

THIS PRODUCT SUPPLEMENT IS PART OF THE CUSTOMER'S SOFTWARE SUBSCRIPTION AGREEMENT AND APPLIES TO THE CUSTOMER'S APPLICABLE SOFTWARE SERVICE SUBSCRIPTION.

Elements

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PART 1 APPLIES TO ALL SOFTWARE SERVICES. THE DEFINITIONS APPLY TO ALL SECTIONS OF THIS SUPPLEMENT.

PARTS 2 TO 4 APPLY TO THE APPLICABLE SOFTWARE SERVICE SUBSCRIPTIONS AS OUTLINED IN THE ORDER FORM.

PART 1: GENERAL TERMS FOR ALL APPLY TO ALL SOFTWARE SERVICES.

- 1.1 Definitions.** Defined terms used in this Supplement are defined in the Order Form the SUT or in this Supplement (in the Glossary).
- 1.2 Documentation.** Customer shall Use the Software Service in accordance with the Documentation. Current versions of applicable Service Descriptions are made available at Opti-World.
- 1.3 Usage Metrics, Volumes and Overages.** The usage metrics and Overages 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 Service.
- 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 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 the 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 Service.
- 1.6 Free Access Subscriptions and Beta Releases.** Optimizely may provide Customer with Use of the Software Service, for a limited time for free and on a trial basis ("**Free Access**"), or (by invitation) Free Access to certain pre-production new features of the Software Service ("**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 the 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 from these release 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 our 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. Furthermore, Optimizely's warranties and indemnities under the Software Services Use Terms do not apply to Free Access Subscriptions, the Pre-Production Releases or Beta Releases. And finally, Optimizely may use good faith efforts in its discretion to assist Customer with its Use of Free Access, Pre-Production Releases or Beta Releases, but will have no obligation to provide support or maintenance for these items.
- 1.7 Sensitive Information/Data.** Sensitive Information (as defined in the DPA) is not intended to be Processed by the Software Service. Customer will not upload any Sensitive Information into the Software Service for Processing.
- 1.8 HIPAA.** The Software Service is not (and is not intended to be) compliant with the privacy and security policies of the Health Insurance Portability and Accountability Act ("**HIPAA**"). Optimizely will not assume any responsibilities under HIPAA as a business associate, nor a subcontractor, as those terms are defined under HIPAA.
- 1.9 Additional Services.** If Customer wishes Optimizely to perform any task which is not part of a Subscription, or to provide an enhanced Service, Optimizely may carry out the task and/or enhance the Subscription at its sole option, and Customer will be charged separately at Optimizely's applicable then current rates for such services in accordance with a signed Order Form, or Statement of Work. Examples of additional work include re-platforming, site category restructuring or code breaking caused by Customer changes to the Software Service.
- 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 Third-Party Open-Source Software.** Software may include distributions of third-party open-source software and/or code ("**Third-Party Open-Source Software**"). Customer shall comply with all applicable license and use terms in its utilization of Third-Party Open-Source Software in its Use of the Software Service.

1.12 Performance Data. Optimizely may use Performance Data in an aggregate and anonymous manner, to compile and analyze statistical information, specifically pertaining to the performance, provisioning, and operation of the Software Service, and may, if solely for the purpose of Optimizely's ability to improve or maintain upkeep of the Software Service, be made publicly available, provided that Customer Data is not in any way incorporated and that Customer's Confidential Information is not identifiable. Performance Data will not include any of Customer's Confidential Information, financial or operational data, or any other data, text, materials, information, or other content that is uploaded, submitted, transferred, transmitted, provided, or otherwise made available to, or posted within the Software Service by, or on behalf of Customer and its Authorized Users. Optimizely retains all Intellectual Property Rights in and to Performance Data, as well as Enriched Data, including data Optimizely makes available to Customer as part of the Software Service, and data that Optimizely obtains from either public or third-party sources.

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 coding solely development 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 Retention. Customer Data Processed in the Software Service is accessible and retained subject to Optimizely's Data Retention Policy. Subject to that policy, Optimizely will delete, or render unreadable Customer Data after expiration or termination of the Subscription Term upon Customer's written request. Retained data is subject to the confidentiality provisions of the Agreement and the obligations under the Data Processing Agreement.

1.15 Data Processing Agreement. The Optimizely Data Processing Agreement is published @ <https://www.optimizely.com/Trust-Center/data-processing-agreement/August-2022>.

1.16 Service Continuity Management. Details of Customer Data backup, data loss restoration, disaster recovery (including recovery point and recovery time objectives) is currently published in Opti-World, as the Service Continuity Policy, and as may also be later described in more detail in the applicable Service Description. Service Continuity is a Policy, and as such is subject to the SUT.

1.17 Acceptable Use Policy. The Acceptable Use Policy applies to all Software Services.

GLOSSARY. The following definitions apply to all Order Forms for Subscriptions of Software Services. Please note, any definitions utilised in the Service Descriptions are illustrative only, and are not contractually binding.

DEFINITIONS

- a) **"Acceptable Use Policy"** is published by Optimizely @ <https://www.optimizely.com/legal/acceptable-use-policy>.
- b) **"Analytics Pixel"** means the tracking pixel embedded in the content posted via the platform into other systems.
- c) **"Analytics Script"** means the javascript tracker provided to Customer by Optimizely.
- d) **"Content"** means features, experiments, text, images, videos, or other content for the Customer Property that Customer selects for Use with the Experimentation Service.
- e) **"Customer Systems"** means the hardware, software, internal website(s), systems, servers and other equipment that the Customer Uses in the conduct of its business from which the Subscription Services are accessed.
- f) **"Data Retention Policy"** is published by Optimizely @ <https://world.optimizely.com/services/data-retention-policy/>
- g) **"Enriched Data"** means proprietary data of Optimizely, which may include geo-location, bandwidth, ISP, proxy, domain, and demographic data that Optimizely makes available (from time to time, and in its discretion) through a Software Service, including in Reports.
- h) **"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.
- i) **"Opti-World"** is defined in the SUT.
- j) **"Optimizely Code"** means (i) the SDK(s) and JavaScript snippet provided by Optimizely to Customer to enable its Use of the applicable Software Service, and (ii) other software, if any, specified in the Order Form that is developed and provided by Optimizely for Use by Customer under the Agreement.
- k) **"Performance Data"** means the de-identified Customer Data generated by Optimizely's instrumentation and logging systems.
- l) **"Personalization Instance"** means a working environment within Personalization, and refers to a segmented environment with associated access controls that serves to organize a single tracking end point, one logical data store, multiple login access to the Personalization portal for personalization strategies and rules, and access to reporting for a single Personalization Instance.
- m) **"Personalization Portal"** means a web based interface that enables Customer Use of performance reports, merchandise rule creation and triggered emails.
- n) **"Processing"** is defined in the SUT.
- o) **"Region"** means the Infrastructure data center region/location, as may be specified in the Order Form.
- p) **"Reports"** means analytics reports produced by Optimizely Data Platform based on Customer Data, including in combination with Enriched Data, regarding visitor traffic to the Customer System.
- q) **"Service Descriptions"** are part of the Documentation for the applicable Software Services.
- r) **"Service Instance"** means an instance of the Content Cloud or B2C Commerce Cloud Software Services, which includes one code base of the Software Service, a number of deployment environments, as well as the requisite Infrastructure, components, and managed services required to run the Software Service in a Region. Additional languages, index(es) and connectors purchased by Customer shall be replicated across all Service Instances for that Software Service.
- s) **"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.

t) **“Software Service”** is reference to the following hosted software and platform services (and as are more particularly described in the applicable Service Description) – (i) **B2C Commerce Cloud** – Optimizely’s hosted B2B commerce software service, including catalog, account, promotions and order management features and capabilities; (ii) **B2B Commerce Cloud** – Optimizely’s hosted B2C commerce platform, and it also includes Search & Navigation; (iii) **Content Cloud** – Optimizely’s hosted content management platform, and it also includes Search & Navigation; (iv) **Data Platform** (or ODP) – Optimizely’s data collection and analytics software service, with features and capabilities facilitating interoperability with Customer’s Systems and the analysis of Customer’s Data, in combination with Enriched Data, and for Reports to be generated; (v) **Data Core Service** is a light version of the Data Platform with Usage volume limitations, and it is limited to data aggregation and analytics capabilities; (vi) **Experimentation** – Optimizely’s experimentation software service, including aggregate data capture, experiment delivery and metrics features and capabilities; (vii) **Marketing Orchestration** – Optimizely’s hosted end-to-end marketing software service, with features and capabilities for customers to plan, staff, and execute content marketing campaigns across multiple platforms by displaying their Customer Data; (viii) **Personalization** – Optimizely’s hosted personalization software service, with features and capabilities that facilitate product recommendations, analytics, content recommendations, email recommendations, and also personalized Search & Navigation (subject to additional Subscription); and (ix) **Search & Navigation** – Optimizely’s hosted content and product indexing and search and navigation, software service, with features and capabilities that facilitate search and filtered delivery of content and products.

u) **“Use”** is defined in the SUT.

v) **“SUT”** means Optimizely’s Software-Services Use Terms.

w) **“Usage Metrics”** are published by Optimizely @ <https://www.optimizely.com/legal/product-supplement/Metrics-and-basic-items>.

x) **“Visitor”** means any visitor or end user of Customer Systems whose activity is collected or analyzed by Optimizely, on behalf of Customer, as part of the Software Service.

y) **“Website Tag”** means Optimizely javascript code provided directly or by means of certified third-party integration that is installed by Customer on the Customer System for the purpose of identifying Customer Data and transmitting it to the Optimizely platform, together with any fixes, updates, and upgrades to the Website Tag that may be provided to Customer by Optimizely.

PART 2: PRODUCT-SPECIFIC ADDITIONAL TERMS FOR OPTIMIZEZY CONTENT CLOUD AND OPTIMIZEZY B2C COMMERCE CLOUD SOFTWARE SERVICE SUBSCRIPTIONS

2.1 **SendGrid Service; SendGrid-AUP.** If Customer decides to utilise the SendGrid Service offered by Optimizely as built-in feature, then Customer’s Use of the SendGrid services are 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 to them, upon Customer’s first access to, and then Use of the SendGrid service. Any breach by Customer of the SendGrid-AUP shall be deemed a breach of Optimizely’s Acceptable Use Policy, and a breach of the Agreement.

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

PART 3: ADDITIONAL TERMS FOR OPTIMIZEZY DATA PLATFORM AND OPTIMIZEZY DATA CORE SOFTWARE SERVICE SUBSCRIPTIONS

Product Service Terms

3.1 **Website Tag and License Grant.** Customer is responsible for downloading and installing the Website Tag on its Customer System in accordance with the Documentation. Subject to this 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 on the Customer System solely for Use in connection with the Software Service, and the Optimizely Data Platform for the Subscription Term only, and for Customer’s internal business purposes only and in accordance with the Documentation.

PART 4: ADDITIONAL TERMS FOR: WELCOME MARKETING ORCHESTRATION SOFTWARE SERVICE SUBSCRIPTION

Product Service Terms

4.1 Optimizely shall provide Customer with Analytics Scripts, which Customer must implement on the requisite approved Properties - (that is, for clarity, digital properties to which Customer publishes Customer Data). Each piece of content published will have an embedded Analytics Pixel, which Customer must not remove. Optimizely will use the Analytics Script, the Analytics Pixel, and cookies to track anonymized data on usage of Customer Data, measure interest in certain topics, and capture information on page views, unique visitors, browser information, IP address, referrals from paid search, and engagement metrics, such as time on site. The foregoing data will be delivered to Customer via the platform. Analytics data shall be tracked only during the Term, shall be anonymized and/or aggregated, and may be used for Optimizely’s internal business purposes, but shall not be distributed to any Third-Parties and shall not be associated with Customer specifically.