

## OPTIMIZEZY SERVICE LEVEL AGREEMENT (“SLA”)

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1. This Service Level Agreement (“SLA”) forms part and its integral to the Agreement between Company with respect to the technical availability of the applicable Software Services, and Customer’s rights and remedies in relation thereto.
2. **DEFINITIONS.** All capitalized terms not defined in this SLA shall have the meaning attributed within the Agreement
  - 2.1 **“Applicable Monthly Service(s) Fees”** means monthly fee(s) set forth within the Agreement and/or Order(s). For the avoidance of doubt, in the event fee(s) are defined only as an annual fee within the Agreement or Order(s), Company will calculate such monthly fee(s) by dividing the annual fee(s) by applicable monthly period, for example twelve (12) months.
  - 2.2 **“Applicable Monthly Period”** means the number of days within a calendar month that Customer’s Subscription is in effect.
  - 2.3 **“Availability”** means the availability metric, which is measured with two (2) decimal places (99.70%, 99.90%, for example), set forth in the Agreement and/or Order(s) that Company shall adhere to as part of the Service(s) provided by Company to Customer.
  - 2.4 **“Business Day”** means a day of the week that is not: a Saturday, Sunday, or any day which is defined as a Public Holiday.
  - 2.5 **“Change”** means any alteration or modification to the infrastructure managed by Company, which has or may influence the Service(s) or infrastructure for Customer, its Affiliates, Authorized User(s), or customers.
  - 2.6 **“Consumption Metric”** means the type of measurement used for the Service(s) that is defined in the Agreement and/or the applicable Order(s).
  - 2.7 **“Emergency”** means unavailability caused by factors outside of Company’s reasonable control, such as unpredictable and unforeseeable events that could not have been avoided even if reasonable care had been exercised.
  - 2.8 **“Launch” or “Go-Live”** means the date on which both of the following have been completed: **(i)** the Service(s) is made fully available to Customer, its Authorized Users, end-users and/or its customers; and **(ii)** Customer’s production Environment has been publicly released.
  - 2.9 **“Public Holiday”** means: **(i)** if Customer’s primary business is domiciled in the Americas, any public or federal holiday in the United States of America; **(ii)** if Customer’s primary business is domiciled in Europe, Africa or in the Middle East, any public holiday in Sweden; or **(iii)** if Customer’s primary business is domiciled in Asia-Pacific (including Australia and New Zealand), any public holiday in Australia.
  - 2.10 **“Service Credit(s)”** means the percentage of the Applicable Monthly Service Fee(s) awarded to Customer following Company’s claim approval.
3. **SUPPORT**
  - 3.1 Optimizely current Support Policy is found here: <https://www.optimizely.com/legal/support-policy/>
4. **SUSPENSION**
  - 4.1 **Suspension of Service(s)**— Company reserves the right to **(i)** suspend access for Customer, its Affiliates, and Authorized User(s) or Authorized Designee to any or all Service(s), **(ii)** shut down or deny Customer’s Service(s) Launch, and/or **(iii)** interrupt or stop the provisioning of the Service(s) for any of the following reasons:
    - 4.1.1 If any of the components, customizations, software, products, or equipment is used and/or applied to the Service(s) belong to a third-party, and such third-party does not adhere to the AUP: <https://www.optimizely.com/legal/acceptable-use-policy/>
    - 4.1.2 If Customer, its Affiliates, Authorized User(s), or Designated User:
      - 4.1.2.1 use the Service(s) in a way that violates applicable local, state, federal, foreign laws or regulations, or the terms of this Agreement,
      - 4.1.2.2 use Company’s email send services in a way that results in excessive bounce-backs, SPAM notices or requests for removal from a mailing list by recipients,
      - 4.1.2.3 violate any of the terms of Right to Use Software Service, Restrictions and Representations, Ownership and Intellectual Property Rights, Confidential Information.
      - 4.1.2.4 repeatedly post or upload material that infringes or is alleged to infringe on the copyright or trademark rights of any person or any entity.
    - 4.1.3 If either Customer’s Website(s) or Customer’s use of the Service(s) is:
      - 4.1.3.1 being subjected to denial-of-service attacks or other disruptive activity,
      - 4.1.3.2 being used to engage in denial-of-service attacks or other disruptive activity,
      - 4.1.3.3 creating a Security Vulnerability for the Service(s) or others (such as exposing Company’s IP net), or

4.1.3.4 causing harm to Company or others, then Company may, with electronic or telephonic notice to Customer, temporarily suspend all or any access to the Service(s).

4.1.4 Company will try to limit the suspension to the affected portion of the Service(s) and promptly resolve the issues causing the suspension of the Service(s).

## 5. AVAILABILITY

5.1 **Availability Calculation** – Availability is calculated per the Applicable Monthly Period according to the following formula:

$$\text{Availability} = 100\% - \frac{\text{UD (Unplanned Downtime)}}{\text{T (Launched time)}}$$

5.1.1 For example: If Company monitored a Subscription with a Service running during a full calendar month consisting of 30 days, and hence 720 hours (which translates to 43,200 minutes), and in that timeframe, the Service had unplanned downtime for 20 minutes. To define the uptime and unplanned downtime percentages, Company would perform the following calculation:

5.1.1.1 Total number of minutes Customer’s Subscription had unplanned downtime: (20 minutes)

5.1.1.2 Total number of minutes Customer’s Subscription had been launched: (43,200 minutes)

5.1.1.3 Divide the total number of minutes of unplanned downtime (20) by the total number of minutes the Subscription was launched (43,200), which equals 0.00046 (20 / 43,200 = 0.046).

5.1.1.3.1 The unplanned downtime percentage = 0.046%

5.1.1.4 The Availability percentage for this Subscription would be: 100% minus 0.046% = 99.95%.

### 5.1.1.5 Calculation Detail

Service Credit Level (percentage %)	Service Level Period (minutes)
0%	720h down to 719h17m (43 minutes downtime)
10%	719h16m to 718h17m. (60m increment)
20%	718h16m to 717h17m. (60m increment)
30%	717h16m to 716h17m. (60m increment)
40%	716h16m to 715h17m. (60m increment)
50%	715h16m to 714h17m. (60m increment)

**Note:** the total credit for the period can become up to 50% of the monthly fee for the affected Service(s).

5.1.2 Unplanned Downtime (UD) - Time in minutes the Service(s) are unavailable (except for any exclusions defined in Sections 5.1.3, 5.3 and 5.4). Unplanned Downtime is calculated on a cumulative basis for the Applicable Monthly Period.

5.1.2.1 For example: Four (4) unplanned downtime periods of five (5) minutes each will be cumulated to twenty (20) minutes for the Applicable Monthly Period.

5.1.3 Unplanned Downtime Calculation - Unplanned downtime is calculated from the point when either Company monitoring systems alert or Customer informs Company that the Launched Service is unavailable to the point when the Availability has been restored.

5.1.4 Launched Time (T) - The number of minutes in the Applicable Monthly Period after a Service was Launched and before the Service was decommissioned, or Subscription was terminated.

5.1.5 Method of Measurement – Company checks the Service(s) once per minute following the Launch of the Service(s), for which each “**check**” will be recorded as one (1) minute of Downtime and as a result, the Service(s) will be measured as unavailable. For the avoidance of doubt, such “**checks**” shall not count towards Customer’s Consumption Metric limit, as defined in the Agreement and/or Order(s).

5.1.6 Exclusions of unplanned downtime - All components of unplanned downtime defined below in this Section 5.1.6 are excluded from the calculation of Availability for the Subscription. Unplanned downtime does not include -

5.1.6.1 Custom code and configuration –lack of Availability caused by customization of the Service(s) by Customer or its Authorized User(s),

5.1.6.2 Emergency Downtime –include Emergency downtime of the Service(s). See Section 5.4 for details.

5.1.6.3 Lack of assistance – time during which Company requires Customer’s or Authorized User’s assistance and Customer or Authorized User(s) is either not available or not able to assist Company in solving an Incident or Problem.

5.1.6.4 Company software patches not applied – lack of Availability caused by Customer’s failure to apply Company software patches which were released by Company for the Service(s).

**5.1.6.5** Scheduled Downtime – Scheduled Downtime of the Service(s). See Section 5.3 for details.

**5.1.6.6** Third-Party Products, Third-Party Providers, and other third-party services – lack of Availability caused by Customer’s utilization of Third-Party Products, Third-Party Providers and other third-party services, except for third-party products and services provided by Company.

**5.1.6.7** Solution Components – lack of Availability caused by Customer’s non-compliance with Company software or third-party products and services per Company’s Nuget Feed found at <https://nuget.optimizely.com/>.

**5.2** **Service(s) Monitoring** - From and including the Launch of the Service(s), Company monitors the Availability of all Service(s) supported under this SLA, twenty-four (24) hours per day, except for during any Scheduled Downtime as outlined in Section 5.3 below. If the Service(s) are unavailable, an alert will be sent to the Service Desk and shall be addressed between the Parties in accordance with this SLA.

**5.3** **Scheduled Downtime** - Downtime classified as Scheduled Downtime of the Service(s) is subtracted from Customer’s defined Availability percentage stated in the Agreement and/or Order(s) of the Service(s) and is defined below:

**5.3.1** Company product patches – Product patches for Company Service(s) are applied based on a schedule that is set by Customer and/or its Authorized Designee for Company Service(s)

**5.3.2** Planned maintenance – For larger maintenance work affecting the Service(s), Company will announce the Scheduled Downtime at least ten (10) Business Days in advance. Company strives to perform planned maintenance outside of normal business hours for the Region where such maintenance is planned to take place.

**5.3.3** Service deployments – Deployments requested by Customer may cause the Service(s) to be unavailable for a brief period.

**5.3.4** Change requests – Changes to the Service(s) requested by Customer, which require downtime of the Service(s).

**5.3.5** Manual web app restarts – Restarts [triggered|initiated] manually from the PaaS portal.

**5.3.6** Manual cache purging – Cache purging [triggered|initiated] manually from the PaaS portal.

**5.4** **Emergency Downtime** - In case of an Emergency, Company claims the right to schedule downtime without notice (although Company will endeavor to provide notice as is possible and practical). To the extent Company has control of any Emergency, Company will seek to minimize Emergency downtime or limitation in time and scope as reasonably possible. Emergency Downtime is subtracted from the agreed Availability of the Subscription.

## **6.** NOTIFICATIONS

**6.1** Announcements of scheduled downtime, emergency downtime, and general incidents which may affect the Service are made on the Optimizely’s Status Page, found here: <https://status.optimizely.com>. Customer may subscribe to information published on Optimizely’s Status Page. Notifications can be made available over email or SMS, among other options. Customer may request copies of log files that show Customer’s use and consumption of Services, as well as other statistics that fees are based on. Log files are saved by Optimizely for no less than sixty (60) days after the issue date of the invoice. For the avoidance of doubt, Customer must subscribe to the Optimizely Status Page to receive such notifications.

**6.1.1** Customer specific notifications - Notifications related to Customer’s specific solution can be made available over phone, email or SMS. Notifications are communicated to Customer technical contact defined in onboarding process form unless otherwise agreed in writing.

**6.1.2** Reason For Outage (“RFO”) - RFO Report will only be supplied (upon request) if the defined SLA level is expected to be breached or has already been breached.

## **7.** SERVICE CREDIT(S) AND COMPENSATION

**7.1** Company will make every reasonable effort to ensure Customer is provided the maximum Availability of the Service(s).

**7.2** Subject to section 7.5 below, if there is Availability failure in a given month, Customer may as its sole and exclusive remedy is the Service Credit for the affected Service(s), and Company’s sole liability will be the issue of the applicable Service Credits, as outline in sections 7.6 to 7.8 below.

**7.3** **Production environments only** - Service Credits only apply to production Environments provided as part of the Service(s) that are used in production and shall exclude non-production Environments.

**7.4** **Successive Monthly Availability Failures** - In the event Availability falls by 0.20% for three (3) consecutive months, or four (4) or more Months during any twelve month period Customer may as its sole and exclusive remedy terminate the affected Service(s) pursuant to the termination procedure(s) set forth in the Agreement or Order(s) by providing Company with written notice within thirty (30) days after the failure, and Company’s sole liability will be to refund to Customer its unused prepaid Fees, from the effective date of Customer’s termination.

**7.5** **How to claim a Service Credit** - For Customer to have the possibility to be awarded a Service Credit, Customer must contact Company and submit a claim for such Service Credit. All Service Credit claims must be submitted to [support@optimizely.com](mailto:support@optimizely.com). Any Service Credit claim not submitted to [support@optimizely.com](mailto:support@optimizely.com) will not be processed by Company.

**7.6** *Service Credit claim period* - Customer's claim for a Service Credit in accordance with this Section must be made within thirty (30) days following the end of the period for which the reduction is sought.

**7.7** *Reimbursement* - Service Credits awarded by Company to Customer will be made available in the following ways:

**7.7.1** *Primary solution* - Service Credit(s) are primarily made available as a credit on the next invoice to be paid by Customer to Company.

**7.7.2** *Secondary solution* - Service Credit(s) are secondarily made available as a refund to be paid by Company to Customer.

**7.8** *Reservation* - Company reserves the right to deny any claim(s) for Service Credits if Customer has any overdue, undisputed invoices at the time.