Optimizely Online Software Subscription Agreement

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BY ACCEPTING THE TERMS OF THE APPLICABLE ORDER FORM, AND USING THE SOFTWARE SERVICE, CUSTOMER ACCEPTS THE TERMS AND CONDITIONS OF THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THIS ONLINE SOFTWARE SUBSCRIPTION AGREEMENT ("**Online SSA**"). THIS AGREEMENT IS MADE BETWEEN CUSTOMER (AS IDENTIFIED IN THE ORDER) AND THE APPLICABLE OPTIMIZELY CONTRACTING ENTITY SPECIFIED BELOW IN SECTION 13.

The Glossary at the end of this Online SSA contains definitions applicable to the Agreement.

1. TERM

1.1 *Term*. Each Subscription commences on the Effective Date of each Order, and continues for the period specified in the Order, or until cancelled, or this Agreement is otherwise terminated, in accordance with the Agreement.

1.2 *Initial Subscription Term*. The Subscription term as stated in each Order, from (and including) a specified date within the Order, or if no date given, then the Effective Date ("Initial Subscription Term").

1.3 *Auto Renewal.* Subject to Section 3.1, upon expiry of the Initial Subscription Term, the Subscription will automatically renew for successive period of twelve months ("Extended Subscription Term"), on the same terms and conditions (subject to section 1.4 below).

1.4 *Price Increase.* For each Extended Subscription Term, Optimizely may increase the Subscription Fee. Any such increase will be as follows: **(i)** Optimizely will provide Customer with 120 days' prior written notice (email acceptable), and **(ii)** the proposed new Subscription Fee will be effective from the start of Extended Subscription Term. If Customer objects to the proposed increase, Customer has the right to cancel its Subscription for that Extended Subscription Term in accordance with the Non-Renewal terms herein.

2. FEES, PAYMENT, TAXES & PO's

2.1 *Fees*. Customer's Use of the Software Service is subject to the Agreement, including the applicable Usage Metrics, and the Usage Metric volumes ("Usage Volumes"). The Usage Metrics are set out in the Product Supplement. The Usage Volumes are set out in the Oder. Customer shall pay Optimizely all agreed Fees, including Overage Fees. All Orders are non-cancellable, except as expressly agreed otherwise, and all Fees are non-refundable. Although some Subscription Fees may be expressed in monthly terms in an Order Form, this is for Customer's convenience only; but Fees are payable as set out in this Agreement, including for Overage, and are to be paid accordingly.

2.2 *Overage*. Customer will monitor its own Use of the Software Service and report any Use in excess of the agreed Usage Volume. Optimizely may monitor Customer's Use to verify compliance with Usage Volume and this Agreement. Overage Fees accrue from the date the Overage first occurs. Overage Fees be calculated against the applicable Usage Volumes and will be two times (2x) Usage Volume unit price. Overage Fees will be invoiced on a monthly basis, in arrears.

2.3 *Payment*. If Customer pays by credit card, all fees are payable at the time of completing the Order. If Customer is invoiced, all Fees are payable with a net thirty (30) days from the issue date of the invoice.

2.4 **Suspension and Interest**. Customer shall pay all correctly-invoiced Fees in accordance with this Agreement. If Customer fails or refuses to pay Fees, Optimizely may, in addition to all other available remedies, suspend

Customer's Use of the applicable Software Service under section 3.2.3 below until payment is made. Optimizely will provide Customer with reasonable prior written notice (email sufficient) before any such suspension. Unpaid Fees will accrue interest at the maximum legal under the applicable law of this Agreement.

2.5 *Taxes.* Fees and other charges imposed under this Agreement will not include Taxes, all of which will be for Customer's account. Customer is responsible for all Taxes. Customer must provide to Optimizely any valid tax-exempt certificates or such similar document prior to signing this Agreement. If Optimizely is required to pay Taxes, Customer will reimburse Optimizely for those amounts attributable to those Taxes. Customer will provide any reasonably required information or documentation to Optimizely necessary to **a)** satisfy informational reporting requirements; **b)** determine whether Optimizely is obligated to collect applicable Taxes or (b) claim an available exemption from or credit for any applicable Tax.

2.6 *Purchase Orders*. Customer's purchase orders are for Customer's administrative convenience only. Optimizely may charge Fees, issue an invoice and collect payment without a corresponding purchase order. This Agreement shall take precedence over any additional terms in any purchase order, and no terms included in any such purchase order shall apply to the Subscription.

2.7 *No Withholding or Set Off*. Customer may not withhold, reduce or set-off Fees owed.

2.8 *No Reduction of Usage Volume* – Customer may not reduce Usage Volume during a Subscription Term.

3. NON-RENEWAL

3.1 *Renewal Cancellation.* A Party may cancel its Subscription for the next Extended Subscription Term by written notice to the other Party at least sixty (60) days prior to the end of the Subscription Term. Upon delivery and receipt of correct notice, the applicable Subscriptions will end on the last day of the then-current Subscription.

3.2 *Cancellation/Termination.* At the conclusion of the Subscription Term, (A) Customer must immediately: (A1) stop using the applicable Software Service; and (B2) cease accessing any Customer Data in the applicable Software Service and (B) Optimizely may delete all Customer Data at any time after thirty (30) days from the last date of the expired Subscription; (ii) Any outstanding correctly-invoiced Fees for the active Subscription Term remain payable.

3.3 *Non-Payment of Fees / Suspension.* If any correctly-invoiced Fee remains unpaid ten days after the date due payment of Optimizely's invoice or if any Fees paid by credit card are not finalized, Optimizely may (in addition to any other rights) suspend Customer's access to the applicable Software Service. However, Optimizely will not suspend the Software Service if Customer has given prompt notice of a dispute, and the dispute is made in good faith, and cooperates diligently to resolve the dispute. If the Software Service is suspended, Optimizely may charge a reasonable re-activation fee appropriate for the reinstatement of the Software Service.

4.RIGHT TO USE. For the Subscription Term only, Optimizely grants Customer a non-transferable, non-exclusive, worldwide right to Use the Software Service, subject to the terms of this Online SSA.

5.OPTIMIZELY RESPONSIBILITIES. *Provisioning* . Optimizely will provide access to the Software Service for Use by Customer as described in the Agreement, including the Documentation. Optimizely will make the Software Service available, and will be responsible for, its operation. *Support*. Optimizely will provide Support for the Software Service as outlined in the Support Policy. *Security*. Optimizely will implement, and will maintain, appropriate technical and organizational measures to protect the Customer Data Processed by Optimizely as part of the Software Service as outlined in the DPA. *Personal Data* . Optimizely will Process Personal Data in accordance with applicable personal data protection and privacy law.

6.PERMISSIONS & RESTRICTIONS. *Permissions* . Customer shall only Use the Software Service (and Documentation and Materials) for its and its Affiliates' internal business operations (which may include the development, support, and launching of public-facing websites). Customer may permit

Authorized Users to Use the Software Service. *Restrictions*. Customer shall not: **(i)** Use the Software Service other than by an Authorized User; **(ii)** Use the Software Service as a service bureau, timeshare or similar service. **(iii)** reverse engineer, decompile, disassemble or attempt to discover the source code, object code or underlying structure, ideas or algorithms of the Software, **(iv)** modify, translate, or create derivative works based on the Software, Documentation or any Materials, **(v)** copy (except for archival or Optimizely-authorized purposes) Software, Documentation or any Materials, **(vi)** resell, distribute, lease, pledge, assign, or otherwise transfer or encumber rights to the Software Service; **(vii)** Use, or otherwise utilize, the Software Service, or any Documentation or Materials, to build, and/or assist any Third-Party in building or supporting, software products that compete with Optimizely; **(viii)** remove any proprietary notices or labels from the Software Service, including in/on any Software, Documentation or Materials; **(ix)** bypass or breach any security device or protection used in the Software Service; **(x)** input, upload, transmit, or otherwise provide to, or through, the Software Service, any information or Materials that are unlawful or injurious, or contain, transmit, or activate virus, worm, malware, or other malicious computer code; **(xi)** damage, destroy, disrupt, disable, impair or impede the Software Service; **(xii)** Use the Software Services, Documentation or Materials in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any Third-Party, or that violates any applicable law; or **(xiii)** otherwise Use the Software Services, Documentation or Materials beyond the scope of the Limited Rights. Customer shall respect, observe and comply with all Third-Party Intellectual Property Rights Optimizely makes known, or Customer is otherwise aware.

7. OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS

7.1*Optimizely Ownership*. As between Optimizely and Customer, Optimizely shall have sole and exclusive ownership of all right, title, and interest in and to the Software Service, including all Optimizely Software, Documentation and Materials, all copies, improvements, and derivative works, including all copyright, trademark, patent, trade secret, know-how, and all other associated Intellectual Property Rights. Third-Party Software is owned by the Third-Party from whom Optimizely has acquired the right to utilize in the

Software Service, or offer to Customer for Customer's Use. Other than the Limited Rights, all other rights in the Software Service, including the Software, Documentation and Materials, are expressly reserved to Optimizely.

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

7.3 *Permitted use of Customer Logo*. Optimizely may request inclusion of Customer's name and logo in Optimizely's published customer list, website, and collateral, or press release, subject to Customer's written acceptance, and subject to Customer's logo and trademark guidance as communicated to Optimizely's Marketing Department.

8. DATA PRIVACY, PROTECTION, PROCESSING AND ACCESS

8.1 *Customer Data Responsibilities; Security*. Customer is solely liable for its Customer Data, including the authenticity, accuracy and manner of capture, publication and removal of Customer Data, and Authorized-User alterations, customizations, edits, modifications, and custom coding. Customer is solely liable for ensuring its Customer Data does not breach applicable Policies, or constitute infringement of a Third-Party right. Information or material displayed, generated or collected through Customer's Use of Software Service, and any code or software used by Customer not provisioned by Optimizely is entirely within Customer's control. Customer will maintain reasonable security standards for its Authorized-Users' Use of the Software Service.

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

8.3 *Data Access*. During the Subscription Term, Customer can access its Customer Data at any time. Customer may export and retrieve its Customer Data in a standard format. Export and retrieval may be subject to technical limitations, in which case Optimizely and Customer will find a reasonable method to allow Customer access to Customer Data. Before the Subscription Term expires, Customer may use Optimizely's self-service export tools (as available) to perform a final export of Customer Data from the Software Service. At the end of the Agreement, Optimizely will delete the Customer Data remaining on servers hosting the Software Service unless applicable law requires retention. Retained data is subject to the confidentiality provisions of the Agreement.

9. WARRANTIES, ACKNOWLEDGEMENTS, DISCLAIMERS, INDEMNITIES, ANDI LIMITATIONS OF LIABILITY

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

9.2 *Documentation and Good Industry Practices Warranty*. Optimizely warrants it will provide the Software Service: **(i)** in substantial conformance with the Documentation and relevant Materials; and **(ii)** with the degree of skill and care reasonably expected from a skilled and experienced supplier of software-as and platform-as services substantially similar to the nature and complexity of the Software Service. Customer's sole and exclusive remedy and Optimizely's entire liability for breach of this warranty will be: **(A)** correction of the deficient Software Service; and **(B)** if Optimizely fails to correct the deficient Software Service using reasonable commercial efforts, Customer may terminate its subscription for the affected Software Service. This remedy does not apply to trivial or non-material cases of

nonconformance. Any termination must occur within three months of Optimizely's failure to correct the deficient Software Service. Section 14.5 applies with respect to the refund of any prepaid Fees.

9.3 *Third-Party Infrastructure Acknowledgement*. The Software Service may include Third-Party Infrastructure. Third-Party Infrastructure Providers are Optimizely Sub-Processors. Customer acknowledges that it is aware of the Third-Party Infrastructure proposed to be utilized in Optimizely's deployment and operation for the Software Service, and has made its own assessments as to the suitability of Third-Party Infrastructure Provider and the Third-Party Infrastructure for its Use purposes.

9.4 *Optimizely Enhancement Software; Customer's Responsibility*. For some Software Service, Optimizely may recommend in the Documentation certain Optimizely Software for Customer to consider utilizing as Enhancements for its Use of the Software Service. Customer will comply with any additional applicable license terms of that Optimizely Software it may Use that Optimizely publishes in conjunction with that Optimizely Software.

9.5 *Third-Party Enhancement Software. Customer's Responsibility*. For some Software Services, Optimizely may recommend in the Documentation Third-Party Software for Customer to consider utilizing as Enhancements in its Software Service Use. Customer will comply with the applicable license terms of any such Third-Party Software published by the Third-Party licensor and distributor of that Third-Party Software. Optimizely's referral to Third-Party Software is not an endorsement, and any such recommendation is provided by Optimizely for convenience only. Customer assumes all risk in its utilization of Third-Party Software. Optimizely is not responsible for any damage sustained or incurred by Customer, nor any Third-Party, arising out of, or related to, Customer's utilization of such Third-Party Software.

9.6 *Third-Party Material. Customer's Responsibility*. Third-Party Material is not part of the Software Service. Customer assumes all risk in its utilization of any Third-Party Material with its Use of the Software Service. Optimizely is not responsible for any damage sustained or incurred by Customer, nor to any Third-Party, arising out of, or related to, Customer's utilization of any Third-Party Material.

9.7 *Customer Data. Customer's Responsibility*. Customer is solely responsible for any infringement, misappropriation, libel, defamation, privacy or human rights-related claims with respect to its Use and Processing of its Customer Data.

9.8 *DISCLAIMERS*. Except **(i)** as expressly stated in this Agreement, and **(ii)** for warranties that cannot be excluded by law, the Software Services, Documentation and Materials, including the Third-Party Infrastructure, 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 Material utilized by Customer in its Use, or that the Software Service, including the Third-Party Infrastructure is, or will be, secure, uninterrupted, timely, or error-free, or meets the Customer's requirements. Customer further acknowledges to and agrees with Optimizely that it is not relying on delivery of future functionality, public comments, or advertising of Optimizely or product roadmaps in obtaining subscriptions for any Software Service, and in no event will Optimizely be liable for any damages, liabilities, costs, or expenses resulting from or related to an internet disruption or the acts, omissions, or delays of the Third-Party Infrastructure Providers. Any representation or warranty made by a Third-Party Infrastructure Provider to Customer concerning the Third-Party Infrastructure is strictly between Customer and that Third-Party Infrastructure Provider. Furthermore, Optimizely and its licensors will not be responsible under the Agreement: **(A)** if the Software Service is not used in accordance with the Documentation, or **(B)** if the defect or liability is caused by Customer or any Third-Party Material or Use of the Software Service in conjunction with any product or service not provided by Optimizely, or **(C)** for any Customer activities not permitted under this Agreement.

9.9 *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.

9.10 *LIMITATION OF MONETARY DAMAGES*. Except for **(i)** the Parties' respective obligations and liability to the other arising under sections 9.11 and 9.13, **(ii)** Customer's liability to Optimizely for the payment of Fees, **(iii)** Customer's liability to Optimizely for violation by Customer of Optimizely Intellectual Property Rights, **(iv)** damages arising from either Party's fraud, and **(v)** death, bodily injury or property damage arising from either Party's willful misconduct or gross negligence - **the maximum aggregate liability of either Party (and its respective Affiliates, including in the case of Optimizely, the Third-Party Infrastructure Providers and its other Sub-Processors) to the other or any other person or entity for all events (or series of connected events) arising in any twelve-month period is absolutely limited, and will not exceed the annual Subscription Fees paid by Customer for the applicable Software Service associated with the damages for that twelve month period** .

9.11 *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 and its Affiliates' Use of any Optimizely Software, Documentation or Material, infringes or misappropriates a patent claim, copyright, or trade secret right ("**IP Claims**"). 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. Optimizely's obligations under this section will not apply if the IP Claim results from: **(i)** Customer's utilization of any Third-Party Material in its Use of the Software Service; **(ii)** the Software Service is being provided on a proof-of-concept, beta, pre-production or trial basis, or for no fee; **(iii)** Customer fails to timely notify Optimizely in writing of the IP Claim and Optimizely is materially prejudiced by Customer's failure or delay; or **(iv)** any Use not permitted under the Agreement.

9.12 *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 its Use of the affected Software Service; or **(ii)** replace or modify the Software Service to be non-infringing without a material decrease in functionality or features. If these options are not reasonably available, Optimizely, or Customer, may terminate the Subscription to the affected Software Service upon written notice to the other Party. Optimizely expressly reserves the right to cease such defense of any claim if the applicable Software Service is no longer alleged to infringe or misappropriate the Third-Party's rights. Section 14.5 applies with respect to the refund of any Fees.

9.13 *CLAIMS AGAINST OPTIMIZELY*. Customer will defend Optimizely against claims brought against Optimizely (including its Affiliates, and their respective subcontractors) by any Third-Party with respect to any breach by Customer of its obligations under section 8.1 with respect to its Customer Data and its Use by Customer in the Software Service ("**Data Claims**"). Customer will indemnify Optimizely against all damages finally awarded against Optimizely (and its Affiliates and their respective subcontractors) (or the amount of any settlement Customer enters into) with respect to Data Claims.

9.14 *THIRD-PARTY CLAIMS PROCEDURE*. All Third-Party claims under sections 9.11 and 9.13 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.

9.15 *EXCLUSIVE REMEDIES*. Sections 9.9, 9.10, 9.11, 9.12 and 9.13 state the sole, exclusive, and entire liability of the Parties, their respective Affiliates, and their respective subcontractors, and is the other Party's sole and exclusive remedy, with respect to covered Third-Party claims and to the infringement or misappropriation of Third-Party Intellectual Property Rights.

10.CONFIDENTIAL INFORMATION

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

10.2*Compelled Disclosure*. Receiver may disclose Discloser's Confidential Information to the extent required by law, regulation, court order or regulatory agency; provided that Receiver required to make such a disclosure uses reasonable efforts to give Discloser reasonable prior notice of such required disclosure (to the extent legally permitted) and provides reasonable assistance in contesting the required disclosure, at the request and cost of Discloser. Receiver and its Representatives shall use commercially reasonable efforts to disclose only that portion of the Confidential Information that is legally requested to be disclosed and shall request that all Confidential Information that is so disclosed is accorded confidential treatment.

10.3*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.

10.4*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.

11. TERM, SUSPENSION, AND TERMINATION

11.1*Suspension*. The Agreement may set out Optimizely's rights to suspend Customer's Use of the Software Service. Any suspension will be limited in scope and time according to the underlying purpose of the right to suspend. Notwithstanding any suspension of Use, Customer will still be granted access to retrieve its Personal Data upon request and to the extent Customer is obliged to access and retrieve them under applicable law.

11.2*Termination*. A Party may terminate the Agreement: **(i)** for cause upon thirty days' prior written notice of the other Party's material breach of any provision of the Agreement (including in the case for Optimizely, Customer's failure to pay any Fees due hereunder within thirty days of the payment due date) unless the breaching Party has cured the breach during such thirty day period; (; or **(ii)** immediately if the other Party files for bankruptcy, becomes insolvent, or makes an assignment for the benefit of creditors, or otherwise materially breaches section 10.. A Party may also terminate this Agreement, or its Subscription to a relevant Software Service, as permitted under sections 9.2 and 9.12 above, or section 14.3 below or under the DPA or the SLA, with termination effective thirty days after receipt of notice in each of these cases. Upon termination, Customer must immediately cease Using the applicable Software Service, including accessing any Customer Data unless

Optimizely has given its authority (in writing) to allow a limited-time read-only access right to that Customer Data.

12. DISPUTES, VENUE, GOVERNING LAW AND JURISDICTION. 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 this Agreement ("**Disputes**") shall be first submitted to non-binding mediation ("**Mediation**"). Mediation will be undertaken in a timely manner, in good faith and costs will be shared equally. If the Dispute is not resolved through Mediation within sixty days, then, upon the election of either Party, the Dispute shall be submitted to an applicable court in the Jurisdiction ("**Venue**") and subject to the Governing Law below. Each Party consents to exclusivity of Venue. The Parties waive all objections to Venue. Except with respect to unpaid Fee Disputes and IP Relief, each Party will otherwise bear its own costs with respect to all other Disputes.

Customer Domicile	USA, CA and MX	Sweden, Denmark, Finland, and Norway	UK and Ireland	EU (ex Ireland
Governing Law:	New York and controlling U.S. Federal Law	Laws of Sweden	Laws of England and Wales	Laws of England and Wales
Venue:	The U.S. District Court (Southern District of New York)	Courts of Stockholm. English language	The Courts of London	The Courts of London

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.

13. OPTIMIZELY CONTRACTING ENTITY. The Optimizely contracting entity is set out in the table below depending on Customer's domicile.

Customer Domicile	USA, CA and MX	Sweden, Denmark, Finland, and Norway	UK and Ireland	E Ir
Optimizely contracting entity	Optimizely North America Inc	Optimizely AB	Optimizely AB	O A
Address	119 5th Avenue, 7th Floor, New York, NY 10003, United States of America	Torsgatan 11, Box 7007, 103 86 Stockholm, Sweden	Torsgatan 11, Box 7007, 103 86 Stockholm, Sweden	T 11 7(8 S S

14. GENERAL PROVISIONS

14.1 *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.

14.2*Product Supplement and Data Processing Agreement*. The Product Supplement and Data Processing Agreement apply to the Software Service.

14.3*Modifications*. So as to provide an evolving standardized Software Service over time, Optimizely may improve or modify the Software Service (including any Software), and including Support, scheduled downtime and planned maintenance windows under the SLA, and other Policies – ("**Modify**" and "**Modification**"). Optimizely's rights to Modify includes the option to remove functionality from the Software Service where Optimizely either provides a functional equivalent or where this does not materially reduce the functionality of the Software Service. Features, functionality, and capabilities ("**New Features**") beyond the initial scope of the Software Service may be subject to additional terms and Customer's Use of New Features shall be subject to those terms. Modifications to the Software Service are communicated in the Optimizely releases portal and the associated release-notes published on Opti-World, both as updated from time to time; and as may also be communicated under the RSS feed and email subscription. *Customer's Right to Terminate*. If a Modification materially degrades the overall functionality of the affected Software Service, Customer's sole remedy is to terminate its subscription to the affected Software Service by providing written notice to Optimizely within one (1) month of Optimizely's applicable notice. If Optimizely does not receive timely notice, Customer is deemed to have accepted the Modification.

14.4*Audit*. Optimizely may audit Customer's Use at its sole discretion, and Customer shall comply with all reasonable audit requests. If Optimizely has reasonable proof of Overage, Optimizely shall notify Customer in writing of the discrepancy, and may invoice Customer for that Overage in accordance with the Order Form.

14.5*Refund and Payments*. For any termination under sections 9.2,9.12 and 14.3 of this Online SSA, or under comparable provisions in the SLA or the DPA where Customer has the right to cancel its Subscription and/or terminate the Agreement, Customer will be entitled to: **(i)** a pro-rata refund in the amount

of the unused portion of prepaid Fees for the terminated Subscription calculated as of the effective date of termination (unless such refund is prohibited by Export Laws); and **(ii)** a release from the obligation to pay Fees due for periods after the effective date of termination. .

14.6 *Force Majeure*. Any delay in a Party's performance (excluding Customer's obligation to pay Fees) caused by conditions beyond the reasonable control of the performing Party, including any fire, casualty, flood, earthquake, war, strike, lockout, pandemic, epidemic, labor stoppages or slowdowns or other industrial disturbances, passage of law or any action taken by a governmental or public authority, or material unavailability of Optimizely's Third-Party Infrastructure or other dependencies, is not a breach of the Agreement; however, the time for performance will be extended for a period equal to the duration of the conditions preventing performance.

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

14.8 *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.

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

14.10 *Assignment*. Without Optimizely's prior written consent, Customer may not assign, delegate or otherwise transfer the Agreement (or any of its rights or obligations) to any party. Optimizely may assign the Agreement to any of its Affiliates or in connection with a merger, acquisition or sale of all or substantially all of its assets to which this Agreement relates.

14.11 *Subcontracting*. Optimizely may subcontract parts of the Software Service to its Affiliates, and Third-Parties. Optimizely is 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.

14.12 *Notices*. Notices will be in writing and given when delivered to the address set out in the applicable Order Form for Customer and set out in Section 13 for Optimizely. Notices from Optimizely to Customer may be in the form of an electronic notice to Customer's authorized representative or administrator. Optimizely may provide notice of Modifications to the Software Service via the Documentation, the Support portal, and also release notes and publications at Opti-World. Customer should be familiar with Opti-World. Notifications relating to the operation, including Support, of the Software Service may also be provided within the Software Service, made available via Opti-World or described in the Support Policy.

14.13 *Export Compliance*. Optimizely and Customer shall comply with all applicable Export Laws, including with respect to Optimizely Confidential Information. Customer and its Authorized Users will not, directly or indirectly, export, re-export, release, or transfer Optimizely Confidential Information in violation of Export Laws. Customer is solely responsible for compliance with Export Laws related to Customer Data. Customer shall not permit any Use of the Software Service from U.S, UK or EU embargoed or sanctioned country or in violation of any U.S., UK or EU export law or regulation. Upon Optimizely's reasonable request, Customer shall provide information to support obtaining any export authorization.

14.14 *US Government End-User Notice*. If Customer is a U.S. Government entity, the Software Service, is a 'Commercial Item', as defined in US Code of Federal Regulation 48 C.F.R., consisting of 'Commercial Computer Software' and 'Commercial Computer Software Documentation', as used in that Title 48 C.F.R. (§ 12.212 and. § 227.7202, as applicable). To the extent applicable, that Commercial Computer Software and the Commercial Computer Software Documentation are being licensed to U.S. Government end-users **(i)** only as Commercial Items and **(ii)** with only those rights as are granted to all other end-users pursuant to this section.

14.15 *Entire Agreement*. The Agreement constitutes the entire and exclusive agreement between Optimizely and Customer in connection with the Parties' business relationship related to the Software Service. All previous representations, discussions, and writings (including any confidentiality agreements) are superseded by the Agreement, and the Parties disclaim any

reliance on them. Except as may be expressly permitted or contemplated within the Agreement, this Agreement may only be modified in writing, signed Any changes to the Agreement made by Customer are not valid without the express written consent of Optimizely. 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.

15. GLOSSARY

15.1 *Acceptable Use Policy* means Optimizely's acceptable use policy, as referred to in the Product Supplement.

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

15.3 *Agreement* (in the context of each Order Form) means the Order Form, and all incorporated terms and conditions, schedules, exhibits and other appendices - and the following order of precedence shall apply with respect to any conflict within the Agreement: (**i**) the Order Form (and each subsequent Order), (**ii**) the Product Supplement , (**iii**) the Service Level Agreement , (**iv**) the Support Policy , (**v**) the Data Processing Agreement , and (**vi**) this Online SSA.

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

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

15.6 *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.

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

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

15.9 *DPA (or Data Processing Agreement)* means Optimizely's Data Processing Agreement, currently published at https://www.optimizely.com/trust-center/data-processing-agreement/ .

15.10 *Effective Date* means the date on which Customer completed the Order Form.

15.11 *Enhancements* means in the context of Customer's Use of the Software Service, configuration, additional features, functionality and capabilities.

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

15.13 *Fees* means all fees set out in an Order Form.

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

15.15 *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.

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

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

15.18 *Online SSA* means these online Software Subscription Agreement terms.

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

15.20 *Opti-World* is a reference to the website published by Optimizely at https://world.optimizely.com , and its sub-sites including https://world.optimizely.com/releases , where Optimizely publishes Documentation, information on releases and related Software information, and other relevant information about the Software Service, as updated from time to time.

15.21 *Optimizely Software* in the context of the Software Service means the Optimizely developed and owned Software, and for clarity, Optimizely Software does not include any Third-Party Software, and it excludes all Third-Party Material.

15.22 *Order Form* or *Order* means any Optimizely ordering documentation, online sign-up, or subscription form that references this Agreement.

15.23 *Overage* means Use over and above the applicable Usage Volume for the Subscription as set out in the Order Form.

15.24 *Overage Fees* are. detailed in the Order Form

15.25 **Parties** - Optimizely and Customer are individually referred to as a "**Party**" and collectively as the "**Parties**".

15.26 *Personal Data* is defined in the Data Processing Agreement.

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

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

15.29 *Product Supplement* means Optimizely's product supplement for the Software Service, currently published at https://www.optimizely.com/legal/product-supplement .

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

15.31 Sensitive Information is defined in the DPA.

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

15.33 *SLA (or Service Level Agreement)* means the service level agreement for the Software Service, currently published at https://www.optimizely.com/legal/service-level-agreement/ , as updated from time to time.

15.34 *Software* in the context of the Software Service means: **(i)** the Optimizely Software and **(ii)** the Third-Party Software, provided in both cases by Optimizely as the Software Service, including as additional software features, functions, capabilities or enhancements; and for clarity, Software excludes Third-Party Material.

15.35 *Software Service* means the cloud-based software services provided by Optimizely and as otherwise detailed in the applicable Order Form.

15.36 *Sub-Processor* is defined in the DPA.

15.37 *Subscription* means Customer's subscription for the Software Service as specified in the Order Form, and "**Subscribed**" shall have a corresponding meaning.

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

15.39 *Support and "Support Policy"* means Optimizely's support for the Software Service, currently published at https://www.optimizely.com/legal/support-policy ,and as updated from to time.

15.40 *Tax* (or *Taxes*) means all transactional taxes, levies, and similar charges (and any related interest and penalties) such as federal, state or local sales tax, value added tax, goods and services tax, use tax, excise tax, service tax or similar taxes.

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

15.42 *Third-Party Infrastructure* means the infrastructure (and associated services and/or code) provided by a Third-Party platform provider or a content delivery network provider (collectively "**Third-Party Infrastructure Providers**") as is made available by Optimizely as part of the Software Service.

15.43 *Third-Party Software* in the context of the Software Service means Third-Party software (including open-source software), components, services, websites, integrations, and code, not or otherwise developed by Optimizely.

15.44 *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 the Software Service; and for clarity, the Software excludes Third-Party Material; and for further clarity, Third-Party Material is not part of the Software Service.

15.45 *Use* 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.

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

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