

SUBSCRIPTION AGREEMENT

THIS SUBSCRIPTION AGREEMENT (“Agreement”) (in the version dated **October 14, 2022**) GOVERNS THE USE BY ANY PERSON OR ENTITY (“CUSTOMER”) OF THE APPLICATION SERVICES (AS DEFINED BELOW) PROVIDED BY ADVERITY GMBH (“ADVERITY”) WITH COMPANY REGISTRATION NUMBER 448481 g. ADVERITY OFFERS ACCESS TO AND USE OF THE APPLICATION SERVICES SUBJECT TO THE TERMS AND CONDITIONS SET FORTH BELOW AND CUSTOMER AGREES TO ALL THESE TERMS AND CONDITIONS UPON PROVISION OF A SUBSCRIPTION TO THE APPLICATION SERVICES THROUGH ADVERITY PORTAL (AS HEREAFTER DEFINED).

Customer and Adverity may be referred to herein individually as a “Party” and collectively as the “Parties.” This Agreement shall enter into force on the Effective Date (as defined below).

I. DEFINITIONS

“**Account**” means the account for the Adverity Portal, created by each User to access the Application Services. The Account is strictly limited to the use by one User.

“**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 Adverity Portal, that could incur additional costs.

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

“**Affiliate**” means an affiliated entity pursuant to Section 189a No. 8 Austrian Commercial Code (Unternehmensgesetzbuch) and/or an associated entity pursuant to Section 189a No. 9 Austrian Commercial Code (Unternehmensgesetzbuch).

“**Agreement**” means this Subscription Agreement , which is deemed to be accepted by using the Application Services and / or upon purchasing a Subscription for an Account at Adverity Portal.

“**Application Services**” means the products and services offered by Adverity, which are provided through the Adverity Portal and made available online via a password-protected customer login.

“**Confidential Information**” shall have the meaning set forth in Section VII.

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

“**Customer Support**” shall have the meaning set forth in Section III.4.

“**Effective Date**” means the date on which the Customer agrees to comply with this Agreement within Adverity Portal or, at the latest, the date on which the Customer starts using the Application Services.

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

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

“**Payment Provider**” means the third-party payment processing provider as appointed by Adverity.

“**Services**” means the Application Services and professional services collectively.

“**Subscription**” means the provision of the Application Services from Adverity to Customer via Adverity Portal, in accordance with the package chosen by Customer.

“**Subscription Package**” means the pre-defined package offered by Adverity and accepted by Customer which forms the Subscription, being either a free package or a paid package.

“**Subscription Term**” means the period for which Adverity makes the Application Services available to the Customer, as stated in the Subscription Package.

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

“**User Guide**” means online help, training, how-to documents and explanatory materials provided by Adverity that assist Customers 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.

II. APPLICATION SERVICES

II.1. Provision of Application Services

Adverity shall make the Application Services available to Customer pursuant to this Agreement during each Subscription Term. Customer agrees that Customer's purchases hereunder are neither contingent on the delivery of any future functionality or features, nor dependent on any oral or written public comments made by Adverity regarding future functionality or features.

II.2. Subscriptions

Unless otherwise agreed between the Parties:

- a. Application Services are provisioned to Customer as Subscriptions and may be accessed only in accordance with this Agreement.
- b. Customer may add additional Application Services during the applicable Subscription Term on terms agreed by both Parties by purchasing a new Subscription as described at IV.1 (*Subscription Fees*) or as otherwise agreed by the parties;
- c. The added Application Services shall commence and terminate on the dates agreed upon by the parties via Adverity Portal.

II.3. Account Registration

To use the Application Services, an Account will be provisioned to the user, and the Customer agrees to, and causes all authorized users:

- 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 Customer 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.

Any activity on an Account shall be the sole responsibility of the Customer.

II.4. Eligibility

The Application Services are provided exclusively to commercial users. The Customer represents and warrants that their authorized Users act in its commercial interests and are not considered as consumers. The Customer further represents and warrants that neither minors, consumers nor other unauthorized third parties use the Application Services within their sphere of responsibility.

III. USE OF APPLICATION SERVICES

III.1. Use of Application Services

Adverity shall:

- a. Provide basic Customer Support for the Application Services to Customer in accordance with Section III.4. at no additional charge, or upgraded support if purchased; and
- b. Use commercially reasonable efforts to make the Application Services available 24 hours a day, 7 days a week, except for:
 - (i) planned downtime (of which Adverity shall give at least 24 hours' notice online via the Application Services or via email), or
 - (ii) any unavailability caused by circumstances beyond Adverity's reasonable control, including - without limitation -, acts of God, acts of government, floods, fires, earthquakes, civil unrest, acts of terror, pandemic or widespread illness as identified by the World Health Organization, strikes or other labor problems, failures, downtime or delays by an Internet service provider, hosting provider, or third-party platform, or denial of service attacks.

III.2 Customer Responsibilities

a. Customer shall:

- (i) be responsible for its compliance with this Agreement, applicable laws and government regulations;
- (ii) be responsible for the accuracy, quality and legality of Customer Data and of the means by which Customer acquires the Customer Data;
- (iii) 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

- (iv) use the Application Services only in accordance with the User Guide and applicable laws and government regulations; and
 - (v) ensure that each registration and each Account is used exclusively by one User. The joint use of a single Account by several people or the transfer of the Account to a third party, either against payment or for free, is forbidden.
- b. Customer shall not:
- (i) make the Application Services available to anyone other than its employees who are authorized by Customer to use the Application Services;
 - (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 Services beyond the scope permitted in writing.
- c. The Customer understands and agrees that its use of the Application Services is metered by Adverity and is limited in accordance with the metered amounts of usage as agreed in Customer's Subscription. If the Customer's use of the Application Services exceeds the amount of usage included within its Subscription, an additional usage fee will be charged accordingly as further described at Section IV.1.(b).
- d. The Administrator may manage Customer's Subscription via Adverity Portal.
- e. Adverity shall be entitled (but not obliged) to verify at its own cost that Customer is following its responsibilities pursuant to this Section III.2. In the event Customer breaches any provision of this Section III.2, Adverity may, in addition to any other rights which Adverity may have under this Agreement or by law, temporarily suspend Customer's access to the Application Services.
- f. There may be additional use restrictions, which

may change from time to time, and Adverity will use reasonable efforts to provide the Customer with advance notice of impending changes in a timely manner.

III.3. Transfer of Application Services

- a. The Customer subscribes to the Application Services for its own use and shall not enable access to any third party (e.g. Customer's Clients, Customer's affiliates, etc), either against payment or free of charge. For such purposes a separate agreement is necessary and can be provisioned.
- b. Nothing in this Agreement shall prevent the Customer from making any data and information obtained from the Application Services available to third parties via the data provisioning features or the dashboard sharing and export functionalities of the Application Services.

III.4 Technical and User Support

- a. Adverity will provide Customer with Technical and User Support during the Subscription Term which includes: Adverity's knowledge base articles and product release notes, available via the Application Services, as well as in-app guides, support documentation and communication via chat or email.
- b. Customer Support does not include Implementation/Professional Services programming, detailed or specialized maintenance, provision of enhancements, or support in different components that are not part of the Application Services.

IV. FEES AND PAYMENT

IV.1. Subscription Fees

- a. Customer will be charged and is required to pay the fees according to the Subscription Package chosen in the Adverity Portal. If the Customer exceeds the usage limits included within its Subscription Package, Customer may be notified and its use may be restricted by Adverity. In case of a restriction, the Customer's further usage will be restored if:

- (i) Customer submits valid payment details within the third party environment of Payment Provider when prompted within Adverity Portal.
- b. By complying with section IV.1 (a) above, Customer agrees:
 - (i) that it authorizes Adverity to submit charges through the Payment Provider's payment processing services.
 - (ii) its Subscription Package will automatically and immediately be replaced with the chosen Subscription Package and Customer may be charged additional usage fees according to the usage terms agreed within Adverity Portal for this new Subscription. Except as otherwise agreed, the Subscription to the Application Services purchased cannot be decreased during the Subscription Term. Subject to Sections V., X.1 and XII.3. below, payments the Customer makes pursuant to this Agreement are non-refundable, and all commitments to make any payments hereunder are non-cancellable; and;
 - (iii) Customer's usage of the Application Services, during its Subscription, may also incur additional fees charged by Payment Provider for which Customer is solely responsible.
 - (iv) Adverity may restrict the ability to change subscriptions within a reasonable period, in case of abusive behavior.

IV.2. Invoicing and Payment

Payments of the fees by the Customer are handled and managed through Payment Provider.

Customer accepts that Adverity reporting Customer's usage of Application Services to Payment Provider.

IV.3. Suspension of Application Services

If any amount owed by Customer under this or any other agreement for the Services is 30 days or more overdue, Adverity may, without limiting Adverity's other rights and remedies, accelerate Customer's unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Customer's access to the Application Services.

IV.4. Costs of litigation

In the event of any litigation in relation to overdue charges, the prevailing party shall be entitled to reasonable legal fees and court costs.

IV.5. Taxes

Unless otherwise stated, Adverity's fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). Customer is responsible for paying all taxes associated with Customer's purchases hereunder. If Adverity has the legal obligation to pay or collect taxes for which Customer is responsible, the appropriate amount shall be invoiced to and paid by Customer in addition, unless Customer provides Adverity with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, Adverity is solely responsible for taxes assessable against Adverity based on Adverity's income, property, and employees.

V. MODIFICATIONS TO THE APPLICATION SERVICES

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 or its suppliers will be liable to the Customer or to any third party for any modification, discontinuance.

If Adverity ceases the Application Services, it shall – at its sole discretion – and as the Customer's exclusive remedy;

- a. permit the Customer to continue the use of the Application Services until the end of the Subscription Term; or
- b. terminate the Subscription of the Customer before the end of the Subscription Term;

and after the effective date of termination, Adverity shall refund to Customer any prepaid fees covering the remaining period of the Subscription Term.

VI. PROPRIETARY RIGHTS

VI.1. Reservation of Rights

Subject to the limited rights expressly granted hereunder, Adverity reserves all rights, title and interest in and to the Application Services, including all related intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth herein.

VI.2. Restrictions

Customer shall not:

- a. modify, copy, or create derivative works based on the Application Services;
- b. reverse engineer the Application Services; or
- c. access the Application Services to
 - (i) build a competitive product or service, or
 - (ii) copy any ideas, features, functions, or graphics of the Application Services.

The above shall not limit any rights of Customer arising out of mandatory statutory legislation.

VI.3. Customer Data

As between Customer and Adverity, Customer shall own all Customer Data, including all reports, statistics, and other data to the extent generated solely from Customer Data, and all intellectual property rights therein. Notwithstanding the foregoing, Adverity shall have the right to collect and use Customer Data in relation to the provision of the Services to Customer.

VI.4 Aggregated anonymous data

Notwithstanding anything to the contrary set forth herein, Adverity may collect and aggregate (i) technical and other data about the User's use of the Application Services ("Aggregated User Data") and (ii) marketing metrics data as statistical averages for benchmarking purposes if the Administrator consents thereto by enabling certain features and functions within Adverity Portal in relation to benchmarking ("Aggregate Marketing Metrics Data") (together "Aggregated Data").

Such Aggregated Data is anonymous and shall not permit any identification or ability to reverse engineer or identify any data subject, User or Customer client, the Customer or any of their Affiliates or products or Services.

Upon its creation, Adverity will be the owner of Aggregated Data and may copy, commingle, and use such data, in Adverity's sole discretion, for any lawful purpose, including but not limited to analyze, improve, support and operate the Application Services and for commercial distribution of benchmarking data and industry reports, during and after the Term.

Customer may withdraw its consent to the export of Aggregated Marketing Metrics Data through the Application Services by disabling certain features and functions within the Adverity Portal in relation to benchmarking.

VI.5. Improvements

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 Customer, even when refinements and improvements result from Customer's request or suggestion. In the case that the intellectual property rights of such refinements and improvements are not automatically transferred to Adverity by virtue of this Agreement or otherwise, Customer hereby transfers and assigns (and, if applicable, shall cause its Affiliates to transfer and assign) to Adverity all rights, title, and interest which Customer or its Affiliates may have in or to such refinements and improvements. The

Customer 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 Customer.

VI.6. Publicity; Trademarks

Neither Party may issue press releases or any other public announcement of any kind relating to this Agreement without the other Party's prior written consent (email is sufficient). Notwithstanding the foregoing, during the Term, either Party may include the name and logo of the other Party in lists (including on its website) of customers or vendors in accordance with the other Party's standard logo and/or trademark usage guidelines. In addition, Adverity may use the trademarks and trade names of Customer solely in connection with its authorized provision of the Application Services. Except as set forth herein, neither Party may use the trademarks and trade names of the other Party without the prior written consent of the other Party.

VII. CONFIDENTIALITY

VII.1. Definition of Confidential information

- a. As used herein, "Confidential Information" means all information disclosed by a Party ("Disclosing Party") to the other Party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Customer Confidential Information shall include Customer Data; Adverity Confidential Information shall include the Application Services; and Confidential Information of each Party shall include the terms and conditions of this Agreement.
- b. Confidential Information also includes:
 - (i) 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, customers, 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;
 - (ii) any Application Services or product related information of Adverity GmbH platforms as well as data transferred via the platforms;
 - (iii) 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 by in any other manner and identified as confidential at the time of disclosure and is also summarized and designated as confidential in a written memorandum delivered within thirty (30) days of the disclosure.

- c. Confidential Information shall not include any information that:
 - (i) is in possession of the Receiving Party prior to receipt from the Disclosing Party;
 - (ii) is or becomes publicly known, otherwise than as a consequence of a breach of this Agreement;
 - (iii) is developed independently by the Receiving Party;
 - (iv) is disclosed by the Receiving Party to satisfy a legal demand by a competent court of law or governmental body or by any applicable regulatory authority or security exchange; or
 - (v) is disclosed to a third party pursuant to written authorization from the Disclosing Party.

VII.2. Protection of Confidential Information

The Receiving party:

- a. shall use the same degree of care that it uses to protect the confidentiality of its own Confidential Information (but in no event less than reasonable care);
- b. will not disclose, utilize, employ, exploit or in any other manner use the Confidential Information disclosed by the Disclosing Party for any reason or purpose other than to fulfil its (pre-contractual) obligations arising out of cooperation between the Parties;
- c. except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees, contractors, and agents who need such access for purposes consistent with this Agreement and who have signed agreements with the Receiving Party containing protections no less stringent than those herein. Neither Party shall disclose the terms of this Agreement to any third party, other than its Affiliates and their legal counsel and accountants, without the other Party's prior written consent.

The obligations under Section VII. of each of the Parties shall continue, even if the contractual relationship between them has ended, without any restriction. Regarding the end of the contractual relationship, reference is made to Section VII.5.

VII.3. Compelled Disclosure

The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

VII.4. Unintentional Disclosure and Remedies

- a. If the Receiving Party discloses Confidential Information in violation of the terms of this Section VIII., the Disclosing Party shall be promptly notified of such disclosure in writing after such disclosure.
- b. The Parties each expressly agree that due to the unique nature of the Disclosing Party's Confidential Information, monetary damages may be inadequate to compensate the Disclosing Party for any breach by the Receiving Party of its covenants and agreements set forth in this Section VIII. Accordingly, the Parties each agree and acknowledge that any such violation or threatened violation shall cause irreparable injury to the Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, the Disclosing Party shall be entitled to seek injunctive relief against the threatened breach of this Section VIII. or the continuation of any such breach by the Receiving Party.
- c. Each Party warrants that it has the right to disclose all Confidential Information that it disclose to the other Party. Each Party will indemnify and defend the other from all third-party claims resulting from the negligent or wrongful disclosure by the indemnifying Party of a third-party's confidential information.

VII.5. Request for Return

The Disclosing Party may request in writing at any time that any Confidential Information disclosed to the Receiving Party be returned with a written statement to the effect that upon such return it has not retained in its possession or under its control, either directly or indirectly, any Confidential Information. The Receiving Party shall comply with any such request within fourteen (14) days of receipt of such request. If the Receiving Party objects to such request for return, the Confidential Information shall be destroyed upon request by the Disclosing Party. In such case the Receiving Party shall provide the Disclosing Party with a written statement under oath certifying that the respective Confidential Information has been destroyed.

VII.6. Proprietary Rights concerning Confidential Information

Section VI. shall apply mutatis mutandis.

VII.7. Right to Control

The Receiving Party will provide the Disclosing Party upon request with a complete and up-dated list of those of its employees and professional advisors, agents and consultants who are or will be provided with the Confidential Information.

VIII. DATA PROTECTION AND CONSENT TO CONTACTING

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

Customer consents to Adverity using information and data concerning the Customer for the purpose of contacting the Customer regarding promotions, products and Services offered by Adverity. Such consent may be withdrawn by the Customer at any time.

IX. WARRANTIES; DISCLAIMERS

IX.1. Representations

Each Party represents that it has validly entered into this Agreement and has the legal power to do so, and this Agreement constitutes the legal, valid, and binding obligation of each party, enforceable in accordance with its terms.

IX.2. Adverity Warranties

Adverity warrants that:

- a. the Application Services shall perform materially in accordance with the User Guide; and
- b. Adverity will not knowingly transmit Malicious Code to Customer.

For any breach of a warranty above, Customer's exclusive remedy shall be as provided in Sections XII.3 and XII.6. below.

IX.3. Customer Warranties

Customer represents and warrants that:

- a. the Customer Data shall not infringe on any copyright, patent, trade secret, or other proprietary right held by any third party; and
- b. Customer shall not use the Application Services in a manner that violates any applicable legislation or any regulation relating to individual privacy.

IX.4. Beta Services

From time to time, Adverity may invite Customer to try, at no charge, Adverity products or services that are not generally available to Adverity customers ("Beta Services"). Any Beta Services will be clearly 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. Customer 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 any and all liability for beta services, except in cases of section XI.4. Adverity may discontinue Beta Services at any time in Adverity's sole discretion and may never make them generally available.

IX.5. Disclaimer

- a. Any (optimization) recommendations, suggestions or forecasts created by the Application Services and based on the data provided by Customer 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. Customer acknowledges that Adverity cannot be held liable at any time for any losses due to decisions or transactions made based on this information.
- b. Except as expressly provided in this Agreement, 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.

X. INDEMNIFICATION

X.1. Indemnification by Adverity

Adverity shall defend Customer against any claim, demand, suit, or proceeding made or brought against Customer 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 Customer"), and shall indemnify Customer for any damages, attorneys' fees and other costs finally awarded against Customer as a result of, and for amounts paid by Customer under a court approved settlement of, a Claim Against Customer; provided that Customer:

- a. promptly gives Adverity written notice of the Claim Against Customer;
- b. gives Adverity sole control of the defense or settlement of the Claim Against Customer (provided that Adverity may not settle any Claim Against Customer unless the settlement unconditionally releases Customer of all liability); and
- c. provides to Adverity reasonable assistance, at Adverity's expense.

If Adverity receives information regarding an infringement, misappropriation, or other claim, Adverity may in Adverity's discretion, and at no cost to Customer:

- (i) modify the Application Services, so that they no longer infringe, misappropriate, or give rise to any other claim, without breaching Adverity's warranties under Section IX.2 above;
- (ii) obtain a license for Customer's continued use of the subject Application Services in accordance with this Agreement; or
- (iii) terminate Customer's Subscriptions for such Application Services upon 30 days' written notice and refund to Customer any prepaid fees covering the remainder of the term of the terminated Subscriptions.

Adverity shall have no obligation to indemnify Customer to the extent any Claim Against Customer arises from Customer's breach of the terms of this Agreement.

X.2. Indemnification by Customer

Customer shall defend Adverity against any claim, demand, suit or proceeding made or brought against Adverity by a third party alleging that Customer Data, or Customer's use of the Application Services in breach of this Agreement, infringes or misappropriates the intellectual property rights of a third party or violates applicable law (a "Claim Against Adverity"), 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:

- a. promptly gives Customer written notice of the Claim Against Adverity;
- b. gives Customer sole control of the defense or settlement of the Claim Against Adverity (provided that Customer may not settle any Claim Against Adverity unless the settlement unconditionally releases Adverity of all liability); and
- c. provide to Customer all reasonable assistance, at Customer's expense.

X.3. Exclusive Remedy

This Section X.3. defines the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this Section.

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XI. LIMITATION OF LIABILITY

XI.1. General Limitation of Liability

In case of material or pecuniary damages caused by not more than ordinary negligence, Adverity and its assistants shall only be liable for breaches of essential contractual obligations, but limited to an amount of damages which could have been anticipated upon entering this Agreement and which are typical for the contract. Nothing in this Agreement shall limit or exclude either Party's liability for death or personal injury caused by its negligence; or for fraud or fraudulent misrepresentation; or any other liability that may not be excluded or limited by law.

XI.2. Limitation of Amount of Liability

Irrespective of Section XI.1 Adverity's total liability for Customer's claims arising in any contract year under or in connection with this Agreement shall be limited to the total of all fees paid by Customer for their use of the Application Services in a 12-month period preceding the damaging event.

XI.3. Indirect Damages

Adverity's liability for indirect damages, consequential damages and loss of profit shall be fully excluded in any case.

XI.4. Application of Limitations of Liability

The limitations of liability contained in Sections XI.1 through XI.3 shall not apply to contractual guarantees, damages caused intentionally or by gross negligence, or damages to life or limb. Other than that, they shall apply to any and all damage claims under or in connection with this Agreement, irrespective of the legal theory on which they are based (including tort claims).

XI.5. Loss of Data

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 Customer.

XI.6. Application of Direct Claims

The foregoing limitations of liability shall also apply to any direct damage claims which Customer may have against employees or representatives of Adverity

XI.7. Insurance

Adverity undertakes to maintain adequate insurance cover for potential liability claims which may arise under or in connection with this Agreement.

I. TERM AND TERMINATION

XII.1. Term of Agreement

This Agreement will continue from the Effective Date until the earlier of:

- a. termination of the Subscription; or
- b. termination of this Agreement as provided in this Section XII. or elsewhere in the Agreement.

Upon the termination, the Customer must immediately stop using the Application Services.

XII.2. Term of Subscriptions

- a. Subscriptions will continue and automatically renew for additional periods equal to the expiring Subscription Term unless terminated in accordance with this Agreement.
- b. Cancellation of a Subscription does not relieve the Customer of its obligation to pay the fees accrued during the Subscription Term.
- c. If Customer' opts to change its Subscription Package pursuant to Section IV.1 then such new Subscription will automatically renew at the end of the agreed Subscription Term, for additional periods equal to the expiring Subscription Term , unless either party gives the other notice of non-renewal at least 30 days before the end of the relevant Subscription Term. If the Customer signs up for such Subscription and subsequently chooses to shorten the Subscription Term, to downgrade to a lower service level, or to cancel the Subscription, the change will take effect at the end of the committed Subscription Term.

XII.3 Termination for Cause

A party may terminate this Agreement for cause any time, in particular:

- a. upon 30 days' written notice to the other party of a material breach if such breach remains uncured at the expiration of such period; or
- b. if the assets of the other party become the subject of a petition in bankruptcy or in any other similar proceeding.

Upon any termination for cause by Customer and after the effective date of termination, Adverity shall refund to Customer any prepaid fees covering the remaining period of the Subscription Term. Upon any termination for cause by Adverity, Customer shall pay any unpaid fees covering the remainder of the Subscription Term. In no event shall any termination relieve the Customer of the obligation to pay any fees payable to Adverity for the period prior to the effective date of termination.

XII.4. Termination by Adverity

Additionally, and without limiting other remedies, Adverity may suspend or terminate this Agreement, or may terminate or suspend Customer's access to and use of the Application Services at any time and with no liability to the Customer, if:

- a. the Customer has submitted information to the Application Services in violation of applicable law or otherwise used the Application Services in breach of the terms of this Agreement;
- b. the Application Services within Adverity Portal are no longer available;
- c. Payment Provider has not received payment pertaining to Customer's use of the Application Services;
- d. Adverity ceases offering or discontinues the Application Services, subject to Section V. above.
- e. the Customer is in breach of section XIV.4. (*Export Control*) below.
- f. Adverity gives not less than 30 days notice to the Customer.

XII.5. Effects of termination

If this Agreement expires or is terminated for any reason, then:

- a. all rights and access to the Application Services by the Customer will terminate, unless otherwise described in this Agreement or agreed between the Parties, and
- b. if the Agreement is terminated for any reason other than Adverity's uncured material breach in accordance with this Agreement, all unpaid fees remaining for the duration of the Subscription Term will become due and payable upon termination.

In no event shall any termination relieve the Customer of the obligation to pay any fees accrued during the Subscription Term or for any purchased Subscriptions to the Application Services and / or the usage for the period prior to the effective date of termination.

XII.6. Return of Customer Data

For a period of 7 days after expiration or termination of this Agreement, Customer Data remains stored in the Application Services. At the conclusion of the 7-day period, Adverity shall delete the Customer Data from the Application Services and shall destroy any corresponding documents under its control, except to the extent that Adverity is bound by law to continue storing such Customer Data.

XII.7. Surviving Provisions

Section IV (Fees and Payment), Section VI (Proprietary Rights), Section VII (Confidentiality), Section IX (Warranties; Disclaimers), Section X (Indemnification), Section XI (Limitation of Liability), Section XII.6 (Return of Customer Data), Section XII.7 (Surviving Provisions), and Section XIV (Miscellaneous) shall survive any termination or expiration of this Agreement.

XIII. SUB-CONTRACTORS

Adverity may use subcontractors to perform the Services, if Adverity executes a written agreement with such subcontractor that obligates such subcontractor to protect Customer and Customer Data to the same extent as is required of Adverity hereunder. Upon request, Adverity shall disclose such subcontractors to the Customer. Adverity shall be responsible for all acts and omissions of any such subcontractor to the same extent as if Adverity had performed the Services.

XIV. MISCELLANEOUS

XIV.1. Notice

Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing or via functionalities available within the Adverity Portal.

XIV.2. Relationship of the Parties

The Parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the Parties.

XIV.3. Agreement to Governing Law and Jurisdiction

This Agreement shall be governed exclusively by the laws of Austria (without regard to its conflict of law rules and to CISG). Exclusive legal venue for all disputes under or in connection with this Agreement shall be with the courts of Vienna, Austria, having subject matter and territorial jurisdiction. This does not apply to dunning proceedings and to cases of mandatory statutory venues which may not be derogated by party agreement.

XIV.4. Export Control

The Application Services, other technology Adverity makes available, and derivatives thereof may be subject to export control laws. Each Party represents that it is not named on any US government or EU denied-party list. Customer shall not permit users to access or use the Application Services in a US or EU-embargoed country or in violation of any other applicable export control laws.

XIV.5. Anti-Corruption

Adverity guarantees, in general and for the duration of this Agreement, that it complies with all applicable laws, regulations and rules, including (but not limited to) all anti-corruption laws and regulations. Customer has not received or been offered any illegal bribe, kickback, payment, gift, or thing of value from any of Adverity employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction.

XIV.6. No Third-Party Beneficiaries

There are no third-party beneficiaries to this Agreement.

XIV.7. Waiver

No failure or delay by either Party in exercising any right under this Agreement shall constitute a waiver of that right.

XIV.8. Severability Clause

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

XIV.9. Assignment

Customer may not assign any of its rights or obligations hereunder without the prior written consent of Adverity. If the assignment of a monetary claim is valid in spite of the prohibition of assignment, Customer shall reimburse all additional costs triggered by the assignment to Adverity; Adverity may provide the Service at its choice with full discharge to Customer or the assignee. Notwithstanding the foregoing, either party may assign this Agreement and all rights and obligations arising therefrom in its entirety, without consent of the other party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the assigns.

parties, their respective successors and permitted

XIV.10. Entire Agreement

This Agreement is the entire agreement between Customer and Adverity regarding Customer's use of the Application Services and supersede all prior agreements, proposals, or representations, written or oral, concerning its subject matter. The application of any terms and conditions of Customer deviating from or exceeding these provisions is excluded. This applies even if Adverity accepts a commercial agreement which refers to the terms and conditions of Customer and/or the terms and conditions of Customer are attached to the commercial agreements, even if Adverity does not explicitly contradict such terms and conditions of Customer. However, if one or more provisions of this Agreement shall be deemed not applicable for whatever reason, Adverity's [Terms of Use](#) shall be subsidiarily applicable. In case of any discrepancies between this Agreement and above-mentioned Terms of Use, this Agreement shall prevail.

XIV.11. Amendments

No modification, amendment, or waiver of any provision of this MSA shall be effective unless made in writing. This applies also to waivers of this requirement of written form.



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