BY ACCEPTING THE ORDER FOR CERTAIN PROFESSIONAL SERVICES FROM OPTIMIZELY, CUSTOMER AGREES THAT THESE SUPPLEMENTARY TERMS FOR THOSE PROFESSIONAL SERVICES ("PROSERV SUPPLEMENT") ARE AN INTEGRAL PART OF THAT ORDER AND THE AGREEMENT.

1. DEFINITIONS **(applicable to this ProServ Supplement only)**

1.1. *Agreement* means the agreement as defined in the applicable Order, and which incorporates this ProServ Supplement.

1.2. *Background IP* means all Intellectual Property owned or licensed by a party either (i) prior to the Effective Date of the applicable Agreement or (ii) independent of the ProServ – and it includes its techniques, knowledge and /or work-flows and processes.

1.3. *Code* means any source or object code, including with respect to any graphical user and application programming interfaces.

1.4. *Consultants* means employees and third-party contractors of Optimizely that provide ProServ to Customer.

1.5. *Customer Data* is defined in the Software Subscription Agreement.

1.6. *Deliverable* means Work Product created specifically for Customer by Optimizely as part of the ProServ and expressly specified, identified or described as a Deliverable in Documentation and an applicable Scope Document – but excludes the tasks associated with the Deliverable.

1.7. *Documentation* means Optimizely's then-current documentation as applicable to the ProvServ as Optimizely published and makes available to ProServ customers, and it includes the [Services Description (Optimizely Software Services)](#) as updated from time to time.

1.8. *Material Defect* means the Deliverable fails to substantially comply with the applicable and corresponding acceptance criteria for that Deliverable set forth in the Scope (or Order).

1.9. *Optimizely Technology* means (i) Optimizely's Background IP, (ii) all Intellectual Property Rights and know-how applicable to Optimizely products and services, and (iii) Optimizely-developed tools, Code, algorithms, modules, materials, documentation, reports and technology that have general application to Optimizely's other customers, including derivatives of and improvements to Optimizely's Background IP. Optimizely Technology expressly excludes Customer's Background IP and Customer's Confidential Information.

1.10. *Professional Service* (or *ProServ*) means the professional services being provided by Optimizely to Customer with respect to the Software Service as identified in the Order as detailed in that Order (or an associated Order), and as described in the Documentation, and as may be further described in a Scope Document.

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

1.12. *Scope* means the scope of the ProServ as described in the Documentation and any applicable Scope Document.

1.13. *Scope Document* means a scope document (also called a statement of work) prepared by Optimizely in respect of certain ProServ.

1.14. *Unique Output* means Work Product or a Deliverable by Optimizely for Customer that is unique to Customer, and includes Customer Background IP or other Customer Confidential Information – but excludes the Optimizely methodologies, or any Work Product tasks associated with that Unique Output.

1.15. *Warranty Period* means thirty (30) days, calculated from accepted (or deemed) delivery of the applicable Work Product.

1.16. *Work Day* means no more than seven hours, excluding Optimizely's time for a lunch break (of one hour) and *Work Hour* means one hour, and any part of an hour (which shall be rounded up).

1.17. *Work Product* means any work product or tangible results produced by or with Optimizely, including works created for or in cooperation with Customer.

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

2. SUT MODIFICATIONS **(applicable to this ProServ Supplement only)**

2.1 *Responsibilities*

2.1.1 *Optimizely Responsibilities.* Subject to Customer's payment of correctly-invoiced Fees, and its performance of its other obligations under the Agreement, Optimizely will provide the ProServ to Customer as outlined the Order, and in accordance with its obligations under this ProServ Supplement, subject to Customer fulfilling its obligations under this ProServ Supplement. *Personnel*. Optimizely will solely determine the Consultants for the ProServ, provided however that Optimizely will ensure Consultants have appropriate skills, experience, and qualifications necessary to perform the ProServ. If at any time Customer or Optimizely is dissatisfied with the material performance of an Optimizely Consultant or Customer project team member, the dissatisfied Party shall promptly report such dissatisfaction to the other Party in writing, and may request a replacement. The other Party will use its reasonable discretion in accommodating any such change (which also, in the case of Optimizely, shall be subject to staffing availability).

2.1.2   *Customer Responsibilities. Cooperation.* Customer shall provide reasonable and prompt cooperation in connection with Optimizely's provision of the ProServ. Optimizely will not be liable for any delay caused by Customer's failure to provide Optimizely with information, materials, consents or access to Customer facilities, networks or systems required for Optimizely to perform the ProServ. If Optimizely informs Customer of such failure and Customer does not cure the failure within ten (10) days, then: (a) Optimizely may terminate any incomplete ProServ and (b) in addition to any Fees due under the applicable Agreement, Customer will pay actual costs incurred by Optimizely for the cancelled ProServ. If any ProServ, in whole or in part, cannot be provided by Optimizely due to a Customer issue and Customer fails to provide Optimizely with reasonable advance notice, the time spent by the Consultants on such ProServ (or which was planned to be spent to the extent that Optimizely is not reasonably able to use such time for another customer on a chargeable basis) will be charged to Customer.

3.   INTELLECTUAL PROPERTY

3.1   *Background Intellectual Property*.   Customer owns all rights, title and interest in Customer's Background IP. Optimizely owns all rights, title and interest in Optimizely's Background IP. Customer grants Optimizely a right to use Customer's Background IP for the purpose of delivery of the ProServ, including the right to allow Optimizely Affiliates (and their respective subcontractors) to use that Background IP for that purpose. Except for the rights granted under Sections 3.2 and 3.3 below, neither Party will otherwise acquire any right, title, or interest in or to the other Party's Background IP. No ProServ is work made for hire under copyright law.

3.2   *Ownership*. Optimizely owns all Intellectual Property Rights in the Work Product and all Deliverables. Subject to payment of correctly-invoiced Fees, Customer owns any Unique Output. Unique Output is Customer Confidential Information.

3.3   *Work Product License*. Subject to payment of correctly-invoiced Fees, Optimizely grants Customer a limited, worldwide, non-exclusive, royalty-free, right to use the Work Product and Deliverables, including any incorporated Optimizely Technology and Optimizely Background IP, for Customer's internal business purposes ("**Right-to-Use**"). The Right-to-Use includes the right to reproduce any Work Product. The Right-to-Use term is limited to the Subscription term of the associated Software Service Subscription ("**Right-to-Use Term**"). The Right-to-Use does not include any right to re-license, sub-license, sell, transfer, otherwise make available to any Third-Party any Work Product, or otherwise deal with Work Product, including modifying or making derivatives, without Optimizely's prior written consent. The Right-to-Use excludes any rights to commercialize any Work Product except as expressly permitted under this ProServ Supplement.

3.4   *Optimizely Technology*.   Further to Sections 3.2 and 3.3, Optimizely owns all rights, title and interest in Optimizely Technology. To the extent Optimizely Technology is incorporated into any Work Product (including any Deliverable, and Unique Output), Optimizely grants Customer a limited right to use the Optimizely Technology in connection with that Work Product on the same terms as the Right-to-Use for the Right-to-Use Term.

4.   PERSONAL DATA PRIVACY

4.1   *Independent Controller*.   Each Party is an independent controller of Relevant Personal Data and will individually determine the purposes and means of its processing of Relevant Personal Data; and each will comply with its obligations in that respect under applicable law regarding the control and processing (including export, transfer and import) of Relevant Personal Data.

4.2   *Data Security.*   Optimizely will maintain appropriate security protocols for the protection of the privacy, security, confidentiality and integrity of Customer Data stored, accessed or otherwise utilized by Optimizely in its delivery of the ProServ ("**Security Protocols**"). Optimizely may update its Security Protocols with respect to any ProServ.

5.   WARRANTIES

5.1   *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 ProServ; and **(ii)** in the case of Customer, Customer's receipt and utilization of the ProServ.

5.2   *Good Industry Practices Warranty*.   Optimizely warrants it will deliver the ProServ with the degree of skill and care reasonably expected from a skilled and experienced supplier of services substantially similar to the nature and complexity of the ProServ. Customer agrees that Customer must notify Optimizely of any claim that Optimizely has breached this warranty in writing within the Warranty Period. Customer's sole and exclusive remedy and Optimizely's entire liability for breach of this warranty will be: **(A)** re-perform the relevant ProServ; and **(B)** if Optimizely fails to re-perform satisfactorily the relevant applicable ProServ using reasonable commercial efforts, Customer may (at its option) cancel the applicable ProServ or (if material to the associated Software Service) the applicable Order. This remedy does not apply to trivial or non-material cases of nonconformance. Any termination by Customer must be effective within one month of Optimizely's failure to correct the deficient ProServ. Section 11.3 of the SUT (or equivalent section of the Agreement) applies with respect to the refund of any prepaid Fees.

6.   LIMITATIONS OF LIABILITY

6.1   *Limitation Of Monetary Damages*.   Except for **(i)** Customer's liability to Optimizely for the payment of correctly-invoiced Fees, **(ii)** violation of the other Party's Intellectual Property Rights, **(iii)** damages arising from either Party's fraud, or **(iv)** 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) to the other or any other person or entity for all events (or series of connected events) is absolutely limited, and will not exceed the Fees Customer paid for the ProServ under the applicable Agreement.

6.2   *Disclaimers*.   Except **(i)** as expressly stated in this Agreement, and **(ii)** for warranties that cannot be excluded by law, the ProServ, Optimizely Technology, Work Product and Deliverables 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

materials utilized by Customer or that the Deliverables and Optimizely Technology will be, secure, uninterrupted, timely, or error-free, or meet the Customer's requirements.

7. MISCELLANEOUS

7.1 **Assumptions & Exclusions.** The assumptions and exclusions that are material to the ProServ are set out in the Documentation, and any applicable Scope Document.

7.2 **Modifications.** Section 11.2 of the SUT (or equivalent section of the Agreement) with respect to Modifications of the Software Service applies to the ProServ.

7.3 **Acceptance.** I. If the Scope Document does not expressly specify acceptance criteria for a Deliverable, such Deliverable will be deemed accepted upon delivery. II. If the Scope Document expressly states that a Deliverable is subject to acceptance and does not otherwise specify an acceptance procedure, the following acceptance procedure applies: A. Upon delivery by Optimizely of a completed Deliverable, Customer shall have ten (10) calendar days to accept or reject the Deliverable due to a Material Defect based on the acceptance criteria set forth in the Scope Document for that Deliverable ("Acceptance Period"). B. If the relevant Deliverable passes the acceptance criteria set out in the Scope Document, Customer shall accept the Deliverable. Acceptance will not be unreasonably withheld by Customer. If Customer notifies Optimizely that it has rejected the Deliverable due to a Material Defect, Customer shall provide written notice, within such ten (10) day period, specifying the basis of the Material Defect. C. Optimizely shall have a reasonable period to cure and redeliver the Deliverable for an additional Acceptance Period. If Customer fails to reject any Deliverable within the Acceptance Period, in a written document specifying the Material Defect, Customer shall be deemed to have accepted such Deliverable as of the tenth (10th) day of the Acceptance Period. D. Upon acceptance of a Deliverable, all ProServ associated with such Deliverable shall be deemed accepted and Optimizely shall have no further obligation with respect to an accepted Deliverable. Customer shall not make productive use of a Deliverable, unless it has been accepted by Customer (either expressly or by passage of time).

7.4 **Delivery & Materials.** Unless otherwise agreed by the Parties in writing, the ProServ will be delivered to Customer remotely during Optimizely's standard business hours. Customer attendance at training and workshops is limited to three (3) attendees unless conducted onsite at Customer's offices, or otherwise agreed to in writing by the Parties. The ProServ and related materials will be provided in English.

7.5 **Travel and Living Expenses.** If Customer requests that Optimizely travel to provide the ProServ, Customer shall pay all pre-approved, and reasonable expenses incurred by Optimizely for the ProServ, including, but not limited to travel, living and administrative expenses incurred by Optimizely while away from Optimizely principal offices and/or local travel. Optimizely shall provide copies of receipts for travel and living expenses charged to Customer. All travel and living expenses by Optimizely shall be in accordance with Optimizely's standard travel and expense policy.

7.6 **Exclusions.** Except as expressly stated in the Documentation, any Scope Document or the Order, the ProServ do not include any custom development work, implementation or work on any non-Optimizely systems (including but not limited to, implementation on Customer's or other parties' internal Code), or any auditing or re-instrumenting of Customer's analytics metrics, segments, or dimensions, and Optimizely is not responsible for the setup, configuration, or implementation of any ProServ in Optimizely's, the Customer's or any Third-Party's environment, including any integration with Third-Party systems and implementation of Optimizely's snippet and/or software development kits (SDKs). Optimizely will not be responsible for delays or failures caused by Customer or other parties, or by events beyond its reasonable control.

7.7 **Inappropriate Behaviour.** Optimizely reserves the right to refuse, limit, suspend or cancel any ProServ if Customer, in the reasonable opinion of Optimizely, displays inappropriate behaviour, including violence, abuse, intimidation, sexism, racism or other forms of anti-social or illegal behaviour, or behaviour contrary to Optimizely's codes of conduct to any Consultant. In any such case, Customer shall have no entitlement to, or liability to pay, a refund with respect to any Fees paid for ProServ delivered then-to date.

7.8 **Non-solicitation.** Both Parties agree that during the term of the applicable Agreement and for a further period of twelve (12) months ("Restricted Period"), neither Party will knowingly solicit for employment or hire any person employed by the other. Nothing in this section will be construed to prohibit individual employees from responding to public employment advertisements, postings or job fairs of either Party, provided such response is not prompted by a Party intentionally circumventing the restriction of this section.