

# TERMS OF USE (“TOU”)

THESE TERMS OF USE (in the version dated June 22, 2021) GOVERN THE USE BY ANY PERSON OR ENTITY OF THE APPLICATION SERVICES (AS DEFINED BELOW) PROVIDED BY ADVERTITY GMBH WITH COMPANY REGISTRATION NUMBER 448481 g.

PLEASE READ THESE TERMS CAREFULLY BEFORE USING THE APPLICATION SERVICES!

## 1. SCOPE OF APPLICATION

- a. Adverity exclusively provides its Application Services to entrepreneurs. The User represents and warrants that they act as an entrepreneur and is not considered as a consumer. The User further represents and warrants that neither minors, consumers nor other unauthorized third-parties use the Application Services within their sphere of responsibility.
- b. Any terms and conditions of the User, that deviate from the TOU shall be ineffective, even if they claim (exclusive) validity.
- c. Adverity is entitled to amend the TOU at any time at its discretion following section 16.
- d. By agreeing to the TOU and/or by using the Application Services, the User agrees to be legally bound by all terms, conditions, and notices contained or referenced in these TOU as well as by the Data Processing Agreement. If the User disagrees with any of the above-mentioned terms, they may not use the Application Services. For the sake of clarity, each User expressly agrees to be bound by these TOU.

## 2. DEFINITIONS

“**Account**” means the account for the Platform, created by each user to access the Application Services. The Account is strictly limited to the use of one user.

“**Adverity**” means Adverity GmbH, an Austrian company whose registered business address is Rathausstrasse 1/2nd Floor, 1010 Vienna, registered at Handelsgericht Wien with the company registration number 448481g and all its Affiliates.

“**Administrator**” means a natural person who is designated by the User’s company to administer the Application Services on behalf of the User’s company, including granting access to the Application Services as well as enabling features and functions on the Platform, that could incur additional costs.

“**Affiliate**” means an affiliated entity that is directly or indirectly, through one or more intermediaries, controlled by, or is under common control with, another person or entity. The term “controlled” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting stock, by contract, or otherwise.

“**Applicable Law**” means all laws, regulations, and legal obligations which are applicable in the Republic of Austria, including the provisions on the competent court of jurisdiction.

“**Application Services**” means the products and services offered by Adverity, which User orders based on a commercial agreement, a proof-of-concept agreement, or a similar agreement and are made available online by Adverity via a password-protected user login.

“**Beta Services**” means any products or services created or provided by Adverity that are not generally available to Adverity’s users.

“**Confidential Information**” shall have the meaning outlined in section 10.

“**Effective Date**” means the date on which an agreement about the provision of the Application Services is concluded between the Parties or, at the latest, the date on which User started using the Application Services.



**“Feedback”** means any materials, including but not limited to comments, suggestions, ideas, or other information provided by the User to Adverity.

**“Malicious Code”** means viruses, worms, time bombs, trojan horses, and other harmful or malicious code, files, scripts, agents, or programs.

**“Party”** and **“Parties”** means Adverity and/or the User concerning their business relationship.

**“Platform”** refers to a specific URL, provided by Adverity, where the Application Services are operating.

**“Subscription”** means the provision of the Application Services from Adverity to User via the Platform.

**“Subscription Term”** means the agreed period for which Adverity makes available the Application Services to the User.

**“TOU”** means these Terms of Use, which are deemed to be accepted by using the Application Services.

**“User”** means anyone who uses the Application Services.

**“User Data”** means all electronic data or information submitted by the User to the Application Services.

**“User Guide”** means online help, training, how-to documents, and explanatory materials that assist the User in using the Application Services (as such materials may be updated from time to time), accessible via log-in to the Application Services or otherwise as made available by Adverity.

### 3. ACCOUNT REGISTRATION

To use the Application Services, an Account will be provisioned to the User and the latter must represent and warrant:

- a. to provide Adverity with accurate, up-to-date, and complete information, which is required to set up an account;
- b. to keep any logins, passwords, or other credentials in connection with the Application Services secret;
- c. to maintain and promptly update any information the User provides to Adverity; and
- d. to notify Adverity immediately of any unauthorized use of this information or any other breach of security within their sphere of responsibility by sending an email to [support@adverity.com](mailto:support@adverity.com).

### 4. USE OF APPLICATION SERVICES

- a. The User shall:
  - i. be responsible for their compliance with the TOU, the Applicable Law as well as for the accuracy, quality, and legality of the User Data and of how the User acquires the User Data. The User represents and warrants that the User Data will not infringe any copyright, patent, trade secret, or other proprietary right held by any third party;
  - ii. use all reasonable efforts to prevent unauthorized access to, or use of, the Application Services, and notify Adverity promptly of any such unauthorized access or use;
  - iii. use the Application Services only following the User Guide and the Applicable Law; and
  - iv. use each registration and each Account exclusively by themselves. The joint use of one Account by several people or the transfer of the Account to a third party, either against payment or for free, is strictly forbidden.
- b. The User shall not:
  - i. make the Application Services available to anyone else;
  - ii. sell, resell, rent, or lease the Application Services or the right to use them;
  - iii. use the Application Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party rights;
  - iv. use the Application Services to store or transmit Malicious Code;

- v. interfere with or disrupt the integrity or performance of the Application Services or third-party data contained therein;
  - vi. attempt to gain unauthorized access to the Application Services or their related systems or networks; or
  - vii. use the Application Services beyond the scope permitted in writing.
- c. In the event, the User breaches any provision of the TOU Adverity may, in addition to any other right which Adverity might have under the Applicable Law, suspend the User's access to the Application Services.

## **5. THIRD-PARTY SERVICES**

- a. The Application Services allow the User to gather data from multiple third-party data sources and services, including various third-party websites. The third-party services from which the data can be gathered are selected by Adverity at its sole discretion and Adverity reserves the right to select, discontinue and change such available sources at any time. Adverity assumes no liability whatsoever for the data or other content collected from third-party services.
- b. The User is solely responsible for ascertaining that they have the right to use the third-party services for gathering and processing any such data by using the Application Services, and the User must obtain any such consents and authorizations as may be needed from time to time concerning such data or other content and their processing.
- c. The Application Services may be used as an add-on to various third-party services and software. Adverity does not assume any liability for such third-party services or software, the User is exclusively responsible for obtaining any necessary licenses or consents needed for their use. The User must familiarize themselves with the applicable terms and conditions, including any restrictions on use, concerning any such third-party services the User agrees to comply with such third-party terms and conditions in addition to the TOU.
- d. Furthermore, the Application Services may contain links to websites and content of third parties as a service to those interested in this information. Adverity does not monitor, endorse, or adopt, or have any control over, any third-party content. Adverity undertakes no responsibility to update or review any third-party content and can make no guarantee as to its accuracy or completeness. Additionally, if the User follows a link or otherwise navigates away from the Application Services, they need to be aware that the TOU will no longer govern. The User should review the applicable terms and policies, including privacy and data gathering practices, of any third-party content or service provider to which they navigate from the Application Services. The User accesses and uses third-party content at their own risk.
- e. The Application Services may contain advertisements and promotions from third parties. The User's business dealings or correspondence with, or participation in promotions of, advertisers other than Adverity, and any terms, conditions, warranties, or representations associated with such dealings, are solely between the User and such third party.

## **6. MODIFICATIONS TO THE APPLICATION SERVICES**

- a. Adverity reserves the right to modify, discontinue, and restrict, temporarily or permanently, all or part of the Applications Services at its sole discretion. Neither Adverity nor its suppliers will be liable to the User or any third party for any modification, discontinuance, or restriction of the Application Services.
- b. If Adverity ceases the Application Services, it shall – at its sole discretion – and as the User's exclusive remedy;



- i. permit the User to continue the use of the Application Services until the end of the Subscription Term; or
  - ii. terminate the Subscription of the User before the end of the Subscription Term and refund them any pre-paid Subscription Fee on a prorated basis.
- c. From time to time, Adverity may invite the User to try, at no additional charge, Beta Services. Any Beta Services will be designated as beta, pilot, limited release, developer preview, non-production, or by a description of similar import. Beta Services are provided for evaluation purposes and not for production use, are not supported, may contain bugs or errors, are subject to change in Adverity's sole discretion, and may be subject to additional terms. The User shall immediately inform Adverity of any bugs or errors experienced, and otherwise, provide its feedback to, and cooperate with, Adverity on Beta Services as reasonably requested by Adverity. Beta Services are provided "as is" with no express or implied warranty and Adverity disclaims all liability for Beta Services. Adverity may discontinue Beta Services at any time in Adverity's sole discretion and may never make them generally available.

## **7. USER'S FEEDBACK**

The User grants Adverity a nonexclusive, royalty-free, perpetual, irrevocable, and fully sublicensable right to use their feedback for any purpose without compensation or attribution to the User.

## **8. PROPRIETARY RIGHTS**

- a. Adverity reserves all rights, title, and interest in and to the Application Services, including all related intellectual property rights. No rights are granted to User hereunder other than as expressly set forth herein.
- b. User shall not:
  - i. modify, copy, or create derivative works based on the Application Services;
  - ii. reverse engineer the Application Services; or
  - iii. access the Application Services to
    - build a competitive product or service, or
    - copy any ideas, features, functions, or graphics of the Application Services.
- c. As between User and Adverity, User shall own all User Data, including all reports, statistics, and other data to the extent generated solely from User Data, and all intellectual property rights therein.
- d. Adverity shall own all rights, title, and interest, including all intellectual property rights, in and to any improvements to the Application Services or any new programs, upgrades, modifications, or enhancements developed by Adverity in connection with rendering the Application Services to User, even when refinements and improvements result from User's request or suggestion. In the case that the intellectual property rights of such refinements and improvements are not automatically transferred to Adverity under the TOU or otherwise, User hereby transfers and assigns (and, if applicable, shall cause its Affiliates to transfer and assign) to Adverity all rights, title, and interest which User or its Affiliates may have in or to such refinements and improvements.
- e. The User agrees that Adverity may disclose the relationship between the User and Adverity as well as the User's name and logo on Adverity's website and in promotional materials.

## **9. INDEMNIFICATION**

- a. Adverity shall defend User against any claim, demand, suit, or proceeding made or brought against User by a third party alleging that the use of the Application Services as permitted hereunder infringes or misappropriates the intellectual property rights of a third party (a "Claim Against User"),



and shall indemnify User for any damages, attorneys' fees and other costs finally awarded against User as a result of, and for amounts paid by User under a court-approved settlement of, a Claim Against User; provided that User:

- i. promptly gives Adverity written notice of the Claim Against User;
  - ii. gives Adverity sole control of the defense or settlement of the Claim Against User (provided that Adverity may not settle any Claim Against User unless the settlement unconditionally releases Customer of all liability); and
  - iii. provides to Adverity reasonable assistance, at Adverity's expense. If Adverity receives information regarding an infringement, misappropriation, or another claim, Adverity may in Adverity's discretion, and at no cost to User
    - modify the Application Services, so that they no longer infringe,
    - misappropriate, or give rise to any other claim;
    - obtain a license for User's continued use of the subject Application Services following the TOU; or
    - terminate the User's Subscription for such Application Services upon 30 days written notice and refund to User any prepaid fees covering the remainder of the term of the terminated Subscription.
- b. Adverity shall have no obligation to indemnify User to the extent any Claim Against User arises from User's breach of these Terms.
- c. The User shall defend Adverity against any claim, demand, suit, or proceeding made or brought against Adverity by a third party alleging that the User Data or the use of the Application Services by the User is in breach of these Terms, infringe or misappropriate the property rights of a third party or violates Applicable Law and shall indemnify Adverity for any damages, attorneys' fees, and other costs finally awarded against Adverity as a result of, or for any amounts paid by Adverity under a court-approved settlement of a claim against Adverity, provided that Adverity:
- i. promptly gives the User written notice of the claim against Adverity;
  - ii. gives the User sole control of the defense or settlement of the claim against Adverity (provided that the User may not settle any claim against Adverity unless the settlement unconditionally releases Adverity of all liability); and
  - iii. provides to the User all reasonable assistance, at the User's expense.

## 10. CONFIDENTIAL INFORMATION

- a. "Confidential Information" means (a) any technical and business information relating to proprietary ideas, patentable ideas and/or trade secrets, existing and/or contemplated products and services, research and development, production, costs, profit and margin information, finances and financial projections, clients, marketing, and current or future business plans and models, regardless of whether such information is designated as "Confidential Information" at the time of its disclosure; (b) any product information of Adverity's Application Services as well as data transferred via the Application Services; (c) in addition to the above, Confidential Information shall also include, and the Parties shall have a duty to protect other confidential and/or sensitive information which is (I) disclosed as such in writing and marked as confidential (or with other similar designation) at the time of disclosure; and/or (II) disclosed in any other manner and identified as confidential at the time of disclosure and which is summarized and designated as confidential in a written memorandum delivered within 30 days after the disclosure; and (d) excludes any information that is (I) is in possession of a Party prior to its receipt from the other Party; (II) is or becomes publicly known without a breach of this section 10.; (III) is developed independently by the other Party; or

(IV) is received from another source who can disclose it lawfully and without an obligation to keep it confidential.

- b. The Parties shall only use the Confidential Information for the Purpose and shall not disclose the Confidential Information to third parties. Either Party may disclose the other Party's Confidential Information if required by law as long as the other Party will be informed promptly by written notice (to the extent permitted by law) of the requirement before the disclosure and assistance will be provided to the other Party in obtaining an order protecting the information from public disclosure. Neither party shall reverse engineer, disassemble, or decompile any prototypes, software, samples, or other tangible objects that embody the Confidential Information.
- c. The Parties acknowledge that the Confidential Information is a valuable, special, and unique asset for each Party which shall be protected with the highest standard of care. Therefore, the Parties agree that they shall not disclose, utilize, employ, exploit or in any other manner use the Confidential Information disclosed by the other Party for any other reason than the Purpose. The Parties shall limit disclosure of Confidential Information within their organization to those directors, officers, partners, contractors, and/or employees having a need to know and shall not disclose Confidential Information to any third party without the prior written consent of the other Party. Before the disclosure, each Party must ensure that the recipients are required to protect the Confidential Information on terms as protective as this section 10. and accept responsibility for each recipient's use of Confidential Information. Upon request, the Parties shall provide each other with a complete and updated list of all such recipients. The Parties shall take reasonable measures to protect the secrecy of and avoid disclosure and/or unauthorized use of the Confidential Information. A Party shall promptly notify the other Party of any actual or suspected unauthorized use or disclosure of the Confidential Information.
- d. If a Party discloses Confidential Information in violation of this section 10., the Party in breach shall notify the other Party in writing of such disclosure immediately upon discovery of the violation and no later than 5 business days after such disclosure.
- e. Neither Party shall be obliged to disclose or provide any Confidential Information to the other Party. Nothing in this section 10. shall obligate the Parties to purchase any service, goods, or intangibles from the other Party or to proceed with any transaction between them or contemplated by this section 10.
- f. ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS." THE PARTIES MAKE NO WARRANTIES, EXPRESS, IMPLIED, OR OTHERWISE, REGARDING THE ACCURACY, COMPLETENESS, OR PERFORMANCE OF ITS CONFIDENTIAL INFORMATION. EACH PARTY REPRESENTS AND WARRANTS THAT IT HAS THE RIGHT TO DISCLOSE ALL CONFIDENTIAL INFORMATION PROVIDED TO THE OTHER PARTY. THE PARTIES SHALL INDEMNIFY AND DEFEND EACH OTHER FROM ALL THIRD-PARTY CLAIMS RESULTING FROM THE NEGLIGENT OR WRONGFUL DISCLOSURE OF A THIRD PARTY'S CONFIDENTIAL INFORMATION.
- g. All documents and other tangible objects containing or representing Confidential Information and all copies of them shall be and remain the property of the disclosing Party and shall be promptly returned to this Party or destroyed (with proof of such destruction), each within 14 days of the written request or upon the termination of the Parties' business relationship.
- h. Nothing in this section 10. is intended to grant any rights in or to the Confidential Information, including without limitation, under any patent, copyright, or another intellectual property right of the other Party.

- i. Each Party acknowledges that any violation or threatened violation of this section 10. may cause irreparable injury to the other Party, entitling the other Party to seek injunctive relief in addition to all legal remedies.

## **11. DATA PROTECTION**

The User agrees to be legally bound by all terms, conditions and notices contained or referenced in the Data Processing Agreement (find below), which forms an integral part of the TOU.

## **12. AGGREGATED ANONYMOUS DATA**

- a. Notwithstanding anything to the contrary herein, the User consents that Adverity may obtain and aggregate
  - i. technical and other data about the User's use of the Application Services; as well as
  - ii. marketing metrics data as statistical averages for benchmarking purposes.
- b. Such aggregated data is anonymous and non-personally identifiable concerning the User. Adverity may use it to analyze, improve, support, and operate the Application Services, and for commercial distribution of benchmarking data and industry reports. In that case, Adverity will not identify the User as a source of any aggregated anonymous data.

## **13. DISCLAIMER & LIMITATION OF LIABILITY**

- a. THE APPLICATION SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. ADVERITY MAKES NO REPRESENTATIONS, WARRANTIES, TERMS, CONDITIONS, OR STATEMENTS, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE REGARDING ANY MATTER, INCLUDING THE MERCHANTABILITY, SUITABILITY, OR FITNESS FOR A PARTICULAR USE OR PURPOSE, OR THAT THE OPERATIONS OF THE APPLICATION SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE.
- b. ANY (OPTIMIZATION) RECOMMENDATIONS, SUGGESTIONS, OR FORECASTS CREATED BY THE APPLICATION SERVICES AND BASED ON THE DATA PROVIDED BY THE USER ARE NOT GUARANTEED TO BE CORRECT. ADVERITY MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS, IMPLIED, OR OTHERWISE REGARDING THE ACCURACY, COMPLETENESS, OR PERFORMANCE OF THE PROVIDED INFORMATION. USER ACKNOWLEDGES THAT ADVERITY CANNOT BE HELD LIABLE AT ANY TIME FOR ANY LOSSES DUE TO DECISIONS OR TRANSACTIONS MADE BASED ON THIS INFORMATION.
- c. EXCEPT FOR BODILY INJURY OF A PERSON, ADVERITY, ITS SUPPLIERS, OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS, AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE CONCERNING ANY SUBJECT MATTER OF THIS TOU UNDER ANY CONTRACT, NEGLIGENCE STRICT LIABILITY, OR OTHER THEORY FOR AN ERROR OR INTERRUPTION OF THE USE OF FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COSTS OF PROCUREMENT OF SUBSTITUTE SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS, FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, OR FOR ANY MATTER BEYOND ADVERITY'S REASONABLE CONTROL. ADVERITY'S TOTAL LIABILITY SHALL BE LIMITED TO THE SUM OF ALL FEES PAID BY THE USER TO ADVERITY IN 12 MONTHS PRECEDING THE DAMAGING EVENT.
- d. ADVERITY SHALL NOT BE LIABLE FOR ANY LOSS OF, OR DAMAGE TO, DATA OR PROGRAMS TO THE EXTENT THAT SUCH LOSS OR DAMAGE WOULD HAVE BEEN AVOIDED OR MITIGATED BY ADEQUATE PREVENTATIVE MEASURES OF THE USER.



#### **14. ASSIGNMENT**

The Subscription is not assignable, transferable, or sublicensable by the User except with Adverity's prior written consent. Adverity may transfer and assign any of its rights and obligations under the TOU without consent to an Affiliate.

#### **15. SEVERABILITY CLAUSE**

Should one or more provisions of the TOU be or become invalid, the remaining clauses of the TOU shall not be affected. The Parties shall replace the invalid provision with a replacement provision that would have been agreed by the Parties according to their original economic intentions. This principle shall also apply in the case of any unintentional contractual gaps.

#### **16. AMENDMENTS TO THE TERMS OF USE**

- a. Adverity is entitled to amend the TOU from time to time for any reason by giving the User notice via email or through the Application Service Platform.
- b. If the User does not agree to the amendments, Adverity shall, at its sole decision and as the User's exclusive remedy;
  - i. permit the User to continue the use of the Application Services according to the prior version of the Terms until the end of the then-current Subscription Term; or
  - ii. terminate the Subscription of the User before the end of the Subscription Term and refund them any pre-paid Subscription Fee on a prorated basis.
- c. Upon any amendment to these Terms, the User may be required to actively consent to the updated Terms by clicking a consent button within the Platform. The continued use of the Application Services, after the amendments of the Terms become effective, constitutes the User's acceptance of the amendments.

#### **17. GOVERNING LAW**

These Terms shall be governed exclusively by the laws which are applicable in the Republic of Austria (without regard to its conflict of law rules and the United Nations Convention on Contracts for the International Sale of Goods ["CISG"]). Exclusive legal venue for all disputes under or in connection with the Terms shall be with the courts of Vienna, Austria, having subject matter and territorial jurisdiction.

#### **18. SURVIVING PROVISIONS**

The following provisions shall survive even after the Subscription has ended: USER'S FEEDBACK; PROPRIETARY RIGHTS; INDEMNIFICATION; CONFIDENTIAL INFORMATION; DATA PROTECTION; AGGREGATED ANONYMOUS DATA; DISCLAIMER & LIMITATION OF LIABILITY; AMENDMENTS TO THE TERMS OF USE; GOVERNING LAW.

#### *Document Information*

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