

## GENERAL TERMS AND CONDITIONS FOR SUBCONTRACTED SERVICES TO OPTIMIZELY

BY ACCEPTING THE ORDER FOR THE DELIVERY TO OPTIMIZELY OF PROFESSIONAL, SUBCONTRACTOR AGREES THAT THESE GENERAL TERMS AND CONDITIONS ("SSC-GTC") ARE AN INTEGRAL PART OF THE ORDER AND THE AGREEMENT.

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

**1. OPTIMIZELY RESPONSIBILITIES** *Services*. Optimizely will provide the Services to Customer as outlined the Order, and in accordance with its obligations under this SSC-GTC, subject to Customer fulfilling its obligations under the Order and associated Scope and under this SSC-GTC.

**2. REPRESENTATIONS AND WARRANTIES**

**2.1 Mutual.** Each Party represents and warrants that it has full power and authority to enter into and fulfill its obligations under the Agreement.

**2.2 Subcontractor Representations and Warranties.** Subcontractor represents and warrants that: **(i)** Subcontractor and its Subcontractor Personnel will comply with all applicable laws and any other obligation Subcontractor and Subcontractor Personnel may have to any other party; **(ii)** Subcontractor will provide the Services in a timely, professional and workmanlike manner and with a degree of quality equal to or higher than applicable industry standards and that all Subcontractor Personnel have the requisite skills, experience, and qualifications; **(iii)** all Services will conform to the specifications and requirements of every Agreement; **(iv)** Work Product and other Deliverables will not infringe any IP Rights of a third party or misappropriate any trade secret or other proprietary right of any third party; **(v)** the use or commercial exploitation of any Work Product and Deliverable will not subject Optimizely or Customer to any claim by a third party for IP infringement or misappropriation in any way of the trade secrets or other proprietary rights of any other person or entity, whether such rights are afforded by the laws of the United States or any other country; **(vi)** Subcontractor and Subcontractor Personnel will not use any Background IP in connection with any Services unless Subcontractor procures, at its sole cost and expense, all rights necessary to use the third party's Intellectual Property Rights in accordance with the Agreement; **(vii)** the Services will be free of any viruses, worms, time bombs, Trojan horses or other harmful, malicious or destructive code, software disabling devices, time-out devices, counter devices and devices intended to collect data regarding usage or related statistics; **(viii)** the Services, nor any element thereof, will infringe the Intellectual Property Rights of any third party; and **(ix)** Subcontractor and Subcontractor Personnel will not use any third party's confidential or proprietary information unless Subcontractor and Subcontractor Personnel obtain the third party's and Optimizely's prior written consent.

**3. DEFECTIVE SERVICES**

**3.1** All Services are subject to acceptance by Optimizely. Subcontractor will, without charge, correct any nonconformity, defect, or malfunction in the Services within ten (10) days of notice from Optimizely. In addition to Section 3.2 below, if Subcontractor is unable to correct the Services within this cure period (or such other extended period as Optimizely may reasonably stipulate), Subcontractor, at Subcontractor's sole expense, and Optimizely's election, will: **(i)** procure the right for Optimizely's continued use of the affected Services; **(ii)** replace the affected Services; **(iii)** modify the affected Services to conform to Optimizely's requirements; or **(iv)** refund Optimizely all fees paid for the non-conforming Services. If the Services are redelivered, provided again, remedied in whole or in part, or replaced, the warranty period starts from the beginning for the newly provided, replaced, or wholly or partly remedied Services.

**3.2 Payment for Incomplete, Defective, or Non-Conformity Services.** Optimizely may reduce or withhold payment to Subcontractor: **(i)** if Subcontractor is, or with reasonable probability may become, unable to comply with or complete its performance hereunder; **(ii)** if Optimizely, in its discretion, determines Subcontractor's performance hereunder is delayed or is in danger of being delayed at no fault of Optimizely or by any failure of the Subcontractor to effect timely compliance with any of the technical, administrative, or operational requirements of the Services; **(iii)** pending satisfactory completion, repair, replacement, and/or restoration of faulty, deficient or defective work, materials, supplies, or equipment; **(iv)** if Subcontractor's performance hereunder is rejected as not conforming with the Agreement; or **(v)** nonpayment from the Customer due to **(i)** through **(iv)** hereunder.

**4. INTELLECTUAL PROPERTY**

**4.1 Background IP.** Except as set as otherwise set out in Sections 4.2 through 4.4 below, neither Party will own or acquire any right, title, or interest to the other Party's Background IP.

**4.2 Work Product and Deliverables; Ownership.** Optimizely shall own all right, title, and interest in the Work Product and Deliverables. If applicable law prevents Subcontractor from transferring ownership of the Work Product and any Deliverables to Optimizely, Subcontractor grants to Optimizely and its Affiliates a perpetual, irrevocable, exclusive, royalty-free, fully-paid, transferrable, worldwide license (with the right to sublicense) to: **(i)** reproduce, prepare derivative works of, distribute, publicly perform, publicly display, and otherwise use the Work Product and such Deliverables; and **(ii)** make, use, sell, offer for sale, import, export any component of, and otherwise dispose of the Work Product and all such Deliverables.

**4.3 Background IP Licenses.** If Subcontractor uses any Background IP in the Services, Subcontractor grants Optimizely and its Affiliates a perpetual, irrevocable, exclusive, royalty-free, fully-paid, transferrable, worldwide license (with the right to sublicense) to: **(i)** reproduce, prepare derivative works of, distribute, publicly perform, publicly display, and otherwise use such Background IP; and **(ii)** make, use, sell, offer for sale, import, export any component of, and otherwise dispose of such Background IP. This license shall survive termination or expiration of the Agreement. To the extent Subcontractor uses any Optimizely's Background IP in its performance of the Services, then subject to this SSC-GTC, Optimizely grants to

Subcontractor a limited, revocable, non-exclusive, non-transferable, royalty-free, fully-paid, worldwide license during the Term, solely for the purpose of, and only to the extent needed for, performing the Services.

**4.4 Use of Third Party Software.** Subcontractor and Subcontractor Personnel will not incorporate any third party's IP or open source materials into the Services without Optimizely's prior written consent. To the extent the Services utilizes any third-party software, Subcontractor will ensure it **(i)** has complied with all applicable laws and terms of use with respect to its use of that third-party software; and **(ii)** provides appropriate disclosure to Optimizely with respect to that third-party software in the Services.

**4.5 Generative AI.** To the extent the Services contain any generative AI, Subcontractor will ensure it **(i)** has complied with all applicable laws and terms of use with respect to its creation and use of any generative AI; **(ii)** provides appropriate disclosure to Optimizely with respect to its use of generative AI in the Services; and **(iii)** indemnifies Optimizely with respect to that use of generative AI.

**4.6 Feedback.** In the event Subcontractor or any of its Subcontractor Personnel provides Optimizely with input regarding Optimizely's software, products, services, business or technology plans, including, without limitation, comments or suggestions regarding the possible creation, modification, correction, improvement, or enhancement of Optimizely's software and/or other Optimizely products or services (collectively, "**Feedback**"), Subcontractor grants to Optimizely and its Affiliates a perpetual, irrevocable, exclusive, royalty-free, fully-paid, transferrable, worldwide license (with the right to sublicense) to: **(i)** reproduce, prepare derivative works of, distribute, publicly perform, publicly display, and otherwise use such Feedback; and **(ii)** make, use, sell, offer for sale, import, export any component of, and otherwise dispose of such Feedback.

**4.7 Moral Rights.** Subcontractor will not assert, and to the extent permitted by applicable law, otherwise waives, any moral rights in the Services. Subcontractor will ensure that Subcontractor Personnel and other third parties with moral rights in the Services will also not assert, and to the extent permitted by applicable law, will waive those moral rights.

**4.8 Cooperation.** Upon the reasonable request of Optimizely, Subcontractor will promptly take such further reasonable actions, including execution and delivery of all appropriate instruments of conveyance, as may be reasonably necessary to assist Optimizely to prosecute, register, perfect, or record its rights in or to the Services.

**4.9 Reservation of Rights.** All Intellectual Property of each Party that is not expressly assigned or licensed under the Agreement is reserved and retained by such Party.

## 5. CONFIDENTIALITY

**5.1 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 affiliates, employees, contractors, subcontractors, legal representatives, accountants, or other professional advisors ("**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 SSC-GTC; **(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. Confidential Information of either Party disclosed prior to execution of this SSC-GTC or Agreement will be subject to this Section 5.1.

**5.2 Compelled Disclosures.** Receiver may disclose Discloser's Confidential Information to the extent required by law, regulation, court order, or regulatory agency; provided that Receiver is required to make such a disclosure and uses reasonable efforts to give Discloser 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.

**5.3 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.

**5.4 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 backup systems under general systems archiving or backup policies; or **(iii)** if Receiver is legally entitled or required to retain.

**5.5 Publicity.** Subcontractor will not issue press releases or other publicity related to Subcontractor's relationship with Optimizely or this SSC-GTC or Agreement without prior written approval from Optimizely.

## 6. PRIVACY AND SECURITY

**6.1 Data Security.** Subcontractor shall implement and maintain a written information security program, which will be followed in all relevant aspects of Subcontractor's performance under the Agreement ("Security Program"). Subcontractor's Security Program shall protect the privacy, security, confidentiality, and integrity of Optimizely Confidential Information that Subcontractor collects, receives, accesses, analyzes, processes, transfers, transmits, stores, disposes, uses, and/or discloses. Subcontractor's Security Program shall include Subcontractor's implementation and maintenance of reasonable administrative, physical, and technical safeguards, which shall be sufficient in nature and scope to: (i) protect against unauthorized use, access, acquisition, disclosure, modification, or destruction of Optimizely Confidential Information; (ii) protect against any potential threats and hazards to the security or integrity of Optimizely Confidential Information; and (iii) protect Optimizely's Intellectual Property Rights. Further, Subcontractor's Security Program shall; (iv) comply with applicable data protection and privacy laws; and (v) meet or exceed accepted industry practices. In the event Subcontractor maintains or stores any Optimizely Confidential Information and/or provides any infrastructure services, Subcontractor shall implement commercially reasonable safeguards and practices for information security that are comparable to established and accepted industry best practices and standards.

**6.2 Data Processing Agreement.** If Optimizely reasonably determines that Subcontractor will be Processing Relevant Personal Data (that is, Personal Data of either Optimizely or a Customer) in its performance of Services, Subcontractor will, notwithstanding the Subcontractor's obligations under Section 6.1 above, enter into a data processing agreement (in Optimizely's standard form) upon request by Optimizely ("Optimizely DPA"). If an Optimizely DPA is later executed by the Parties, that Optimizely DPA will become part of the Agreement.

## 7. TERMINATION

**7.1 Termination for Cause.** Either Party may terminate an Agreement if: (i) the other Party fails to cure any material breach within thirty (30) days after written notice of such breach; or (ii) the other Party seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding, or if any such proceeding is instituted against such party (and not dismissed within sixty (60) days thereafter). In addition to Optimizely maintaining any rights or remedies provided in the Agreement and applicable law, upon any termination by Optimizely pursuant to this Section 7.1, Subcontractor will refund Optimizely any prepaid fees for the Services.

**7.2 Termination for Convenience.** Optimizely may terminate an Agreement for convenience upon ten (10) days advance written notice.

**7.3 Effects of Termination.** Upon termination of an Agreement, subject to any written directions of Optimizely, Subcontractor shall: (i) promptly deliver to Optimizely all Work Product (and Deliverables), whether complete or incomplete, for which Optimizely has paid, and all Optimizely Equipment in its possession; (ii) provide reasonable cooperation and assistance to Optimizely in transitioning the Services to a different service provider; and (iii) on a *pro rata* basis, repay all fees and expenses paid in advance for any Services not performed, produced, or provided. In no event shall Optimizely be liable for any Subcontractor Personnel termination costs arising from the expiration or termination of the Agreement.

**7.4 Return of Property.** Upon termination of an Agreement, each Party shall: (i) return to the other Party all documents and tangible materials (and any copies) containing, reflecting, incorporating, or based on the other Party's Confidential Information; (ii) permanently delete all of the other Party's Confidential Information from its computer systems or otherwise in its possession; and (iii) certify in writing to the other Party that it has complied with the requirements of this Section 7.4. Notwithstanding the foregoing, Optimizely may retain copies of any Subcontractor Confidential Information incorporated in the Work Product, Deliverables, or to the extent necessary to allow Optimizely to make full use of the Work Product and any Deliverables.

## 8. INDEPENDENT CONTRACTOR

**8.1 Independent Contractor.** Subcontractor is, and shall remain at all times, an independent contractor. Nothing in the Agreement is intended to create nor shall be construed as creating an employment relationship between the Parties. Subcontractor has sole responsibility to comply with all applicable laws relating to its performance as an independent contractor and shall be responsible for: (i) Subcontractor Personnel's acts and omissions; (ii) payment of its Subcontractor Personnel's entire compensation and benefits, as applicable, including employment taxes, worker's compensation, unemployment compensation and any similar taxes associated with employment or their relationship; and (iii) staffing, instructing, and managing Subcontractor Personnel.

**8.2 No Employee Benefits.** Neither Subcontractor nor Subcontractor Personnel are entitled to participate in any employment-related benefits of Optimizely. If Subcontractor or any Subcontractor Personnel were to be reclassified as an employee under applicable law, neither Subcontractor nor Subcontractor Personnel will be eligible to receive any employee benefits from Optimizely, except those mandated by law, even if by the terms of Optimizely's benefit plans or programs, Subcontractor and Subcontractor Personnel would otherwise be eligible to such benefits. Neither Subcontractor nor Subcontractor Personnel will apply for any government-sponsored benefits intended to apply to employees.

**8.3 Subcontractor Covenants.** To the fullest extent permitted by law, neither Subcontractor nor Subcontractor Personnel will pursue any charge, claim, or action against Optimizely and its Affiliates, or cause or knowingly permit any such charge, claim, or action to be pursued, in any federal, state or municipal court, administrative agency, arbitral forum, or other tribunal, arising out of any of the matters covered by Sections 8.1 and 8.2 above.

**9. INDEMNIFICATION** Subcontractor will indemnify, defend, and hold harmless Optimizely and its Affiliates and their respective directors, officers, and employees (collectively, "Indemnified Party") from and against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, fees and costs of enforcing any right to indemnification under this SSC-GTC or any Agreement, and the cost of pursuing any insurance providers, incurred by

Indemnified Party (collectively, "**Losses**"), relating to/arising out of or resulting from any claim by Optimizely or third party arising out of or occurring in connection with Subcontractor's negligence, willful misconduct, or breach of the Agreement. Subcontractor shall not enter into any settlement without Optimizely's or Indemnified Party's prior written consent.

**10. LIMITATION OF LIABILITY** Nothing in this SSC-GTC or any Agreement shall limit or exclude Subcontractor's liability for: **(i)** death or personal injury resulting from negligence; **(ii)** fraud or fraudulent misrepresentation; **(iii)** breach of any express or implied terms of this Agreement; **(iv)** its indemnification obligations; or **(v)** the willful default or willful misconduct of Subcontractor, its employees, agents or sub-contractors. Unless prohibited by law, under no circumstances shall Optimizely or its Affiliates be liable to Subcontractor, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any: **(a)** loss of profit; **(b)** loss of business; or **(c)** indirect, special, punitive, or consequential damages suffered by Subcontractor that arises under or in connection with the Agreement, and Optimizely's total liability arising under or in connection with the Agreement shall be limited to the amount of an unpaid invoice in the case of payment disputes.

**11. GOVERNING LAW** Excluding claims arising out of Optimizely's Intellectual Property Rights for which a provisional remedy or equitable relief is sought ("IP Relief"), all other disputes related to the Agreement ("Disputes") shall be first submitted to non-binding 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 (60) days, then, upon the election of either Party, the Dispute shall be submitted to an applicable court in the jurisdiction and subject to the governing law below. Each Party consents to exclusivity of venue. The Parties waive all objections to venue. Each Party will bear its own costs with respect to all other Disputes.

Subcontractor 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
<b>Governing Law:</b>	New York and controlling U.S. Federal Law	Laws of Sweden	Laws of England and Wales	Laws of The 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
<b>Venue:</b>	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 any conflicts of law principles and the Uniform Computer Information Transactions Act (where enacted) will not apply.

**12. INSURANCE** During the Term, Subcontractor shall maintain in force adequate insurance with policy limits sufficient to protect and indemnify Optimizely (and each of their officers, directors, and employees) from any losses resulting from Subcontractor's acts or omissions or the acts or omissions of its Subcontractor Personnel. Without limiting this obligation, Subcontractor will obtain and maintain the insurance in accordance with the Order Form.

**13. AUDITS** During the Term, and for one year after the Agreement expires or earlier terminates, Optimizely or its third-party auditor may audit Subcontractor's relevant records to confirm Subcontractor's compliance with the Agreement. Optimizely's auditor will only have access to those records reasonably necessary to confirm such compliance. Subcontractor will repay Optimizely any overcharged amounts by, at Optimizely's option, either: **(i)** promptly issuing a credit to Optimizely; or **(ii)** issuing a refund to Optimizely within thirty (30) days of Optimizely's invoice date. Subcontractor will reimburse Optimizely for all reasonable audit costs if the price discrepancy for any particular invoice exceeds 3 percent. Any such audit will be conducted during normal business hours and in a manner designed to cause minimal impact on Subcontractor's ordinary business activities.

**14. NON-SOLICITATION** At no time during the Term of an applicable Agreement, will Subcontractor: **(i)** employ, solicit for employment, recruit, or otherwise seek to employ or retain the services of any employee of, or contractor to Optimizely (and any Affiliate) or the Customer; or **(ii)** direct commercial arrangement with the Customer for services by Subcontractor to Customer in relation **(a)** to the Software Service the subject matter of the SOW, or **(b)** any other Software Service the Customer may have with Optimizely (or any of its Affiliates).

## **15. GENERAL**

**15.1 Optimizely Policies and Procedures.** Subcontractor and Subcontractor Personnel shall comply with all Optimizely policies and procedures, including Optimizely's Supplier Code of Conduct ("SCoC") as published at <https://www.optimizely.com/legal/supplier-code-of-conduct/> (as updated from time to time), and to the extent required, any Customer codes, policies and procedures.

**15.2 Background Checks.** To the extent permitted by law, Optimizely may require Subcontractor to conduct background checks of Subcontractor Personnel as directed by Optimizely or Customer. Optimizely may require Subcontractor to exclude Subcontractor Personnel based on the background check results. In addition, Subcontractor must ensure that all persons have a responsibility to self-report to Subcontractor for any

disqualifying offense, and following such self-reporting, Subcontractor must notify Optimizely within twenty-four (24) hours of all details concerning the offense. Upon the request of Optimizely, Subcontractor will re-screen any of its Subcontractor Personnel.

**15.3 Optimizely Group.** All rights, benefits, and protections granted to Optimizely under the Agreement extend to its Affiliates.

**15.4 Assignment.** Neither Party may assign the Agreement without the other Party's prior written consent, except that Optimizely, without such consent, may make such an assignment to an Affiliate or in connection with a reorganization, merger, consolidation, acquisition, or other restructuring involving all or substantially all of Optimizely's assets. Non-permitted assignments are void.

**15.5 Subcontracting** Subcontractor may not subcontract any of its obligations hereunder without Optimizely's prior written approval (which may or may not be approved, and if approved on conditions) Subcontractor shall: **(i)** remain directly responsible and liable for the acts and omissions of its any subcontractor.

**15.6 Force Majeure.** Neither Party shall be considered to be in default of the Agreement because of a delay or failure in performance of its obligation resulting from any cause beyond its reasonable control (a "**Force Majeure Event**"), provided it gives reasonably prompt notice of the Force Majeure Event to the other Party and uses reasonable efforts to mitigate the delay or failure.

**15.7 Notices.** All notices shall be in writing, in English, and deemed effective upon personal delivery, email (excluding legal notices that may not be sent via email), or upon deposit in the United States Post Office, by registered or certified mail, postage prepaid, addressed for Optimizely at **119 5th Avenue, 7th Floor, New York, NY 10003, United States of America Attn: General Counsel**, and to Subcontractor at the address shown above, or at such other address or addresses as either Party shall designate in writing to the other.

**15.8 Severability.** If any provision of the Agreement is found by any court of competent jurisdiction to be unenforceable or invalid, that provision will be limited to the minimum extent necessary so that the Agreement may otherwise remain in effect.

**15.9 Amendments.** Any amendment must be in writing, signed by both Parties, and expressly state that it is amending the Agreement.

**15.10 Business Continuity.** Subcontractor will maintain a reasonable business continuity and disaster recovery plans consistent with generally-accepted industry standards.

**15.11 Waivers.** No delay or omission by Optimizely in exercising any right under the Agreement shall operate as a waiver of that or any other right. A waiver or consent given by Optimizely shall not be construed as a bar or waiver of any right on any other occasion.

**15.12 Entire Agreement.** The Agreement (which includes the applicable Order, Scope Documents, Change Orders and Optimizely DPA (if any), and all attached exhibits and all incorporated and other referenced documents, is the Parties' entire agreement regarding its subject matter and supersedes and cancels all previous agreements and communications (written or oral) relating to its subject matter. No clickwrap, browsewrap, other Subcontractor license terms, or any contractual terms referenced in Subcontractor quotes (or other Subcontractor ordering documents) apply to Optimizely.

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

**15.14 Severability.** If any provision of this SSC-GTC is held by a court of competent jurisdiction to be invalid or unenforceable, then any such provision shall be construed to reflect the intentions of the invalid or unenforceable provision, with all other provisions remaining in full force and effect.

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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 SSC-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 or **(iii)** licensed to either Party by third parties, and which are required for the full and proper performance of their obligations under the Agreement.

**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; and in the case of Optimizely, includes Optimizely Technology and Customer Data.

**Customer** means Optimizely's customer identified in an applicable Order for Scope Document.

**Customer Data** is any and all data that is Processed by Optimizely on behalf of a Customer in Customer's Software Service subscription with Optimizely.

**Deliverable** means Work Product created specifically for the benefit of a Customer by Subcontractor as expressly specified, identified or described as a Deliverable in the applicable Scope Document;

**Equipment** means any equipment, systems, or facilities provided by Optimizely and used directly or indirectly in providing the Services.

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

**Fees** means the fees and other charges 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.

**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 the Software Services, and (iii) Optimizely-developed tools, code, algorithms, modules, materials, documentation, reports and technology that have general application to the Customer, and Optimizely's other customers, including derivatives of and improvements to Optimizely's Background IP.

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

**Personal Data** means personal data or personally identifiable information as defined by applicable law.

**Process** or **Processing** means any operation or set of operations which is performed on Relevant Personal Data or sets of Relevant Personal 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.

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

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

**Scope** or **Scope Document** (also referred to a statement of work or SoW) means the scope of the Services as described in the Order.

**Service** means the services being provided to Optimizely (and /or Customer, as Optimizely's direction) by Subcontractor as set out in the applicable Order, including under any Change Order, and all applicable Scopes.

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

**Subcontractor Personnel** means Subcontractor's employees, agents, personnel, service providers, subcontractors, and their agents.

**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.

**Time and Material** when used in an Order means the dedicated time with Subcontractor's resources working with or without Optimizely's and /or Customer's resources towards the defined Services completion.

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

**Work Day** and **Work Hours** are defined in the Order.

**Work Product** means any work product or tangible results produced by or with Subcontractor (including Subcontractor Personnel), alone or jointly with others, including works in cooperation with Optimizely and / or Customer, including, without limitation, any works as defined under applicable copyright laws, software, interfaces, data structures, database schema, documentation, specifications, other materials, and methods and processes and the IP Rights therein.

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