　　*Data Security*. Optimizely will maintain appropriate security protocols for the protection of the privacy, security, confidentiality and integrity of Customer Data stored, accessed or otherwise utilized by Optimizely in its delivery of the Services ("**Security Protocols**").　Optimizely may update its Security Protocols with respect to any Service.

**5.**　　　WARRANTIES, DISCLAIMERS, INDEMNITIES AND LIMITATIONS OF LIABILITY

**5.1**　　*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 Services; and **(ii)** in the case of Customer, Customer's receipt and utilization of the Services.

**5.2**　　*Good Industry Practices Warranty*.　Optimizely warrants it will perform the Services with the degree of skill and care reasonably expected from a skilled and experienced supplier of professional services substantially similar to the nature and complexity of the Services. Customer agrees that Customer must notify Optimizely of any claim that Optimizely has breached this warranty in writing within the Warranty Period. Customer's sole and exclusive remedy and Optimizely's entire liability for breach of this warranty will be: **(A)** re-perform the relevant Service; and **(B)** if Optimizely fails to re-perform satisfactorily the relevant applicable Service using reasonable commercial efforts, Customer may (at its option) cancel the applicable Service or (if material) the applicable Order Form. This remedy does not apply to trivial or non-material cases of nonconformance. Any termination by Customer must be effective within one month of Optimizely's failure to correct the deficient Service. Section 9.5 applies with respect to the refund of any prepaid Fees.

**5.3**     *PERSONNEL*. If at any time Customer or Optimizely is dissatisfied with the material performance of an Optimizely Consultant Customer project team member, the dissatisfied Party shall promptly report such dissatisfaction to the other party in writing and may request a replacement. The other Party will use its reasonable discretion in accomplishing any such change (which also, in the case of Optimizely, shall be subject to staffing availability).

**5.4**     *DISCLAIMERS*.  Except **(i)** as expressly stated in this Agreement, and **(ii)** for warranties that cannot be excluded by law, the Services, Optimizely Technology, Work Product and Deliverables 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, or results to be derived from use of or integration with any third-party materials utilized by Customer or that the Deliverables and Optimizely Technology will be, secure, uninterrupted, timely, or error-free, or meet the Customer's requirements.

**5.5**     *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, on 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.

**5.6**     *LIMITATION OF MONETARY DAMAGES*.  Except for **(i)** the Parties' respective obligations and liability to the other arising under sections 5.6 and 5.8, **(ii)** Customer's liability to Optimizely for the payment of Fees, **(iii)** violation of the other party's Intellectual Property Rights, **(iv)** damages arising from either Party's fraud, or **(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) is absolutely limited, and will not exceed the Fees Customer paid under the applicable Agreement.**

**5.7**     *IP INFRINGEMENT CLAIMS AGAINST CUSTOMER*.  Optimizely will defend Customer against claims brought against Customer and its Affiliates by any Third-Party alleging that Customer's use of any Deliverable or Unique Output (excluding Customer Background IP and any Third-Party open-source software) in accordance with the Agreement infringes or misappropriates a US, UK or EU patent claim, copyright, or trade secret right ('*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 the IP Claims Against Customer. Optimizely's obligations under this Section do not apply: **(i)** if the Deliverable or Unique Output is being used by Customer in a manner not permitted under the Agreement (including Documentation), **(ii)** if Customer Data is the cause of IP Claim Against Customer, (iii) to a modification of the Deliverable or Unique Customer Output by Optimizely based upon specifications furnished by Customer, **(iv)** to any unauthorized modification of the Deliverable or Unique Customer Output by Customer; and **(v)** if the IP Claim Against Customer is attributable to any Third-Party enhancement or material being used by Customer – (i) through (iv) each a "*Customer Indemnity Responsibility*". Optimizely's obligations to defend and indemnify are also dependent upon: **(v)** the Deliverable or Unique Output 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, **(vi)** Customer being then-current with Fees; **(vii)** Customer timely notifying Optimizely in writing of the IP Claim Against Customer, and Optimizely not being materially prejudiced by Customer's failure or delay to notify Optimizely.

**5.8**     *REMEDIES*.  If a Third-Party makes an IP Claim, or in Optimizely's reasonable opinion is likely to make an IP claim, Optimizely may (at its sole option and expense): **(i)** procure for Customer the lawful right to continue use of the Deliverable; or **(ii)** replace or modify the Deliverable to be non-infringing without a material decrease in functionality or features. If these options are not reasonably available, Optimizely, or Customer, cancel the Deliverable (or terminate the applicable Order, if the Deliverable was a material component of that Order) upon written notice to the other Party. Optimizely expressly reserves the right to cease such defense of any claim if the applicable Deliverable is no longer alleged to infringe or misappropriate the Third-Party's rights. Section 9.5 applies with respect to the refund of any Fees. Sections 5.6 and this 5.7 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.

**5.9**     *CLAIMS AGAINST OPTIMIZELY.* 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, or the United Kingdom 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.

**5.10**     *THIRD-PARTY CLAIMS PROCEDURE*.  All Third-Party claims under sections 5.6 and 5.8 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.

6.     CONFIDENTIAL INFORMATION

**6.1**     *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 applicable Agreement will be subject to this Section.

**6.2**     *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 required to be disclosed and shall request that all Confidential Information that is so disclosed is accorded confidential treatment.

**6.3** *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.

**6.4** *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.

7.    TERM, SUSPENSION, AND TERMINATION

**7.1** *Suspension*.  The Order may set out Optimizely's rights to suspend delivery of the Services and / or Customer's use of any Deliverable. Any suspension will be limited in scope and time according to the underlying purpose of the right to suspend, Optimizely will provide Customer with reasonable advance notice (email sufficient) of any intention to suspend, and will discuss the proposed suspension in good faith and in a timely manner with the view to avoid suspension if the Customer cooperates diligently to resolve the dispute underlying the proposed suspension of the Services.

**7.2** *Termination*.  A Party may terminate the Agreement: **(i)** for cause on fourteen (14) 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 6 (Confidentiality) or **(b)** if the other Party files for 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).  Upon termination, Customer's right to use any Work Product and Deliverable immediately ceases.

**7.3** *Effect of Termination; Confidential Information*.  Further to section 7.2, 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.

8.    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**'). Optimizely's preferred Mediation venues are JAMS (formerly known as Judicial Arbitration and Mediation Services, Inc.) a US-based global arbitration and mediation center (https://www.jamsadr.com/mediation) or the International Arbitration Center, a UK-based  arbitration and mediation center (https://www.iac-london.com). 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 thirty (30) 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 applicable governing law below ("**Law**"). The Parties may agree to not Mediate if the Dispute is not sufficiently material.  Each Party consents to exclusivity of the applicable venue below ("**Venue**"). The Parties waive all objections to law and 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.

| Customer Domicile | USA, CA and MX | Sweden, Denmark, Finland, and Norway | UK and Northern Ireland | 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 England and Wales | Laws and Regulations under Berlin | Laws of England and Wales | Laws of England and Wales | New South Wales | Singapore | New York and controlling U.S. Federal Law |
| **Venue:** | 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 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.

9.    GENERAL PROVISIONS

**9.1** *Feedback*.  Customer may at its sole discretion and option provide Optimizely with Feedback. In such instance, Optimizely and its Affiliates 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.

**9.3**     *Assumptions & Exclusions.* The assumptions and exclusions as are material to the Services are set out in the Order.

**9.4**     *Taxes.* Unless expressly stated in the Order, Fees and other charges described in the Agreement do not include Taxes. Any applicable direct pay permits or valid tax-exempt certificates must be provided to Optimizely prior to the execution of the Agreement. If Optimizely is required to pay Taxes, Customer shall reimburse Optimizely for such amounts. Customer hereby agrees to indemnify Optimizely for any Taxes and related costs (including those related to the long-term assignment of Consultants), interest and penalties paid or payable by Optimizely. This Section shall not apply to taxes based on Optimizely's income

**9.5**     *Refund and Payments*.  For termination under Section 5, or any comparable provision of this Agreement where Customer has under certain limited circumstances the right, as a sole and exclusive remedy, to terminate the applicable Agreement, provided Customer is not otherwise in material breach, Customer will be entitled to: **(i)** a pro-rata refund in the amount of the unused portion of prepaid Fees for any undelivered Services calculated as of the effective date of termination; and **(ii)** a release from the obligation to pay Fees due for periods after the effective date of termination. Any and all such refunds and releases shall be Optimizely's sole liability to Customer.

**9.6**     *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.

**9.7**     *Delivery & Materials.* Unless otherwise agreed by the Parties in writing, the Services will be delivered to Customer remotely during Optimizely's standard business hours. Customer attendance at training and workshops is limited to three (3) attendees unless conducted onsite at Customer's offices, or otherwise agreed to in writing by the Parties. The Services and related materials will be provided in English.

**9.8**     *Travel and Living Expenses.* If Customer requests that Optimizely travel to provide the Services, Customer shall pay all pre-approved, and reasonable expenses incurred by Optimizely for the Services, including, but not limited to travel, living and administrative expenses incurred by Optimizely while away from Optimizely principal offices and/or local travel. Optimizely shall provide copies of receipts for travel and living expenses charged to Customer. All travel and living expenses by Optimizely shall be in accordance with Optimizely's standard travel and expense policy.

**9.9**     *Exclusions*: Except as expressly stated in any Order, , the Services do not include any custom development work, implementation or work on any non-Optimizely systems (including but not limited to, implementation on Customer's or other parties' internal Code), or any auditing or re-instrumenting of Customer's analytics metrics, segments, or dimensions, and Optimizely is not responsible for the setup, configuration, or implementation of any Software Service in Optimizely's, the Customer's or any third-party's environment, including any integration with third-party systems and implementation of Optimizely's snippet and/or software development kits (SDKs). Optimizely will not be responsible for delays or failures caused by Customer or other parties, or by events beyond its reasonable control.

**9.10**     *Non-solicitation.* Both Parties agree that during the term of the applicable 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 section

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

**9.12**     *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.

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

**9.14**     *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 Optimizely Group, or to any Third-Party in connection with a solvent merger, acquisition or sale of all or substantially all of its assets.

**9.15**     *Subcontracting*.  Optimizely may subcontract the whole or any part of the delivery of the Services to its Affiliates, and Third-Parties.  Notwithstanding that right to subcontract delivery, Optimizely remains responsible for the performance of those subcontractors, and remains responsible and accountable to Customer for any breaches of the Agreement caused, or contributed to, by its subcontractors (including Third-Parties).

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

**9.17**     *Entire Agreement*.  The Agreement constitutes the entire and exclusive agreement between Optimizely and Customer in connection with the Parties' business relationship related to the Services. 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. Terms and conditions of any Customer-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

*Affiliate* means any entity that controls, is controlled by, or is under common control of either Party to this 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.

*Agreement* means the agreement as defined in the applicable Order, and which incorporates this 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 the Services – and it includes its techniques, knowledge and /or work-flows and processes.

**Change Order** means a signed written agreement that amends an Order.

**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.

**Code** means any source or object code, including with respect to any graphical user and application programming interfaces.

**Consultants** means employees and third-party contractors which Optimizely provide Services to Customer.

**Customer Data** is defined in the Software Subscription Agreement.

**Deliverable** means Work Product created specifically for Customer by Optimizely's personnel as part of the Services and expressly specified, identified or described as a Deliverable in the applicable Order – but excludes the tasks associated with the Deliverable.

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

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

**Fees** means the fees set out in an Order for the Services.

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

**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 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.

**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, 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 Group** means Optimizely and its Affiliates

**Optimizely Technology** means **(i)** Optimizely's Background IP, **(ii)** all Intellectual Property Rights and know-how applicable to Optimizely products and services, and **(iii)** Optimizely-developed tools, Code, algorithms, modules, materials, documentation, reports and technology that have general application to Optimizely's other customers, including derivatives of and improvements to Optimizely's Background IP. Optimizely Technology expressly excludes Customer's Background IP and Customer's Confidential Information.

**Order** is the Parties' written (and signed) ordering document for the Services. Order includes Change Order.

**Relevant Personal Data** means any Personal Data processed by a Party under the Agreement in connection with delivery and receipt of the Services.

**Service** means the professional services being provided by Optimizely to Customer as described in an applicable Order (including any associated Scope).

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

**Scope** means the scope of the Services as described in the Order.

**Software** means (in the context of a Deliverable) means: **(i)** Optimizely Software and **(ii)** Third-Party Software. Software excludes Third-Party Material.

**Software Service** means Optimizely's software service and /or platform service associated with the Service.

**Software Subscription Agreement** means the Customer's written agreement with respect to the Software Service.

**Taxes** means federal, state or local sales, VAT, GST, foreign withholding, use, property, excise, service or similar taxes now or hereafter levied all of which shall be for Customer's account.

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

**Third-Party Software** means (in the context of a Deliverable or Unique Output) Third-Party software (including open-source software), components, services, websites, integrations, and code, not created or owned by Optimizely.

**Third-Party Material** means any software or product made available to Customer by any Third-Party, including components, services, websites, integrations, Code, and open-source software, and installed, enabled, or utilized by Customer in its use of Deliverable. Software excludes Third-Party Material. Deliverables exclude Third-Party Material.

**Time and Material** when used in an in an Order means the dedicated time with Optimizely resources working with or without a client's resources towards the defined Services completion. Time and Materials are sold in units of Work Days and can be scheduled in no less than half Work Day increments. Time and Materials engagements have no expectations of specific "timed" deliverables.

**Unique Output** means Work Product or a Deliverable by Optimizely for Customer that is unique to Customer, and includes Customer Background IP or other Customer Confidential Information – but excludes the Optimizely methodologies, or any Work Product tasks associated with that Unique Output.

**Warranty Period** means thirty (30) days, calculated from accepted (or deemed) delivery of the applicable Work Product.

**Work Day** when used in an in an Order means no more than seven (7) hours, excluding Consultant's usual meal and necessary rest breaks.

**Work Product** means any work product or tangible results produced by or with Optimizely, including works created for or in cooperation with Customer.

**END NOTE**. Words denoting the singular includes the plural and vice versa. Defined words include their grammatical forms.