

## Add-on platform terms of service

Thank you for signing up for a subscription with Optimizely North America, Inc. (“Optimizely”, “we” or “us”). By placing an order, clicking to accept this Agreement, or using, enabling or accessing the Add-On Platform or any Add-On, you agree to all the terms and conditions of this Add-On Platform Terms of Service (“Agreement”). If you are using the Add-On Platform or related services on behalf of a company or other entity, then “Customer” or “you” means that entity, and you are binding that entity to this Agreement. You represent and warrant that you have the legal power and authority to enter into this Agreement and that, if the Customer is an entity, this Agreement and each Order Form is entered into by an employee or agent with all necessary authority to bind that entity to this Agreement. Please note that we may modify this Agreement as further described in the amendments section below, so you should make sure to check this page from time to time. This Agreement includes any Order Forms (as defined below) as well as any policies or exhibits linked to or referenced herein.

**1 OVERVIEW OF THE OPTIMIZEPLY PLATFORM.** Optimizely’s add-on platform (“**Add-On Platform**”) is a platform that permits you to enable integrations, add-ons and applications (collectively, “**Add-Ons**”) for use with your instance of the Optimizely Services. Add-Ons also include updates and upgrades that you later use or download through the Add-On Platform.

### **2 DEFINITIONS.**

2.1 “**Authorized Users**” means your employees and contractors (such as media agencies or marketing consultants) who are acting for Customer’s benefit and on its behalf.

2.2 “**Customer Data**” means content (such as text, images or videos) and data you use in connection with Add-Ons, including Third Party Content.

2.3 “**EULA**” means: (i) for any Optimizely Add-On, Optimizely’s Terms of Service Agreement for the Optimizely Services currently available at <https://www.optimizely.com/terms/> (the “**Optimizely EULA**”) and (ii) for any Third Party Add-On, the terms and conditions included in or with the Third Party Add-On, as well as any terms and conditions for online products that integrate with the Third Party Add-On (the “**Publisher EULA**”).

2.4 “**Optimizely Add-On**” means any Add-On developed and published by Optimizely.

2.5 “**Optimizely Service**” means the specific proprietary software-as-a-service products developed by Optimizely, excluding the Add-On Platform.

2.6 “**Order Form**” means any Optimizely ordering documentation or online sign-up or subscription flow for any Add-On.

2.7 “**Publisher**” means: (i) for any Optimizely Add-On, Optimizely and (ii) for any Third Party Add-On, the developer of that Add-On.

2.8 “**Scope of Use**” means the usage limits or other scope of use descriptions for Add-Ons included in the applicable Order Form or EULA. These include any numerical limits on Authorized Users, descriptions of product feature levels, and names or numerical limits for web domains and apps.

2.9 **“Subscription Term”** means the initial term for the subscription to the applicable Add-On, as specified on Customer’s Order Form(s), and each subsequent renewal term (if any).

2.10 **“Third Party Add-On”** means any Add-On other than Optimizely Add-On.

2.11 **“Third Party Content”** means content, data or other materials provided by Customer’s third-party data providers, including through Add-Ons used by Customer.

2.12 **“Third Party Product”** means any Third Party Add-On and other applications, integrations, software, code, online services, systems and products not developed by Optimizely.

Other terms are defined in other Sections of this Agreement.

**3 ACCOUNT REGISTRATION AND USE.** Customer and its Authorized Users may need to register for an Optimizely account in order to place orders or to access the Add-On Platform. Account information must be accurate, current and complete, and will be governed by Optimizely’s Privacy Policy (currently available at <https://www.optimizely.com/privacy/>). Customer agrees to keep this information up-to-date so that Optimizely may send notices, statements and other information by email or through Customer’s account. Customer must ensure that any user IDs and passwords for the Add-On Platform are kept strictly confidential and not shared with any unauthorized person. If any Authorized User stops working for Customer, Customer must immediately terminate that person’s access to its account. Customer will be responsible for any and all actions taken using its and its Authorized Users’ accounts and passwords. Customer must notify Optimizely immediately of any breach of security or unauthorized use of its account. Accounts are granted to specific customers and must not be shared with others. If you order, use or access any Third Party Add-On, you hereby authorize Optimizely to provide your information (including without limitation your name, company name, addresses (including e-mail addressees) and phone numbers) and access credentials (for access to your instance of the Optimizely Service) to the Publisher of that add-on.

#### **4 USE RIGHTS.**

**4.1 Use of the Add-On Platform.** Subject to all the terms and conditions of this Agreement, Optimizely grants Customer a worldwide, non-exclusive, non-transferable, non-sublicensable right and license to access and use the Add-On Platform during the Term solely for Customer’s internal business purposes, but only in accordance with this Agreement (including without limitation any applicable Service-Specific Terms), the Documentation, and all applicable Scope of Use descriptions.

**4.2 Use by Employees and Contractors.** Customer may permit its Authorized Users to use the Add-On Platform provided their use is for Customer’s benefit only and remains in compliance with this Agreement. Customer will be responsible and liable for all Authorized Users’ use and access and their compliance with the terms and conditions herein. Use by all Authorized Users in aggregate will count towards applicable Scope of Use restrictions.

**4.3 Use of Add-Ons.** Your use of an Add-On will be governed by this Agreement and the terms and conditions of the applicable EULA. Any Optimizely Add-On shall be subject to the Optimizely EULA and shall be deemed “Optimizely Code” under that agreement. Any Third Party Add-On shall be subject to the Publisher EULA. Customer agrees that: **(i)** Optimizely is not a party to any Publisher EULA; **(ii)** Publisher has the right to enforce the applicable EULA against Customer; **(iii)** it and its Authorized Users must not exceed applicable Scope of Use restrictions; **(iv)** any Customer Data received by Publisher through the Add-On will be subject to

the applicable EULA, and Optimizely shall have no responsibility for this Customer Data; and (v) Publisher owns all rights, titles and interests in and to the Add-On and reserves all rights and licenses not specifically granted to Customer pursuant to the EULA.

**4.4 General Restrictions.** Customer must not (and must not allow any third party to): **(i)** rent, lease, copy, transfer, sublicense, or provide access to the Add-On Platform or any Add-On to a third party (except Authorized Users as specifically authorized above); **(ii)** incorporate the Add-On Platform or any Add-On (or any portion thereof) into, or use it with or to provide, any site, product or service (other than use of Add-Ons with the Optimizely Services); **(iii)** use the Add-On Platform or any Add-On (or any portion thereof) for time sharing purposes or for a third party's benefit; **(iv)** publicly disseminate information regarding the performance of the Add-On Platform or an Add-On; **(v)** modify or create a derivative work of the Add-On Platform, any Add-On or any portion thereof; **(vi)** reverse engineer, disassemble, decompile, translate or otherwise seek to obtain or derive the source code, underlying ideas, algorithms, file formats or non-public APIs, of the Add-On Platform or any Add-On, except to the extent expressly permitted by applicable law and then only upon advance notice to Optimizely; **(vii)** distribute any portion of the Add-On Platform or any Add-On; or **(viii)** remove or obscure any proprietary or other notices contained in the Add-On Platform or any Add-On.

**4.5 Beta Releases and Free Access Subscriptions.** Customer may receive Add-Ons on a free or trial basis (a **"Free Access Subscription"**) or "alpha", "beta" or other early-stage Add-Ons (**"Beta Releases"**). This Section will apply to any Free Access Subscription or Beta Release (even if a Beta Release is provided for a fee or counts towards Customer's Scope of Use allocations) and supersedes any contrary provision in this Agreement. Without limiting the other disclaimers and limitations in this Agreement, CUSTOMER AGREES THAT ANY FREE ACCESS SUBSCRIPTION OR BETA RELEASE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT ANY WARRANTY, SUPPORT, MAINTENANCE, STORAGE, SLA OR OTHER OBLIGATIONS OF ANY KIND. WITH RESPECT TO BETA RELEASES, CUSTOMER FURTHER ACKNOWLEDGES AND AGREES THAT BETA RELEASES MAY NOT BE COMPLETE OR FULLY FUNCTIONAL AND MAY CONTAIN BUGS, ERRORS, OMISSIONS, AND OTHER PROBLEMS FOR WHICH OPTIMIZEZY AND THE APPLICABLE PUBLISHER WILL NOT BE RESPONSIBLE. ACCORDINGLY, ANY USE OF A BETA RELEASE IS AT CUSTOMER'S SOLE RISK. Customer acknowledges that future versions of a Beta Release may not be released and may not be available under the same commercial or other terms. Optimizely may terminate Customer's right to use any Free Access Subscription or Beta Release at any time for any reason or no reason in Optimizely's sole discretion, without liability.

**4.6 Open Source.** Some components of Add-Ons (whether developed by Optimizely or third parties) may also be governed by applicable open source software licenses. To the limited extent that the open source software licenses expressly supersede this Agreement or a EULA, the open source licenses govern your use of any components of Add-Ons that are governed by these open source software licenses.

**4.7 Aggregate/Anonymous Data.** Optimizely and Publishers may generate and collect learnings, logs and data regarding use of the Add-On Platform and Add-Ons (**"Aggregate/Anonymous Data"**). Customer agrees that Publisher and Optimizely may use Aggregate/Anonymous Data for any business purpose during or after the term of this Agreement, including without limitation to develop and improve other products and services, so long as the Aggregate/Anonymous Data does not personally identify Customer.

## **5 CUSTOMER OBLIGATIONS.**

**5.1 Appropriate Use.** Customer agrees to: **(i)** comply with the applicable EULA for each Add-On it uses and **(ii)** use the Add-On Platform and each Add-On in compliance with all applicable laws (including privacy and export control laws), third party rights (including intellectual property, privacy and publicity rights) and Optimizely's then-current Acceptable Use Policy (currently available at <https://www.optimizely.com/legal/customer-acceptable-use-policy/>); and **(iii)** obtain all necessary rights, releases and permissions to use Customer Data as contemplated by this Agreement.

**5.2 Evaluation of Add-Ons.** Optimizely reserves the right (but shall have no obligation) to pre-screen, review, flag, filter, modify, refuse or remove any or all Add-Ons and any representation, statement, reviews or other content on the Add-On Platform related to such Add-On. **However, Customer agrees that Optimizely is not responsible for any representation, statement, review or other content made in connection with any Add-On and does not in any way warrant the accuracy, reliability, security, completeness or usefulness of these items, whether or not it reviewed or published them.** Customer agrees that it bears all risk associated with its reliance on these items and for its evaluation of any Add-On.

**5.3 Reviews.** If you post any reviews for any Add-Ons, you must: **(i)** comply with Optimizely's then-current Acceptable Use Policy; **(ii)** not make any false or misleading statement; **(iii)** ensure that your review is an honest, good-faith rating; and **(iv)** disclose any affiliation with the Publisher or any conflict of interest (e.g. if you are a competitor). We do not claim ownership of the content of reviews or comments you post on the Add-On Platform. However, you agree that this content is licensed to us just like "Feedback" (see below) and that we can use and publish this content and incorporate it into other works in any format or medium now known or later developed, and permit others to do so.

**5.4 Notice and Take-Down.** If Customer receives any take down requests or infringement notices related to Customer Data or its use of Add-Ons, it must promptly stop using these items with the Optimizely Services and notify Optimizely. Without limiting its other available remedies, Optimizely may without liability take down Customer Data or disable use of Third Party Products hosted on Optimizely Services if it determines that Customer is collecting and/or using these items in breach of its obligations under this Agreement or the applicable EULA. For clarity, Customer (not Optimizely) is solely responsible for its Customer Data and its use of Third Party Products. Optimizely's failure to take action does not make Optimizely responsible for these items.

**6 SUPPORT.** Optimizely makes available web-based support for the Add-On Platform through its website (currently available at [help.optimizely.com](http://help.optimizely.com)). Optimizely does not provide support for Third Party Products. Each Publisher is responsible for determining the level of customer support they provide, and Customer should contact them directly.

## **7 FEES AND PAYMENT.**

**7.1 Fees.** Some Add-Ons are provided to Customer free of charge. For other Add-Ons, Customer agrees to pay all fees in U.S. dollars within thirty (30) days of the invoice date, unless a different currency or payment period is specified in the applicable Order Form. Optimizely's fees are exclusive of all taxes, and Customer must pay any applicable sales, use, VAT, GST, excise, withholding, or similar taxes or levies, whether domestic or foreign, other than taxes based on the income of Optimizely. Customer will make tax payments to Optimizely to the extent amounts are included in Optimizely's invoices. Some customers may have the option to pay by credit card. If Customer is paying by credit card, it authorizes Optimizely to charge fees and other

amounts automatically to Customer's credit card without invoice. Unless otherwise specified in an Order Form or Service-Specific Term, such charges typically occur monthly in advance, though overage fees (if any) may be charged in arrears. Payments are non-refundable and non-creditable and payment obligations non-cancellable. Late payments may be subject to a service charge equal to the lesser of 1.5% per month of the amount due or the maximum amount allowed by law.

**7.2 Fees for Third Party Products.** Customer acknowledges that certain Add-Ons may require Customer to have a license or subscription to third-party online services or other Third Party Products. Customer is responsible for payment of any applicable fees for such third-party products directly to the applicable provider.

## **8 TERM AND TERMINATION.**

**8.1 Term.** This Agreement remains in effect until terminated (the "Term").

**8.2 Termination.** Either party may terminate this Agreement at any time for any or no reason with thirty (30) days' advance written notice. Optimizely may also terminate this Agreement or any related Order Forms immediately if determines that Customer has breached Section 5 (Customer Obligations). For clarity, termination of this Agreement will not terminate any EULA.

**8.3 Suspension of Service.** Optimizely reserves the right to suspend Customer's access to the Add-On Platform and/or any Add-On immediately and without liability if: **(i)** Customer's account is overdue; **(ii)** Customer has exceeded its Scope of Use limits and no overage fees for the excess use are specified in the Order Form; or **(iii)** Optimizely deems suspension necessary as a result of: (a) a breach or alleged breach of this Agreement; or (b) to prevent harm or liability to other customers or third parties or preserve the security, stability, availability or integrity of the the Add-On Platform.

**8.4 Effect of Termination.** Upon any expiration or termination of this Agreement, Customer's must immediately cease use of the Add-On Platform and any Third Party Add-on and delete any and all copies of any related passwords or access codes. Further, upon any expiration or termination of any EULA or of Customer's subscription to the Optimizely Services, Customer's license rights and Subscription Terms for any Add-On shall automatically terminate (notwithstanding anything to the contrary in the EULA or Order Form) and it must promptly cease use of the Add-On and delete any and all copies of the Add-On in its possession and any related passwords or access codes. Upon any termination of this Agreement, any payments for the remaining portion of the Subscription Term for each Add-On will become due and must be paid immediately by Customer. Except where this Agreement specifies an exclusive remedy, all remedies under this Agreement, including termination or suspension, are cumulative and not exclusive of any other rights or remedies that may be available to a party.

**8.5 Survival.** All terms and conditions of this Agreement other than Sections 4.1 (Use of the Add-On Platform) and 4.2 (Use by Employees and Contractors) will survive the termination and expiration of this Agreement.

## **9 OPTIMIZEZY TECHNOLOGY.**

**9.1 Ownership and Updates.** This is a subscription agreement for access to and use of the Add-On Platform and Add-Ons. Customer acknowledges that it is obtaining only a limited license hereunder and that irrespective of any use of the words "purchase", "sale" or similar terms, no ownership rights are transferred to Customer under this Agreement. Customer agrees that

Optimizely (or the relevant Publisher, as applicable): **(i)** retain all rights, title and interest (including all intellectual property rights) in and to the Add-On Platform, the Add-Ons and any Aggregate/Anonymous Data and **(ii)** reserves any licenses not specifically granted to Customer. The Add-On Platform and most Add-Ons are offered as on-line, hosted products. Accordingly, Customer acknowledges and agrees that it has no right to obtain a copy of the software behind the Add-On Platform or any hosted Add-Ons and that Optimizely at its option may make updates, bug fixes, modifications or improvements to the Add-On Platform and the Add-Ons from time-to-time without notice to Customer.

**9.2 Feedback.** If Customer elects to provide any suggestions, comments, improvements, information, ideas or other feedback or related materials to Optimizely (collectively, **“Feedback”**), Customer hereby grants Optimizely a worldwide, perpetual, non-revocable, sublicensable, royalty-free right and license to use, copy, disclose, license, distribute and exploit any such Feedback in any manner without any obligation, payment, or restriction based on intellectual property rights or otherwise. Nothing in this Agreement limits Optimizely’s right to independently use, develop, evaluate, or market products, whether incorporating Feedback or otherwise.

**10 INDEMNIFICATION.** Customer will indemnify and hold Optimizely harmless from and against any third-party claims and related costs, damages, liabilities and expenses (including reasonable attorney’s fees) arising from or pertaining to Customer’s use of any Third Party Products or to Customer’s breach or alleged breach of this Agreement. Customer also agrees to defend Optimizely against these claims at Optimizely’s request, but Optimizely may participate in any claim through counsel of its own choosing and the parties will reasonably cooperate on any defense. Customer must not settle any claim without Optimizely’s prior written consent.

**11 DISCLAIMERS.** THE ADD-ON PLATFORM AND ALL THIRD PARTY ADD-ONS ARE PROVIDED BY OPTIMIZEZY ON AN “AS IS” AND “AS AVAILABLE” BASIS AND WITH ALL FAULTS. NEITHER OPTIMIZEZY NOR ANY PUBLISHER MAKES ANY WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. OPTIMIZEZY DOES NOT WARRANT OR GUARANTEE THAT THE ADD-ON PLATFORM OR ANY ADD-ON WILL MEET CUSTOMER’S EXPECTATIONS OR WILL BE UNINTERRUPTED, SECURE, TIMELY OR ERROR FREE. OPTIMIZEZY WILL NOT BE RESPONSIBLE OR LIABLE IN ANY MANNER FOR ANY THIRD PARTY PRODUCTS, THIRD PARTY CONTENT, CUSTOMER DATA OR NON-OPTIMIZEZY SERVICES (INCLUDING FOR ANY DELAYS, INTERRUPTIONS, TRANSMISSION ERRORS, SECURITY FAILURES, AND OTHER PROBLEMS CAUSED BY THESE ITEMS), FOR CUSTOMER’S USE OF THE ADD-ON PLATFORM OR ANY ADD-ONS (INCLUDING FOR THE COLLECTION AND/OR USE OF CUSTOMER DATA BY ADD-ONS), OR FOR DECISIONS OR ACTIONS TAKEN (OR NOT TAKEN) BY CUSTOMER BASED UPON THE ADD-ON PLATFORM OR ANY ADD-ONS. THE DISCLAIMERS IN THIS SECTION SHALL APPLY TO THE MAXIMUM EXTENT NOT PROHIBITED BY APPLICABLE LAW, NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN. CUSTOMER MAY HAVE OTHER STATUTORY RIGHTS. HOWEVER, ANY STATUTORILY REQUIRED WARRANTIES UNDER APPLICABLE LAW, IF ANY, SHALL BE LIMITED TO THE SHORTEST PERIOD AND MAXIMUM EXTENT PERMITTED BY LAW. The applicable EULA may contain warranties, disclaimers and limitations that are different than the ones in this Agreement, but as between Customer and Optimizely, the disclaimers and limitations of this Agreement shall control.

**12 LIMITATIONS OF LIABILITY.** TO THE MAXIMUM EXTENT NOT PROHIBITED BY APPLICABLE LAW, IN NO EVENT WILL OPTIMIZEZY OR ITS SUPPLIERS BE LIABLE FOR ANY LOSS OF USE,

FAILURE OF SECURITY MECHANISMS, LOST OR INACCURATE DATA, INTERRUPTION OF BUSINESS, LOST PROFITS, COSTS OF DELAY, REPUTATIONAL HARM, OR ANY INDIRECT, SPECIAL, INCIDENTAL, COVER, RELIANCE OR CONSEQUENTIAL DAMAGES OF ANY KIND, HOWEVER CAUSED, EVEN IF INFORMED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES. WITHOUT LIMITING THE FOREGOING, OPTIMIZEZY'S AND ITS SUPPLIER'S TOTAL LIABILITY SHALL NOT EXCEED IN AGGREGATE THE AMOUNT ACTUALLY PAID OR PAYABLE BY CUSTOMER TO OPTIMIZEZY FOR THE APPLICABLE ADD-ON IN THE TWELVE (12) MONTHS PRECEDING THE CLAIM. FOR FREE ACCESS SUBSCRIPTIONS OR BETA RELEASES PROVIDED WITHOUT CHARGE, OPTIMIZEZY'S TOTAL LIABILITY SHALL NOT EXCEED IN AGGREGATE FIFTY U.S. DOLLARS (\$50 US). NOTWITHSTANDING THE FOREGOING, NONE OF THE LIMITATIONS IN THIS SECTION EXCLUDES EITHER PARTY'S LIABILITY FOR FRAUD OR FOR DEATH OR PERSONAL INJURY TO THE EXTENT CAUSED BY A PARTY'S NEGLIGENCE. IN ADDITION, THE LAWS IN SOME JURISDICTIONS MAY NOT ALLOW SOME OF THE LIMITATIONS OF LIABILITY IN THIS SECTION. IF ANY OF THESE LAWS IS FOUND TO APPLY TO THIS AGREEMENT, THIS SECTION 12 SHALL APPLY TO THE MAXIMUM EXTENT NOT PROHIBITED BY SUCH LAW. EACH PARTY ACKNOWLEDGES AND AGREES THAT THIS SECTION 12 IS A FUNDAMENTAL BASIS OF THE BARGAIN AND A REASONABLE ALLOCATION OF RISK BETWEEN THE PARTIES AND WILL SURVIVE AND APPLY TO ANY CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ITS SUBJECT MATTER (INCLUDING THE ADD-ON PLATFORM AND ANY ADD-ONS), REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE), EVEN IF ANY LIMITED REMEDY IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

**13 THIRD PARTY PRODUCTS AND INTEGRATIONS.** Customer understands that the Add-On Platform and Add-Ons may provide Customer with access to Third Party Content and to Third Party Products that may access Customer's instance of the Optimizely Service and export, delete or otherwise alter Customer Data. **Optimizely does not warrant or support Third Party Products or Third Party Content (whether or not these items are designated by Optimizely as "powered", "verified" or otherwise) and disclaims all responsibility and liability for these items and their access to the Optimizely Services, including their modification, deletion, disclosure or collection of Customer Data. Optimizely is not responsible in any way for Customer Data once it is transmitted, copied or removed from the Optimizely Services.**

#### **14 GENERAL.**

**14.1 Assignment.** This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Neither party may assign this Agreement without the advance written consent of the other party, except that Optimizely may assign this Agreement without consent to an affiliate or in connection with a merger, reorganization, acquisition or other transfer of all or substantially all of its assets or voting securities. Any attempt to transfer or assign this Agreement except as expressly authorized under this Section 14.1 will be null and void.

**14.2 Notices.** Any notice or communication under this Agreement must be in writing. Customer must send any notices under this Agreement (including breach notices) to Optimizely at the following address, [legal@optimizely.com](mailto:legal@optimizely.com), and include "Attn. Legal Department" in the subject line. Optimizely may send notices to the e-mail addresses on Customer's account or, at Optimizely's option, to Customer's last-known postal address. Optimizely may also provide general notices through posting on Optimizely's website or the Add-On Platform itself. Each party hereby consents to receipt of electronic notices. Optimizely is not responsible for any automatic filtering Customer or its network provider may apply to email notifications.

**14.3 Subcontractors.** Optimizely may use subcontractors and permit them to exercise the rights granted to Optimizely in order to provide the Add-On Platform and related services under this Agreement. These subcontractors may include, for example, Optimizely's hosted service and CDN providers. However, subject to all terms and conditions herein, Optimizely will remain responsible for: **(i)** compliance of its subcontractors with the terms of this Agreement and **(ii)** the overall performance of the Add-On Platform if and as required under this Agreement.

**14.4 Subpoenas.** Nothing in this Agreement prevents Optimizely from disclosing Customer Data to the extent required by law, subpoenas, or court orders, but Optimizely will use commercially reasonable efforts to notify Customer where permitted to do so.

**14.5 Independent Contractors.** The parties to this Agreement are independent contractors, and this Agreement does not create a partnership, joint venture, employment, franchise or agency relationship. Neither party has the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent.

**14.6 Force Majeure.** Neither party will be liable for any delay or failure to perform its obligations under this Agreement (except payment obligations) if the delay or failure is due to causes beyond its reasonable control, such as a strike, blockade, war, act of terrorism, riot, natural disaster, failure or reduction of power or telecommunications or data networks or services, or government act.

**14.7 Export.** Customer is responsible for obtaining any required export or import authorizations for use of the Add-On Platform and any Add-Ons. Customer represent and warrant that it, its affiliates, and its Authorized Users are not on any U.S. government list of prohibited or restricted parties or located in (or a national of) a country subject to a U.S. government embargo or that has been designated by the U.S. government as a "terrorist supporting" country. Customer must not access or use the Add-On Platform or any Add-On in violation of any U.S. export embargo, prohibition or restriction.

**14.8 Amendments; Waivers.** Optimizely may update or modify this Agreement (including any referenced policies and other documents) from time to time. Any such amendments will take effect thirty (30) days from the date of posting by Optimizely. If Customer does not accept the amendment, it may terminate the Agreement. Customer's continued use of the Add-On Platform after the effective date of the revised Agreement constitutes Customer's acceptance of such revised terms. Except as otherwise described in this Section, any modification or amendment to this Agreement must be made in writing and signed by a duly authorized representative of each party (each in its discretion). No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement. Waivers must be made in writing and executed by a duly authorized representative of the waiving party.

**14.9 Severability.** If any provision of this 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 this Agreement may otherwise remain in effect.

**14.10 No Third Party Rights.** Nothing in this Agreement confers on any third party the right to enforce any provision of this Agreement. Customer acknowledges that each Order Form only permits use by and for the legal entity or entities identified in the Order Form and not any affiliated entities.



**14.11 U.S. Government Use.** The Optimizely Services are based upon commercial computer software. If the user or licensee of an Optimizely Service is an agency, department or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure or transfer of the Optimizely Service, or any related documentation of any kind, including technical data and manuals, is restricted by a license agreement or by this Agreement in accordance with Federal Acquisition Regulation 12.212 for civilian purposes and Defense Federal Acquisition Regulation Supplement 227.7202 for military purposes. The Optimizely Services were developed fully at private expense. All other use is prohibited.

**14.12 Entire Agreement.** This Agreement represents the parties' complete and exclusive understanding relating to the Agreement's subject matter. It supersedes all prior or contemporaneous oral or written communications, proposals and representations with respect to the Add-On Platform or any other subject matter covered by this Agreement. Any terms provided by Customer (including as part of any purchase order or other business form used by Customer) are for administrative purposes only, and have no legal effect.

**14.13 Governing Law, Jurisdiction and Region-Specific Terms.** This Agreement is governed by the laws of the State of California and the United States without regard to choice or conflict of law rules thereof. The exclusive jurisdiction and venue for actions related to the subject matter of this Agreement shall be the state courts located in Santa Clara County, California or the United States District Court for the Northern District of California, and both parties submit to the personal jurisdiction of these courts. The terms of the United Nations Convention on Contracts for the Sale of Goods do not apply to this Agreement. The Uniform Computer Information Transactions Act (UCITA) shall not apply to this Agreement regardless of when or where adopted.