

THESE PRODUCT TERMS OF USE (“PRODUCT TERMS”) (FORMERLY, THE OPTIMIZELY PRODUCT SUPPLEMENT) ARE AN INTEGRAL ELEMENT OF THE SOFTWARE SUBSCRIPTION AGREEMENT AND APPLY TO ALL APPLICABLE SOFTWARE SERVICE SUBSCRIPTIONS.

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THE DEFINITIONS IN PART 1 APPLY TO ALL SECTIONS OF THESE PRODUCT TERMS. PARTS 2 THROUGH 7 AND 10 APPLY TO THE APPLICABLE SOFTWARE SERVICE SUBSCRIPTION OUTLINED IN THE ORDER FORM. PART 8 APPLIES TO THOSE SOFTWARE SERVICES THAT UTILISE THIRD-PARTY APPLICATION AND /OR INTEGRATE TO THIRD-PARTY PLATFORMS. PART 9 APPLIES TO THOSE SOFTWARE SERVICES THAT UTILISE OPTIMIZELY GEN AI FEATURES. PART 11 APPLIES TO CERTAIN PROFESSIONAL SERVICES FOR SOFTWARE SERVICE SUBSCRIPTIONS.

UPON CUSTOMER’S RENEWAL OF ITS SOFTWARE SERVICE SUBSCRIPTION, THE THEN-CURRENT VERSION OF THESE PRODUCT TERMS (PUBLISHED AT [HTTPS://WWW.OPTIMIZELY.COM/LEGAL/PRODUCT-SUPPLEMENT/](https://www.optimizely.com/legal/product-supplement/)) AS AT THE DATE OF THAT RENEWAL WILL APPLY TO THE SUBSCRIPTION RENEWAL, AND WILL REPLACE THE PRODUCT SUPPLEMENT UNDER THE EXPIRING SUBSCRIPTION.

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#### PART 1: GENERAL TERMS FOR ALL SOFTWARE SERVICES

**1.1 Definitions.** Definitions used in these Product Terms are as defined in the Order Form, the GTC, or as defined in these Product Terms. Words denoting the singular include the plural and vice versa. Defined words include their grammatical forms.

**1.2 Documentation.** Customer shall Use the Software Service in accordance with the Documentation. Current versions of applicable Service Descriptions are made available at Optimizely World.

**1.3 Usage Metrics, Volumes and Overages.** The usage metrics applicable to the Software Service Subscription are described in the Usage Metrics. The applicable Usage Metric volumes (“Usage Volumes”) and Overages are described in the Order Form.

**1.4 Penetration Testing and Load Testing.** Except as Optimizely may expressly permit, and under Optimizely’s conditions for such tests, Customer will not otherwise perform any penetration testing, load testing, or any other similar kind of testing on the Software Services.

**1.5 Account Registration and Use.** Account information must be accurate, current, and complete, and will be governed by Optimizely’s Privacy Policy (currently available at [www.optimizely.com/privacy/](https://www.optimizely.com/privacy/)). Customer agrees to keep this information up to date so that Optimizely may send operational notices, statements, and other information by email or through Customer’s account. Customer must ensure that any user IDs, passwords, and other access credentials (such as API tokens) are kept strictly confidential and not shared with any unauthorized person. Customer is responsible for maintaining the security of Customer’s account passwords. If any Authorized User stops working for Customer, Customer must promptly terminate that person’s access to its account and Use of the Software Services.

**1.6 Free Access Subscriptions and Beta Releases.** Optimizely may provide Customer with Use of the Software Service, for a limited time and for free on a trial basis (“Free Access”), or (by invitation) Free Access to certain pre-production new features of the Software Services (“Pre-Production Releases”), or (by invitation) Use of ‘alpha,’ ‘beta,’ or other early-stage development of the Software Service (“Beta Releases”). Pre-Production Releases and Beta Releases are entirely optional for Customer to Use. Optimizely makes no promises that future versions of Pre-Production Releases or Beta Releases will be released, or will be made available under the same commercial or other terms. Additionally, there may not be a viable upgrade path for these releases to any subsequent release. Optimizely may terminate Use of any Pre-Production Releases or Beta Releases or Free Access (subject to the terms of the Order Form) at any time, with or without notice, at Optimizely’s sole discretion, without liability. With respect to any Pre-Production Releases and Beta Release, Customer acknowledges to, and agrees with, Optimizely that such releases may not be complete or fully functional and may contain bugs, errors, omissions, and other problems for which Optimizely will not be responsible. Accordingly, any Use of such Pre-Production Releases and Beta Releases are at Customer’s sole risk notwithstanding anything to the contrary herein. Optimizely’s warranties and indemnities under the GTC do not apply to Free Access, Pre-Production Releases, or Beta Releases. Optimizely has no obligation to provide support or maintenance in relation to Free Access, Pre-Production Releases, or Beta Releases.

**1.7 Sensitive Information/Data.** Subject to Section 1.8, the Software Service is not intended to Process Sensitive Information.<sup>1</sup> If Customer submits Sensitive Information for Processing in its Use of the Software Service, Customer acknowledges that it has reviewed Optimizely’s technical and organizational measures (<https://www.optimizely.com/trust-center/privacy/toms/>) (the “TOMs”) and has determined that the TOMs are sufficient and satisfactory for its purposes in relation to that Processing by Optimizely of that Sensitive Information.

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<sup>1</sup> Personal Data (or personally-identifiable information) defined as sensitive information (or data) under applicable data protection laws, and (as such) may require additional protections, safeguards or security measures under such applicable laws.

**1.8 US HIPAA.** Subject to the Subscription of any approved Software Service subscribed that facilitates ePHI Processing ("ePHI-Enabled Software Service"), the Software Services are not (and are not intended) to be Used by Customer for ePHI Processing, and Optimizely assumes no responsibility to Customer with respect to any such ePHI Processing other than with its obligations to Customer of confidentiality and security under the Agreement in relation to Customer Data. Any ePHI Processing by Optimizely in an ePHI-Enabled Software Service is subject to the BAA with Customer.

**1.9 Hosting Region.** With the exception of Experimentation<sup>2</sup>, Personalization, CMP and EXP Analytics, which are only US-hosted, the Hosting Region and Country are determined by default by Customer's location. Details of currently-offered data center regions and countries made available by Optimizely from its global data center providers (MS Azure, Amazon Web Services and Google Cloud Platform) is available upon request. Not all data centers of those Third-Party Service Providers are made available by Optimizely, and not all Software Services are made available in an otherwise available data center. Available Optimizely data centers published by Optimizely are subject to update, and some published data centers may not be available for technical, resource or other issues, and alternate data centers in the applicable region will be provisioned.

**1.10 Initial Provisioning.** Applicable Subscriptions shall be provisioned at the start of the Initial Subscription Term through a standard setup ready for Customer. Customer acknowledges that its Subscriptions may be impacted by its failure to provide and update Customer Data, and other data such as Catalogue Feed, documents, data, files, and other content required for the applicable Subscription.

**1.11 Geo-fenced Support.** Geo-fenced support is available for all Software Services, subject to some restrictions. Geo-fenced support requires Customer to have a geo-fenced support addendum with its Subscription.

**1.12 Data Use by Optimizely.**

**1.12A.** Subject to Sections 1.12B and 1.12C, in addition to Optimizely's right to use Customer Data to provide the Software Service to Customer, Optimizely may also utilize Customer Data for the following ancillary purposes: **(i)** to create Performance Data, **(ii)** for Reporting, **(iii)** providing Support, and **(iv)** in the development of the Software Service, including the development of new capabilities and features ("Development") - (collectively, "Data Use").

**1.12B. Data Use Restrictions.** The following restrictions, apply to Data Use ("Data Use Restrictions"): **A.**- Performance Data may be utilized by Optimizely provided it is aggregated and anonymized, for the purpose of compiling and analyzing statistical information specifically pertaining to the performance, provisioning and/or operation of the Software Service; **B.**- Customer Data Use is subject to the same confidentiality and non-disclosure protections applicable to Customer Data generally as outlined in the Agreement; **C.**- Reports are Confidential Information; **D.**- Optimizely's access to and utilization of any Personal Data in Support is subject to Optimizely's obligations under the Agreement; **E.**- Customer Data Use is subject to the technical and organizational measures outlined in the Agreement so as to ensure appropriate security of that data; **F.**- No Customer Data Use will be undertaken with the objective of identifying individual data subjects; **G.**- Optimizely will not use any Personal Data that reveals any racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation; and **H.** Neither Reporting, Support nor Development will disclose any Customer Data (including any Personal Data) to any other Customer or Third-Party (other than Third-Parties engaged by Optimizely in delivery of the Software Services, and Reporting and Development (and then only under appropriate confidentiality undertakings to Optimizely)); and **I.**- whilst Development may reveal Personal Data (such as an Authorized User's identity), its use in Development by Optimizely will be strictly limited to the purpose of Development of that Software Service, and the identification of how current features and capabilities are utilized by Customers and its Authorized Users for the sole purposes of the development of further features and capabilities of that Software Service. Any such Personal Data use in Development is subject to the Customer Data Use Protocols in this 1.12B.

**1.12C. HIPAA.** Protected Health Information may only be used by Optimizely in accordance with its HIPAA obligations as a Business Associate, and only in accordance with the BAA with that Customer, notwithstanding any rights of Optimizely under Data Use under Sections 1.12A and 1.12B. Any authorized Use by Optimizely will be undertaken only in accordance with the HIPAA Rules, and De-identified, and then only utilized by Optimizely in a data set that is aggregated and anonymised. Section 7.2 applies with respect to De-identified Health Information.

**1.13 Customer Custom Code; Ownership.** As between Optimizely and Customer, and subject always to the rights of applicable open-source software licensors, Customer owns (or has the lawful right to) its custom code solely developed by it (and its Authorized Users), without any contribution from Optimizely, excluding however, any derivative work of Optimizely's Intellectual Property Rights and Confidential Information.

**1.14 Data Access, Retention, Retrieval and Destruction.** Customer Data Processed in the Software Services is accessible and retained subject to Optimizely's Data Retention Policy. Subject to that policy and subject to the Agreement, Customer can access its Customer Data at any time during the Subscription Term. Prior to the expiry of the Subscription Term, Customer may use self-service export tools or APIs (as available with the Software Service) to retrieve a copy of its Customer Data. Where Customer Data self-service export is technically limited, Optimizely will, at no additional cost to Customer, provide Customer, with a one-time copy of its Customer Data in an Optimizely-supported industry-standard format. At the end of the Subscription, Customer Data will be retained for **thirty (days)** ("Data Access Window") and will be made available to Customer, on request, subject to the same limitations stated above in this section. Data retained in the Software Service remains subject to the data protection provisions of the Agreement. Optimizely will securely delete Customer Data using industry standard data-destruction methods from all Optimizely-controlled storage no more than **thirty-five days** following the post-agreement Data Access Window, unless subject to retention under applicable law or on request from Customer to delete sooner. All Customer requests to delete Customer Data prior to **thirty-five days** after the Data Access Window may be subject to technical limitations and require additional fees to perform.

**1.15 Continuity Management.** Details of Customer Data backup, data loss restoration, and disaster recovery (including recovery point and recovery time objectives) are published in the Service Continuity Policy, and as may also be described in more detail in the applicable Service Description.

**1.16 Customer Acceptable Use Policy.** The Customer Acceptable Use Policy applies to all Software Services.

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#### Definitions Follow

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<sup>2</sup> Effective 1 March 2025, EU-hosting is available for a Customer's experimentation visitor data. The administrative data of the Software Service, including experimentation configuration and parameter settings of the Customer, remains US hosted. With the EU-hosting of that experimentation data, some features are restricted: raw events exports are not available for Europe-hosted customers, until further notice. The EU-hosting is multi-EU; that is, there is not a single data centre utilised for the EU Experimentation hosting.

**DEFINITIONS.** The following definitions apply to every Software Service Subscription. Any definitions utilized in any Documentation (including Service Descriptions) is illustrative only and are not contractually binding.

**BAA** means a business associate contract in accordance with the requirements of HIPAA.

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

**Campaigns Supplement** means Optimizely's supplementary terms for the Optimizely Campaign Service, as published by Optimizely at [Optimizely Campaign Supplement](#).

**Customer Acceptable Use Policy** means Optimizely's Policy in relation to Customer acceptable Use of the Software Service, and is published by Optimizely at [Customer Acceptable Use Policy](#), as updated from time to time.

**DORA** means the Digital Operational Resilience Act (DORA), officially Regulation (EU) 2022/2554.

**Data Retention Policy** means Optimizely's Policy in relation to Customer Data retention within the Subscription Term, and is published by Optimizely at [Data Retention Policy](#), as updated from time to time.

**De-Identify** means the de-identification of Protected Health Information in accordance with the Privacy Rule, and **De-Identification** and **De-Identified** shall be interpreted accordingly.

**De-identified Health Information** means Protected Health Information that has been De-identified.

**Edge Delivery** means an Optimizely SDK (*Software Development Kit*) for Web Experimentation, and is an alternative to JavaScript snippet.

**Enhancement** has the meaning ascribed in the GTC. In the absence of a GTC, it means optional Software configuration, features, functionality and capabilities, and includes Third-Party Platform integrations.

**Environment** means Customer hardware, software, intranets, servers and other equipment that Customer utilizes in its Use of the Software Service.

**ePHI** means electronic protected health information as defined under HIPAA.

**HIPAA** means the Health Insurance Portability and Accountability Act of 1996, as amended, of the United States of America.

**HIPAA Rules** means HIPAA's privacy rule, security rule and breach notification rule, as defined under HIPAA.

**Onboarding** means an hour limited service that provides Customer with a technical overview for configuration and development within the cloud, initial cloud implementation support, and a pre-launch checklist.

**Onboarding Packages** are described in the [Service Onboarding Packages](#), (as updated from time to time by Optimizely).

**Optimizely Enhancement** means any Enhancement developed by, and provided to Customer, by Optimizely.

**Optimizely Material** is defined in the GTC. In the absence of an GTC, it 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 One** means Optimizely's bundled Software Services.

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

**Orders** means an initial order form, a change order form or a renewal order form.

**PaaS Services** means Optimizely's platform-as-a-service Content Management System and Commerce Connect Software Services.

**Performance Data** means data generated by the Software Service, whether manually or automatically, with respect to how the Software Service is being used by the Customer.

**PHI** means protected health information as defined under HIPAA.

**Privacy Rule** means the HIPAA privacy rule, HIPAA 45 CFR Part 160 and Part 164 (Subparts A and E).

**Process** and **Processing** are defined in the GTC. In the absence of a GTC, they mean 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.

**Property** means the websites, applications (such as mobile application, over-the-top applications, back-end applications) and/or digital services within an Environment from which Customer makes Use of the Software Service, as is permitted under this Agreement, including the Documentation.

**Protected Health Information** means PHI, and ePHI.

**Region** means the data center region as may be specified in the Order Form.

**Reporting** means reports produced by Optimizely, whether manually or automatically, with respect to the Software Service utilizing Performance Data and Technical Data, whether for its own purposes (so far as relevant to the Software Service and Customer's Use), and / or the benefit of the Customer, and whether at the Customer's request, or at Optimizely's initiative.

**Security Rule** means the HIPAA privacy rule, HIPAA 45 CFR Part 160 and Part 164 (subpart C).

**Service Continuity Policy** means Optimizely's Policy in relation to Customer Data backup, data loss or distortion, exclude data in backups, disaster recovery, recovery point objectives and recovery time objectives, and is published by Optimizely in its [Service Continuity Policy](#), (as updated from time to time).

**Services Description** is reference to the Documentation made available to Customers by Optimizely at Optimizely World, in its [Software Service Services Description](#), (as updated from time to time), and which describes the technical functionalities, features and capabilities of the applicable Software Service, prerequisites for the Software Service, available options and add-ons, available integrations to other Software Services, Third-Party integrations, and /or the scope of any services associated with that Software Service (such as onboarding).

**Short Message Service, SMS, or MMS** means the text communication service component of mobile communication systems that allows the exchange of short text or media messages between fixed line or mobile phone devices.

**Software Service** is a reference to the = software-as and platform-as services, as listed in **Schedule I**, (and as more particularly described in the applicable Service Description).

**Support** means the support provided for the Software Service Subscription.

**GTC** means Optimizely's Software Service General Terms And Conditions, or its predecessor Software Services Use Terms.

**Technical Data** means information such as geo-location, bandwidth, ISP, proxy, domain, demographic and other such data with respect to Software Service Use that Optimizely may make available in Reports.

**Third-Party Enhancement** means any Enhancement developed by a Third-Party, and it includes Third-Party Platform integrations.

**Third-Party Platform** means any Third-Party platform.

**Third-Party Publisher** means the Third-Party licensor of the Third-Party Enhancement.

**Usage Metrics** are published by Optimizely at [Software Service Usage Metrics](#).

**Use** is defined in the Order Form, and/or the GTC. In the absence of that term being defined in the applicable Agreement, it means access to, and to otherwise activate the processing capabilities of the Software Service, including to load, execute, access, employ in the Software Service, or display information resulting from such capabilities, and Use may occur through an interface delivered with or as a part of the Software Service, or a third-party interface deployed by Customer, or another intermediary system.

**Visitor** means any user or visitor activity collected by Optimizely, on behalf of Customer, as part of the Software Services.

**Website Tag** means Optimizely-provided JavaScript code installed by Customer in its Environment for the purpose of identifying customer data and transmitting that data to the applicable Software Service.

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## PART 2: ADDITIONAL TERMS FOR CONTENT MANAGEMENT SYSTEM AND COMMERCE CONNECT.

These additional terms are only applicable to a CMS or Commerce Connect Subscription, and do not apply to any other Software Service Subscription.

**2.1 SendGrid Service; SendGrid-AUP.** Customer's Use of the SendGrid Service made available by Optimizely as Third-Party Enhancement Software is subject to and governed by the Twilio acceptable use policy located at: <https://www.twilio.com/legal/aup> ("SendGrid-AUP"). Customer is deemed to have accepted the SendGrid-AUP and to be bound by its terms upon Customer's first access to, or Use of, the SendGrid Service. A breach by Customer of the SendGrid-AUP is a breach of the Customer Acceptable Use Policy, and a breach of the Agreement.

**2.2 Optimizely Digital Commerce Catalog Restriction.** Customer shall not Use the 'checkout' or 'customer service' capabilities and features of the digital commerce catalog features of the Software Services. Any Use of the capabilities and features is not permitted.

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## PART 3: ADDITIONAL TERMS FOR THE DATA PLATFORM.

These additional terms are only applicable to an ODP Subscription, and do not apply to any other Software Service Subscription.

**3.1 Website Tag and License Grant:** Customer is responsible for downloading and installing the Website Tag to its Environment in accordance with the Documentation. Subject to the Agreement, Optimizely grants to Customer a limited, revocable, non-exclusive, non-transferable, royalty-free license (without the right to sublicense) to install the Website Tag in its Environment and Property solely for Use in connection with the Software Service, and ODP for the Subscription Term only, and for Customer's internal business purposes only and in accordance with the Documentation.

**3.2 Audience Sync.** Utilization of Optimizely's Real-Time Segmentation is described in the applicable Experimentation and Content Management Documentation. Audience Sync excludes Optimizely's Data Platform user interface or other functionality.

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## PART 4: ADDITIONAL TERMS FOR CONTENT MARKETING PLATFORM AND DIGITAL ASSET MANAGEMENT.

These additional terms are only applicable to a CMP and DAM Subscription, and do not apply to any other Software Service Subscription.

**4.1** For Customers utilizing stock images within the marketplace feature of CMP and DAM, please refer to the [Photostock Terms](#) for rights and restrictions on stock image Use.

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## PART 5: ADDITIONAL TERMS FOR WAREHOUSE-NATIVE EXPERIMENTATION ANALYTICS

These additional terms are only applicable to an EXP Analytics Subscription, and do not apply to any other Software Service Subscription.

**5.1 EXP Analytics – Access & Use.** **What EXP Analytics does do:** Warehouse-Native Experimentation Analytics connects to Customer's data warehouse using a data warehouse service account provisioned by Customer for EXP Analytics. Optimizely's access is intended to be limited to Customer-selected set of tables/views that Customer presents to EXP Analytics. EXP Analytics sends SQL queries to Customer's data warehouse to perform analytical computations, and for the purpose of presenting aggregated results in reports shown to Customer's users. All data traffic between EXP Analytics and Customer's data warehouse is encrypted; optionally, EXP Analytics writes a temporary cache of data in a Customer-designated scratch area within Customer's data warehouse. **What EXP Analytics does not do:** EXP Analytics does not Process any Customer Data outside Customer's data warehouse, and Customer has the option of enabling a setting which will enable in-memory caching of some artifacts within EXP Analytics cloud environment resulting in improved performance; EXP Analytics does not modify any Customer Data in Customer's data warehouse; EXP Analytics does not use the structure or semantics of the Customer Data for any kind of learning or training; and EXP Analytics does not have access to all the data in Customer's data warehouse (only has access to what is selectively made available by Customer).

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**PART 6: ADDITIONAL TERMS FOR CAMPAIGNS.**

These additional terms are only applicable to a Campaigns Subscription, and do not apply to any other Software Service Subscription.

**6.1** Please refer to the [Campaigns Supplement](#).

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**PART 7: ADDITIONAL TERMS FOR US HIPAA AND EU DORA**

**7.1 US HIPAA.** Effective 1 January 2025, Optimizely, as Business Associate (as defined under HIPAA), can support HIPAA-regulated customers with their HIPAA requirements as Covered Entities, and their Use of the Software Service. An Optimizely-approved BAA will be required with respect to Optimizely's HIPAA commitment to the Customer in relation to the HIPAA Rules. **NOTE:** Only Software Service identified with a 'HIPAA' sku in an applicable Order Form (and described as an ePHI-enabled Software Service in the Services Description) is HIPAA-supported Software Service by Optimizely.

**7.2 HIPAA & DE-IDENTIFICATION.** Any Protected Health Information utilized by Optimizely in its provision of the Software Service is as authorized by Customer in accordance with the Agreement, including the BAA, but it may only be Used by Optimizely as De-identified data in accordance with the Privacy Rule. Any such De-identified Health Information will only be used by Optimizely in an aggregated data set, ensuring anonymity.

**7.3 EU DORA.** Effective 1 January 2025, Optimizely, as an ICT Service Provider (as defined under DORA), can support DORA-regulated customers with their DORA requirements and their Use of the Software Service. An Optimizely-approved DORA supplement will be required with respect to Optimizely's DORA commitments.

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**PART 8: ADDITIONAL TERMS FOR ENHANCEMENTS (ADD-ONS), INCLUDING THIRD-PARTY PLATFORM INTEGRATIONS**

**8.1** Certain Software Services may contain functionality enabling Enhancements (also referred to as Add-Ons) to be utilized by Customer in its Use of the Software Service. Use of Enhancements is subject to this Section 8, the GTC, and applicable Documentation.

**8.2 Optimizely Enhancements. Customer's Responsibility.** For some Software Service, Optimizely may recommend in the Documentation additional Optimizely Software for Customer to consider utilizing as an optional Enhancement in its Use of the Software Service. Optimizely Enhancements are, upon Use by Customer, part of the Software Service for the further purposes of this Agreement. Customer will comply with any open-source license terms that Optimizely publishes with respect to any Optimizely Enhancement.

**8.3 Third-Party Enhancement. Customer's Responsibility.** For some Software Service, Optimizely may identify in the Documentation, Third-Party Enhancements from Third-Parties for Customer to consider utilizing as an optional Enhancement in its Use of the 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. Third-Party Enhancements may require Customer to accept license terms for the Use of a Third-Party Enhancement as may be published by the Third-Party. Optimizely's referral in the Documentation to any Third-Party Enhancement is not an endorsement of that Third-Party Enhancement, and any such reference in the Documentation is provided as a convenience only. Except to the extent the Software Service is the cause of a defect in a Third-Party Enhancement, Customer assumes the sole risk associated with 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 any such Use of any Third-Party Enhancement.

**8.4** Use of any Third-Party Enhancements is subject to the applicable Third-Party Publisher license ("TPPL"). If Customer does not want to accept the TPPL, Customer should not utilize that Third-Party Enhancement.

**8.5** Third-Party Enhancements are not subject to any Software Services warranty by Optimizely, or any rights of indemnification from Optimizely with respect to any allegation of Third-Party Intellectual Property Rights infringement. Third-Party Enhancements utilized by Customer in their Use of the Software Service are 'as available', 'as is', and with any / all faults.

**8.6** Utilization by Customer of a Third-Party Enhancement may require installation of Optimizely Code within the Third-Party Software or on a Third-Party Platform for the functioning of that Third-Party Enhancement. Customer shall have the limited right for the Subscription Term to install and Use the relevant Optimizely Code in the Third-Party Enhancement as may be required, and to distribute the installed Optimizely Code within any Customer applications used in connection with the Third-Party Enhancement and their Use of the Software Service, but not otherwise. Customer may not make any derivative use of any Optimizely Code, or commercialize such Optimizely Code. Optimizely Code is Optimizely Confidential Information.

**8.7** Customer grants Optimizely a worldwide, royalty-free, right and license for the Subscription Term to host, copy, use, transmit and display the underlying Third-Party Software and Third-Party Platform integration, and associated Code of the Third-Party Enhancement. Customer further grants Optimizely permission to allow the Third-Party Enhancement to access Customer Data (and information about Customer's usage of the Third-Party Enhancement) as may be required by that Third-Party Enhancement in its interoperation with the Software Service.

**8.8** Customer's access to and Use of Third-Party Enhancements may provide Customer with access to Third-Party Content that it utilizes in that Third-Party Enhancement. Optimizely does not warrant or support any such Third-Party Content.

**8.9** Customer's access to and Use of Third-Party Enhancements may be subject to the Third-Party Publisher's privacy policies. Customer should ensure it is familiar with those Third-Party Publisher's privacy policies in its utilization of the Third-Party Enhancement.

**8.10** Customer's access to and utilization of a Third-Party Enhancement may permit, facilitate or necessitate the transfer of Customer Data from the Software Service. As between Customer and the Third-Party Publisher, Customer controls its Customer Data. Optimizely assumes no responsibility or liability to Customer with respect to any such Customer Data export and /or import, including that disclosure and collection, and any modification, corruption, manipulation, enhancement or otherwise, of that Customer Data by Customer and/or Third-Party Publisher in Customer's utilization of that Third-Party Enhancement.

**8.11** Third-Party Publishers are not Optimizely Sub-processors.

**8.12** Customer must not make any false or misleading statements in its reviews of any Third-Party Enhancements within the Software Service or in any Documentation, and must ensure any reviews are an honest good-faith rating, and must also disclose any Third-Party affiliation, including any promotion fee, or conflict of interest (for example, a competitor). Any published review is feedback, and Optimizely may in its sole discretion retain and freely use, incorporate or otherwise exploit such feedback without restriction, compensation or attribution to the source of the feedback.

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## PART 9: ADDITIONAL TERMS FOR OPTIMIZELY'S AI FEATURES AND TOOLS

**9.1** Some Software Services incorporate artificial intelligence ("AI"), including machine learning ("ML"). The Services Description for the Software Service identifies the AI, ML, and also any generative AI ("Gen-AI") features (collectively, "AI"). For Gen-AI, the applicable Services Description also outlines the underlying Gen-AI large language model utilised (the "LLM"), and the applicable data use and privacy terms of the applicable LLM. Customer should be with the LLM data-use privacy terms in their Gen-AI Use. Some AI features can be disabled; and some not. All Gen-AI features can be disabled. The Services Description provides details as to how a Customer can request AI to be disabled. (if capable).

**9.2** *Customer Content.* Customer may provide input (that is, prompts (including associated system instructions, cached content, and files such as images, videos, or documents)) to the AI feature ("Input"), and Customer will receive generated responses ("Output") (collectively "AI Content"). Customer is responsible for its Input, including ensuring that it does not violate any applicable law or the terms of data-use of the underlying LLM. Customer must ensure that they have all rights, licenses, and permissions with respect to their Input.

**9.3** *Ownership of AI Content.* As between Customer and Optimizely, and to the extent permitted by applicable law, Customer retains its ownership rights in Input, and owns the Output. As between Customer and any underlying LLM supporting the AI Feature, and to the extent permitted by applicable law, Customer also retains its ownership rights in Input and owns the Output. With respect to Gen-AI features, the LLMs assign to Customer any right, title, and interest, if any, in and to Output.

**9.4** *Similarity of AI Content.* Due to the nature of AI and artificial intelligence generally, Output may not be unique, and other users may receive similar output from the applicable AI features.

**9.5** *Responsible Use.* Customer will only utilize AI features in a responsible and legally compliant manner. Customer will not use AI Content: (i) promote or facilitate any illegal activities, unlawful actions; (ii) facilitate any fraudulent actions; (iii) generate any content that is violent, sexually explicit, demeaning, insulting or hateful; (iv) attempt any unauthorized access to a system, property or information; (v) distribute malware or spam; (vi) track people without consent; (vii) contravene regulatory safety practices; or (viii) falsely impersonate any individual, or (ix) mine cryptocurrency. Customer will not (x) utilize AI features to develop, train, or improve other AI services, unless explicitly permitted by Optimizely, or (x) use web scraping, web harvesting, or web data extraction methods to extract data from AI features.

**9.6** *Acknowledgements.* Customer Use of AI features is on basis that such Use is an acknowledgment that Output may not always be accurate, and Customer should not rely on Output from that AI feature as a sole source of truth or factual information, or as a substitute for professional advice, and Customer must evaluate Output for accuracy and appropriateness for their use case, including using human review as appropriate, before using or sharing Output from the AI features. Customer must not utilize any Output relating to a person for any purpose that could have a legal or material impact on that person, such as making credit, educational, employment, housing, insurance, legal, medical, or other important decisions about them. AI features may provide incomplete, incorrect, or offensive Output that does not represent Optimizely's views. If Output references any Third-Party products or services, it doesn't mean the Third-Party endorses, or is affiliated with, Optimizely. Customer also acknowledges that the legal framework applicable to artificial intelligence is still evolving, as is the interpretation of courts, regulators and authorities. Optimizely may remove, or limit the use of, the AI if (i) Optimizely (or in the case of Gen-AI features, the applicable LLM) reasonably believes such action is required to address a change in law or a change or clarification of the interpretation of a court or authority in relation to artificial intelligence; or (ii) a Third-Party removes or limits Optimizely's right of such third party's AI technologies.

**9.7** *Optimizely's Use of Customer Data.* Customer Data shall not be used by Optimizely to train, develop, or improve any Gen-AI features. Customer Data shall not be used by Optimizely to train, develop, or improve any Gen-AI features for the benefit of others. Customer Data will only be used in an automated means according to the programming of that AI feature to train the machine learning feature of the Software Service solely for the Customer's benefit, use and enjoyment of the Software Service in accordance with Optimizely's use rights under the Agreement.

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## PART 10: OPAL TERMS OF USE

**10.1** Use of OPAL is subject to Optimizely's AI use terms in Section 9 above, and these further terms.

**10.2** These OPAL terms of use ("Opal Terms") apply whether OPAL is used as a feature of another Software Service, or as its own Software Service, and whether Opal is being Used as part of a promotion (and whether Fees are being paid or whether it is being made available at no charge).

**10.3** Agents and other tools (including workflows) within Opal (collectively "Agents") are identified as either Optimizely developed (and as such, are Optimizely Enhancements), or as Third-Party developed (and as such, are Third-Party Enhancements).

**10.4** Customer's queries of, or prompts to, Agents ("Queries") are Customer Data. Similarly, responses generated by Agents ("Responses") are also Customer Data. Optimizely has rights with respect to that Customer Data as outlined in these Product Use Terms (Sec. 1.12) and the Agreement.

**10.5** A Customer shall not use Opal or any Agent to gain access, or attempt to gain access, to any Optimizely Confidential Information (including the Confidential Information of any other Optimizely customer) or to Optimizely's operations, or to interfere with Optimizely's operations, Opal or any other customers' use of Opal.

**10.6** Customers are solely responsible for ensuring their Queries are accurate and lawful, for validating and interpreting Responses, for configuring any automated decisions based on Responses, and for complying with all applicable regulatory obligations related to their utilization of Agents. Customer acknowledges that Responses may contain inaccuracies, biases, or omissions. Responses are informational and do not constitute legal, compliance, or regulatory advice. If Customer needs authoritative guidance, Customer should seek qualified professional advice. Optimizely is not responsible for the accuracy of Responses.

**10.7** The LLM's utilized by Optimizely within OPAL are not intended to create obligations under HIPAA, and may not satisfy HIPAA requirements. Customer should not use OPAL to transmit ePHI.

**10.8** Subject to express warranties with respect to the Software Service in the GTC, Opal (and Agents) are otherwise provided 'as is' and 'as available', without any additional warranties of merchantability, fitness for a particular purpose, or non-infringement. Optimizely does not otherwise guarantee that Opal and Agents will be error-free, accurate, complete, or continuously available. Optimizely disclaims all liability arising from Customers' reliance on Responses.

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**PART 11: ADDITIONAL TERMS FOR CERTAIN PROFESSIONAL SERVICES**

**11.1     *Onboarding.*** Onboarding is a pre-paid pre-defined scope-limited professional service that Optimizely provides Customer as part of the Software Service. Onboarding provides a technical overview for configuration, implementation support, and a pre-launch checklist. Onboarding is purchased as limited number of hours, with a fixed validity period as set out in the applicable Order. The applicable Onboarding service is described in the Service Onboarding Packages. Certain Onboarding packages may require a statement of work/scope document to be prepared by Optimizely (and agreed with Customer) before Onboarding commences. Onboarding hours can be utilized only for the Software Service that Onboarding was purchased. At the end of that Onboarding period, unused Onboarding hours expire, and unused hours cannot be rolled over or re-purposed for any other Software Service. Customer should ensure it manages its consumption of Onboarding hours. Optimizely will provide Customer with the status of the Onboarding hours upon request. Additional Onboarding hours can be purchased at Optimizely's then-current fees.

**11.2     *Technical Advisory Subscriptions.*** Technical Advisory Services supporting certain Software Services may be sold by Optimizely and purchased by Customer on a subscription basis in a Software Services Order ("TAM Service", and "TAM Subscription"). The TAM Service is described in applicable Documentation (as published by Optimizely, or otherwise available upon request Optimizely), including in Services Descriptions. TAM Service is subject to the Professional Services Supplement.

**11.3     *Catalogue Services.*** Certain 'out-of-the-box' Professional Services supporting Experimentation, Personalization, CMP and DAM may be sold by Optimizely and purchased by Customer in a Software Services Order ("Catalogue Services"). Catalogue Services may be Ordered as a one-time service, or for by way of a subscription. Details of the Catalogue Service purchased are set out in the applicable Order. Catalogue Services are a pre-defined set of tasks as described in applicable Documentation (as published by Optimizely, or otherwise available upon request Optimizely), including the Services Descriptions, and / or a standardized statement of work as made available to Customer by Optimizely. Catalogue Services is subject to the Professional Services Supplement.

**11.4     *Other Professional Services.*** Other Professional Services listed in a Software Services Order may require a statement of work / scope document to be prepared by Optimizely (and agreed with Customer) before those Professional Services commence.

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= *Exhibit Schedule I (the Software Services) follows.*

## Schedule I

### **The Software Services (at the time of publication)**

**Analytics** – Optimizely's data analytics software service, enabling Customer to utilise event-based and state-based data analytics for insights into customer's usage of Customer's products and their respective customer journeys.

**Audience Sync** – Optimizely's Data Platform Audience Sync feature available for Experimentation and Content Management System that facilitates Customer's utilization its own customer data platform with the Optimizely Data Platform and enables customer to send segments to the Optimizely Data Platform for real-time experimentation and personalization.

**Campaigns** – Optimizely's marketing campaigns software service.

**CMS (SaaS) and CMS (PaaS)** – Optimizely's SaaS and PaaS Content Management Systems.

**Composable Commerce** is a reference to Configured Commerce and Commerce Connect.

**Commerce Connect** (formerly, Customized Commerce, and historically B2C) – Optimizely's PaaS commerce platform, including Graph or Search & Navigation as additional features and capabilities.

**Configured Commerce** (formerly, B2B) – Optimizely's SaaS commerce software service, including catalog, account, promotions and order management features and capabilities.

**Content Management System** (or **CMS**) – Optimizely's content management system, Optimizely's composable suite of tools to create and publish content, including Graph or Search & Navigation as additional features and capabilities.

**Content Marketing Platform** (formerly, Welcome Marketing Orchestration) (or **CMP**) – Optimizely's marketing software service, with features and capabilities for the planning and executing across multiple teams of marketing campaigns.

**Content Recommendations** – Optimizely's AI-based software service that tracks Visitor data so as to facilitate building profiles for each Visitor.

**Content Graph** – Optimizely's software service that enables advanced query and search capabilities, to retrieve content from other Software Services, and to utilize the content from any Third-Party application or platform.

**Data Platform** (or **ODP**) – Optimizely's data collection and analytics software service, with features and capabilities facilitating interoperability with Customer's Environment and Property and the analysis of Customer's Data.

**Digital Asset Management** (or **DAM**) – Optimizely's digital asset management software service that integrates with Content Management System.

**Experimentation** is a reference to Feature Experimentation and Web Experimentation.

**Experiment Collaboration** – Optimizely's software service that allows customers to manage their experiment ideation, planning, and hypothesis-creation process.

**Feature Experimentation** – Optimizely's software service, that facilitates Customer running experiments within its Properties, deploying code behind feature flags, experimentation with A/B tests, and rollout / rollback of features through use of Software Development Kits (SDKs).

**OPAL** means Optimizely's AI-based, LLM-backed, agent-driven marketing platform.

**Orchestrate Services** means Content Marketing Platform and Content Management.

**Personalization** – Optimizely's software service that enables customers to deliver a personalized web Visitation experience, based on Visitors' different attributes and behaviors.

**Product Information Management** – Optimizely's software service that enables catalog and data requirements and facilitates the management of the data acquisition and curation process, with approved workflows, and can be integrated with Composable Commerce.

**Product Recommendations** – Optimizely's AI-based software service that facilitates the creation and configuration of marketing campaigns with personalized product recommendations from the personalization portal.

**Search & Navigation** – Optimizely's content and product indexing and search and navigation, Software Service, with features and capabilities that facilitate search and filtered delivery of content and products.

**Warehouse-Native Experimentation Analytics** (or **EXP Analytics**) – Optimizely's Experimentation add-on software service that allows Customers to connect Experimentation to their data warehouse, enabling Customers to analyze Experimentation results against metrics stored in their data warehouse.

**Web Experimentation** – Optimizely's experimentation software service that facilitates experimentation via A/B or multi-variant testing on any channel or any device.