

END USER SUBSCRIPTION AGREEMENT

THIS END USER SUBSCRIPTION AGREEMENT ("Agreement") (in the **version dated April 21, 2023**) GOVERNS THE USE BY ANY PERSON OR ENTITY ("CUSTOMER") OF THE APPLICATION SERVICES (AS DEFINED BELOW) PROVIDED BY ADVERTITY GMBH ("ADVERTITY") WITH COMPANY REGISTRATION NUMBER 448481g THROUGH A MARKETPLACE. ADVERTITY 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 PURCHASE OF A SUBSCRIPTION TO THE APPLICATION SERVICES THROUGH THE MARKETPLACE.

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

I. 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 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 the Platform, that could incur additional costs.

"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 End User Subscription Agreement, which is deemed to be accepted by using the Application Services and / or upon purchasing a Subscription to the Application Services.

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

"Marketplace Provider and Customer Agreement" means the agreement by and between the Marketplace Provider and the Customer.

"Confidential Information" shall have the meaning set forth in Section VIII.

"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 in the Marketplace 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.

"Marketplace" means a third-party cloud marketplace, which provides users with access to software applications and services that are built on, integrate with, or complement the cloud provider's offerings.

"Marketplace Provider" means the legal entity that provides the Marketplace.

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

"Services" means the Application Services and professional services collectively.

"Subscription" means the provision of the Application Services from Adverity to Customer via the Platform.

"Subscription Term" means the period for which Adverity makes available the Application Services to the Customer.

"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 purchased as Subscriptions and may be accessed only in accordance with the Agreement;

- b. Additional Application Services may be added during the applicable Subscription Term on terms agreeable to both Parties; and
- c. The added Application Services shall terminate on the same date as the pre-existing Subscriptions.

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-marketplace@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 entrepreneurs. The Customer represents and warrants that their authorized users act as entrepreneurs 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 Customer Support for the Application Services to Customer in accordance with Section III.4. at no additional charge; 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, the Marketplace Provider and Customer Agreement 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 their use of the Application Services is metered by Adverity and is limited in accordance with the metered amounts of usage purchased with a Subscription through the Marketplace. If the Customer's use of the Application Services exceeds the amount of usage included with the Subscription, the additional usage fee will be charged accordingly.
- d. 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 that 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.
- e. 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 provided.
- 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 Marketplace. If the Customer exceeds the usage limits included in the chosen Subscription, the Customer will be charged additional usage fees according to the package chosen in the Marketplace. Except as otherwise provided herein, the Subscription to the Application Services purchased cannot be decreased during the relevant Subscription Term. Except as provided herein or not in conflict with the Terms and Conditions for AWS Marketplace Sellers, all payments the Customer makes pursuant to this Agreement are non-refundable, and all commitments to make any payments hereunder are non-cancellable.
- b. Customer's usage of the Application Services via the Marketplace may also incur Marketplace infrastructure fees for which Customer is solely responsible. Such fees, related payment terms, and refunds are determined between Customer and Marketplace Provider.

IV.2. Invoicing and Payment

Payments of the fees by the Customer are handled and managed through Marketplace Provider according to the Marketplace Provider's invoicing and payment terms. Customer accepts that Adverity is measuring and reporting Customer's usage of Application Services to Marketplace 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, without limiting its other remedies, Adverity

may 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. THIRD-PARTY SERVICES

V.1. Third-party services

The Application Services allow the Customer 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.

V.2. Right to use third-party services

The Customer 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 Customer must obtain any such consents and authorizations as may be needed from time to time in relation to such data or other content and their processing.

V.3. Application Services as add-on to third-party services

The Application Services may be used as an add-on to various third-party services and software (including

Marketplace). Adverity does not assume any liability for such third-party services or software, the Customer is exclusively responsible for obtaining any necessary licenses or consents needed for their use. The Customer must familiarize themselves with the applicable terms and conditions, including any restrictions on use, in relation to any such third-party services the Customer agrees to comply with such third-party terms and conditions in addition to the Agreement.

V.4. Access and use of third-party content

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 Customer follows a link or otherwise navigates away from the Application Services, they need to be aware that the Agreement will no longer govern. The Customer 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 Customer accesses and uses third-party content at their own risk.

V.5. Third-parties' advertisements and promotions

The Application Services may contain advertisements and promotions from third parties. The Customer'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 Customer and such third party.

VI. 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, or restriction of the Application Services.

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.

VII. PROPRIETARY RIGHTS

VII.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.

VII.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.

VII.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.

VII.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 the Platform 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 their consent to the export of Aggregated Marketing Metrics Data through the Application Services by disabling certain features and functions within the Platform in relation to benchmarking.

VII.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.

VII.6. Publicity: Trademarks

Neither Party may issue press releases or any other public announcement of any kind relating to this Agreement without the prior written consent of the Marketplace Provider and other Party (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.

VIII. CONFIDENTIALITY

VIII.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.

VIII.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 VIII. 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 VIII.5.

VIII.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.

VIII.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.

VIII.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.

VIII.6. Proprietary Rights concerning Confidential Information

Section VII. shall apply mutatis mutandis.

VIII.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.

IX. 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 (find below), 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.

XI. WARRANTIES; DISCLAIMERS

XI.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.

XI.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 XIV.3 and XIV.6. below.

XI.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.

XI.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 XIII.4. Adverity may discontinue Beta Services at any time in Adverity's sole discretion and may never make them generally available.

XI.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.

XII. INDEMNIFICATION

XII.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 XI.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 any prepaid fees covering the remainder of the term of the terminated Subscriptions.

Adverty 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.

XII.2. Indemnification by Customer

Customer shall defend Adverty against any claim, demand, suit or proceeding made or brought against Adverty arising out of or relating to any third party claim, including any claim brought 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, amounts to gross negligence, willful misconduct, fraud or violates applicable law (a "Claim Against Adverty"), and shall indemnify Adverty and the Marketplace Provider for any damages, attorneys' fees and other costs finally awarded against Adverty or the Marketplace Provider as a result of, or for any amounts paid by Adverty or the Marketplace Provider under a court-approved settlement of, a Claim Against Adverty or the Marketplace Provider; provided that Adverty or the Marketplace Provider:

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

XII.3. Exclusive Remedy

This Section XII. 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.

XIII. LIMITATION OF LIABILITY

XIII.1. General Limitation of Liability

In case of material or pecuniary damages caused by not more than ordinary negligence, Adverty 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.

XIII.2. Limitation of Amount of Liability

Irrespective of Section XIII.1 Adverty'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.

XIII.3. Indirect Damages

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

XIII.4. Application of Limitations of Liability

The limitations of liability contained in Sections XIII.1 through XIII.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).

XIII.5. Loss of Data

Adverty 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.

XIII.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 Adverty.

XIII.7. Insurance

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

XIV. TERM AND TERMINATION

XIV.1. Term of Agreement

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

- (i) the expiration of Subscription; or
- (ii) termination of this Agreement as provided in this Section XIV. or elsewhere in the Agreement; or
- (iii) the Marketplace Provider and Customer Agreement according to which the Customer may use the Marketplace and Application Services expires or is terminated for any reason (unless the Parties agree otherwise).

Upon the termination or expiration of this Agreement, the Customer must immediately stop using the Application Services.

XIV.2. Term of Subscriptions

- a. Monthly Subscriptions will automatically renew each month unless auto-renewal is cancelled on notice by either Party to the other. If the auto-renewal is cancelled, the Subscription will expire at the end of the then-current billing month.
- b. Annual or longer Subscriptions will automatically renew at the end of the Subscription Term unless auto-renewal is cancelled on notice by either Party to the other. If the Customer signs up for such Subscription and 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.
- c. Cancellation of Subscription does not relieve the Customer of their obligation to pay the fees for the entire committed Subscription Term.

XIV.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.

XIV.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 the Marketplace are no longer available;
- c. Adverity 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 VI. above.
- e. the Customer is in breach of section XVII.4. "Export Control" below.
- f. Adverity gives not less than 30 days notice to the Customer.

XIV.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 for the purchased Subscriptions to the Application Services and / or the usage for the period prior to the effective date of termination.

XIV.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.

XIV.7. Surviving Provisions

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

XV. 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.

XVI. MISCELLANEOUS

XVI.1. Notice

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

XVI.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.

XVI.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.

XVI.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.

XVI.5. Anti-Corruption

Adverity guarantees, in general and for the duration of this contract, 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.

XVI.6. No Third-Party Beneficiaries

There are no third-party beneficiaries to this Agreement.

XVI.7. Waiver

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

XVI.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.

XVI.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 parties, their respective successors and permitted assigns.

XVI.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.

XVI.11. Amendments

Adverity may modify this Agreement at any time and Customer will thereafter be bound by the version of this Agreement that is in effect at the time the Customer uses the Application Services. The version of this Agreement that is in effect at the time can be viewed in Marketplace.

DATA PROCESSING AGREEMENT (“DPA”)

THIS DATA PROCESSING AGREEMENT (“DPA”) (in the version dated April 21, 2023) GOVERNS THE DATA PROCESSING OPERATIONS BETWEEN THE CUSTOMER (“DATA CONTROLLER”) AND ADVERTITY GMBH (“DATA PROCESSOR”) WITH COMPANY REGISTRATION NUMBER 448481 g. BY ENTERING END USER SUBSCRIPTION AGREEMENT THAT REFERENCES THIS DPA, CUSTOMER AGREES TO THE TERMS AND CONDITIONS OF THIS DPA.

1. BACKGROUND

1. The Data Controller and the Data Processor have entered into the above-mentioned End User Subscription Agreement (“Agreement”) under which the Data Processor shall provide certain services to the Data Controller. Within the scope and for the purpose of the performance of the services defined in the Agreement, the Data Processor will process beside other data potentially Personal Data on behalf of the Data Controller.
2. The Data Controller and the Data Processor have entered into this DPA in order to fulfill the requirement of a written agreement between a data controller and a data processor of Personal Data as set out in Applicable Data Protection Legislation. In addition to what may be set out in the Agreement, the following shall apply in relation to the Data Processor’s processing of Personal Data on behalf of the Data Controller. Data subjects, data categories as well as the extent, nature and purpose of data processing are determined by the Agreement, Appendix 1 to this DPA and the Data Controller’s instructions.

2. DEFINITIONS

All terms used in this DPA are to be understood in accordance with the EU General Data Protection Regulation ((EU) 2016/679 “GDPR”), unless otherwise expressly agreed. The following terms and expressions in this DPA shall have the meaning set out below:

“Adequacy Decision” means a formal decision made by the EU Commission which recognizes that another country, territory, sector or international organization provides an equivalent level of protection for personal data as the EU does.

“Applicable Data Protection Legislation” means any national or internationally binding data protection laws or regulations (including but not limited to the GDPR and the Austrian Data Protection Act (“DSG”)) including

any requirements, guidelines and recommendations of the competent data protection authorities applicable at any time during the term of this DPA to, as the case may be, the Data Controller or the Data Processor;

“Data Controller” means the legal person which, alone or jointly with others, determines the purposes and means of the processing of Personal Data under this DPA;

“Data Processor” means a natural or legal person, public authority, agency or other body which processes Personal Data on behalf of the Data Controller under this DPA;

“Sub-processor” means any legal or natural person, including any agents and intermediaries, processing Personal Data on behalf of the Data Processor as set forth in Art 28 (2) and (4) GDPR and section 4.1 below;

“Personal Data” means any information relating to an identified or identifiable living, natural person (“data subject”) as set forth in Art 4 (1) GDPR;

“Processing” means any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means as set forth in Art 4 (2) GDPR.

“Standard Contractual Clauses” mean standard contractual clauses under the GDPR for data transfers from controllers or processors in the EU/EEA (or otherwise subject to the GDPR) to controllers or processors established outside the EU/EEA (and not subject to the GDPR).

3. PROCESSING OF PERSONAL DATA

1. The Data Processor and any person acting under its authority (e.g. personnel, Sub-processors and persons acting under the Sub-processor’s authority) undertake to only process Personal Data in accordance with documented instructions communicated by the Data Controller (Appendix 1). The Data Processor shall only process Personal Data to the extent necessary to fulfill its obligations under this DPA or Applicable Data Protection Legislation.
2. If the services are altered during the term of the Agreement and such altered services involve new or amended processing of Personal Data, or if the Data Controller’s instructions are otherwise changed or updated, the parties shall ensure that Appendix 1 is updated as appropriate before or at the latest in connection with the

commencement of such processing or change.

3. When processing Personal Data under this DPA, the Data Processor shall comply with any and all Applicable Data Protection Legislation and applicable recommendations by competent Data Protection Authorities or other competent authorities and shall keep itself updated on and comply with any changes in such legislation and/or recommendations. The Data Processor shall accept to make any changes and amendments to this DPA that are required under Applicable Data Protection Legislation.
4. The Data Processor shall assist the Data Controller in fulfilling its legal obligations under Applicable Data Protection Legislation, including but not limited to the Data Controller's obligation to comply with the rights of data subjects and in ensuring compliance with the Data Controller's obligations relating to the security of processing (Art. 32 GDPR), the notification of a Personal Data Breach (Art 33, 34 GDPR) and the Data Protection Impact Assessment and the prior consultation (Art 35, 36 GDPR), obligation to respond to requests for exercising the data subject's rights to information regarding the processing of its Personal Data. The Data Processor shall not carry out any act, or omit any act, that would cause the Data Controller to be in breach of Applicable Data Protection Legislation.
5. The Data Processor shall immediately inform the Data Controller of a request, complaint, message, or any other communication received from a competent authority or any other third party regarding the processing of Personal Data covered by this DPA. The Data Processor may not in any way act on behalf of or as a representative of the Data Controller and may not, without prior instructions from the Data Controller, transfer or in any other way disclose Personal Data or any other information relating to the processing of Personal Data to any third party, unless the Data Processor is required to do so by law. The Data Processor shall assist the Data Controller in an appropriate manner to enable him to respond to such a request, complaint, message or other communication in accordance with Applicable Data Protection Legislation. In particular, the Data Processor shall not publish any submissions, notifications, communications, announcements or press releases in the event of a breach of data

protection as defined in section 6.3. In the event the Data Processor, according to applicable laws and regulations, is required to disclose Personal Data that the Data Processor processes on behalf of the Data Controller, the Data Processor shall be obliged to inform the Data Controller thereof immediately, unless prohibited by law.

4. SUB-PROCESSORS

1. The Data Controller authorizes the Data Processor to engage the Sub-processors. All Sub-processors authorized by the Data Controller are acting under the authority and subject to direct instructions of the Data Controller. A list of the current Sub-processors is set out in Appendix 1 for the purposes specified therein. The Data Processor shall notify the Data Controller in writing in advance of any changes, in particular before engaging other Sub-processors in which event the Data Processor shall without undue delay and at the latest 8 weeks prior to transferring any Personal Data to a Sub-processor, inform the Data Controller in writing of the identity of such Sub-processor as well as the purpose for which it will be engaged.
2. The Data Controller at its own discretion may object with good cause to any such changes within 8 weeks after the Data Processor's notice.
3. The Data Processor shall impose by written agreement, which includes an electronic form, on all Sub-processors processing Personal Data under this DPA (including inter alia its agents, intermediaries and sub-contractors) the same obligations as apply to the Data Processor, in particular the obligations defined in section 4.1 (in particular, procedure of notification to Data Controller and Data Controller's right to issue direct instructions to Sub-processors) and section 4.2 of this DPA.

5. TRANSFER TO THIRD COUNTRIES

1. The location(s) of intended or actual processing of Personal Data is set out in Appendix 1. The Data Processor must not transfer or otherwise directly or indirectly disclose Personal Data outside the European Economic Area without the prior written consent of the Data Controller (which may be refused or granted at its own discretion) and ensure that the level of protection of natural persons guaranteed by the GDPR and as set

forth in this DPA is not undermined. Unless otherwise agreed between the Parties, adequate protection in the receiving country shall be secured through an agreement incorporating the European Commission's Standard Contractual Clauses.

2. If the Data Controller is located in a country, which is not a member of the EU/EEA and in case that no Adequacy Decisions exists, the [Standard Contractual Clauses \(Module 4: Processor-to-Controller\)](#) shall be applicable to the transfer of Personal Data between the Data Processor and Data Controller and incorporated into this DPA by reference, and can be shared with the Customer upon request.

6. SECURITY OF PROCESSING

1. As set forth in Appendix 2, the Data Processor guarantees to implement and uphold appropriate technical and organizational measures according to the current state of the art to ensure an appropriate level of security for the Personal Data and shall continuously review and improve the effectiveness of its security measures. The Data Processor shall protect the Personal Data against destruction, modification, unlawful dissemination, or unlawful loss, alteration or access. The Personal Data shall also be protected against all other forms of unlawful processing. Having regard to the state of the art and the costs of implementation and taking into account the nature, scope, context and purposes of the processing as well as the risk of varying likelihood and severity for the rights and freedoms of data subjects, the technical and organizational measures to be implemented by the Data Processor shall include, as appropriate:
 - i. the pseudonymization and encryption of Personal Data;
 - ii. the ability to ensure the ongoing confidentiality, integrity, availability and resilience of systems and services processing Personal Data;
 - iii. the ability to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident; and
 - iv. a process for regularly testing, assessing, and evaluating the effectiveness of technical and

organizational measures for ensuring the security of the processing.

2. The Data Processor shall without undue delay notify the Data Controller of any accidental or unauthorized access or supposed access to Personal Data or any other actual or supposed, threatened or potential security incidents (Personal Data Breach) after becoming aware of such incidents. The notification shall be in written form and shall at least:
 - i. describe the nature of the Personal Data breach including where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of Personal Data records concerned;
 - ii. communicate the name and contact details of the data protection officer or other contact point where more information can be obtained;
 - iii. describe the likely consequences of the Personal Data Breach;
 - iv. describe the measures taken or proposed to be taken by the Data Controller to address the Personal Data Breach, including, where appropriate, measures to mitigate its possible adverse effects;
 - v. include any other information available to the Data Processor which the Data Controller is required to notify the Data Protection Authorities and/or the data subjects.
3. The Data Processor will furthermore provide reasonable assistance requested by the Data Controller for the Data Controller to investigate the Personal Data Breach and notify it to the Data Protection Authorities and/or the data subjects as required by Applicable Data Protection Legislation.
4. In addition, the Data Processor shall at its own expense immediately take necessary measures to restore and/or reconstruct Personal Data that has been lost, damaged, destroyed or corrupted as a result of the personal data breach.
5. The Data Processor undertakes to not disclose or otherwise make the Personal Data processed under this DPA available to any third party, without the Data Controller's prior written approval. This section 6.5 shall not apply if the Data Processor is required by applicable laws and regulations to disclose

Personal Data that the Data Processor processes on behalf of the Data Controller, in which case what is set out in section 3.5 shall apply.

6. The Data Processor undertakes to ensure that access to Personal Data under this DPA is restricted to those of its personnel who directly require access to the Personal Data in order to fulfill the Data Processor's obligations in accordance with this DPA and the Agreement. The Data Processor shall ensure that such personnel (whether employees or others engaged by the Data Processor) (i) has the necessary knowledge of and training in the Applicable Data Protection Legislation to perform the contracted services; and (ii) is bound by a confidentiality obligation concerning the Personal Data to the same extent as the Data Processor in accordance with this DPA.
7. The Data Processor requires all of its personnel (employees and Sub-processors) authorized to process Personal Data not to process Personal Data for any other purpose, except on instructions from the Data Controller or unless required by applicable law. The Data Processor shall ensure that this confidentiality obligation extends beyond the termination of employment contracts, Sub-processor contracts, service contracts or the termination of this DPA. This confidentiality obligation shall remain in force after the expiry or termination of the DPA.
8. The Data Processor appoints the following person as contact point for data protection matters: Mr. Michael Pilz (dpo@adverity.com).

7. AUDIT RIGHTS

1. The Data Processor shall allow the Data Controller or an external auditor mandated by the Data Controller to conduct audits, investigations and inspections on data protection and/or data security ("audit") in order to ensure that the Data Processor or Sub-processors are able to comply with the obligations under this DPA and Applicable Data Protection Legislation and that the Data Processor or Sub-processors have undertaken the required measures to ensure such compliance.
2. The Data Processor makes available all information necessary to demonstrate compliance with this DPA and Applicable Data Protection Legislation and assists the Data

Controller in the performance of audits.

8. INDEMNIFICATION

The Data Processor shall indemnify and hold harmless the Data Controller upon the Data Controller's first demand insofar as third parties (Data Subjects in particular) make claims against the Controller on the grounds of an infringement of their personal rights or of data protection law where such infringement is caused by actions of the Data Processor in intentional or gross negligent violation of this DPA. The obligation to indemnify is – except in cases of willful intent or in relation to personal injuries or death – capped with the amount of fees paid by the Controller in the 12 months immediately before the infringing incidence.

9. TERM

1. The term of this DPA follows the above-mentioned Agreements.
2. In case of a termination of the Agreement, this DPA shall remain in force as long as the Data Processor processes Personal Data for the Data Controller.
3. The Data Controller may terminate the Agreement without notice as a result of a breach of the obligations under this DPA by the Data Processor or one of its Sub-processors.

10. NOTICES

1. Any notice or other communication to be provided by one party to the other party under this DPA, shall be provided in accordance with the notices provision of the Agreement.
2. In case the Data Processor determines that any instruction to process data of the Data Controller violates Applicable Data Protection Legislation or substantial provisions of this DPA (including technical and organizational measures), it will immediately inform the Data Controller thereof.

11. MEASURES UPON COMPLETION OF PROCESSING OF PERSONAL DATA

1. Upon expiration or termination of this DPA, the Data Processor shall delete or return all Personal Data (including any copies thereof) to the Data Controller, as instructed by the Data Controller, and shall ensure that any Sub-processors do the same, unless otherwise required by applicable law. When returning the Personal Data, the Data Processor shall provide the Data Controller with all necessary assistance.
2. Upon request by the Data Controller, the Data

Processor shall provide a written notice of the measures taken by itself or its Sub-processors with regard to the deletion or return of the Personal Data upon the completion of the processing.

12. FINAL PROVISIONS

1. If the Data Controller and the Data Processor have entered into additional agreements in conflict with this DPA, the provisions of this DPA regarding the processing of Personal Data shall take priority, except where such provision is included in the Agreement for the purpose of supplementing this DPA. All other conflicting provisions shall be governed by the provisions of the Agreement.
2. This DPA is governed by the law of the Republic of Austria to the exclusion of the conflict law rules under private international law and the UN Convention on the International Sale of Goods. In the event of all disputes arising from a contract – including disputes about its existence or non-existence

– the courts with subject- matter jurisdiction at the registered seat of the Data Processor shall be the exclusive forum.

3. If a provision or parts of a provision in this DPA is or becomes ineffective under applicable legislation, this will not affect the effectiveness and validity of the remaining provisions. The contracting parties will replace it by a provision which, in terms of content, is as close as possible to the ineffective provision.

Appendix 1 - Data Processing Instructions

Purposes Specify all purposes for which the Personal Data will be processed by the Data Processor.	Provide access to Data Processor's marketing data reporting and analytics Application Services.
Categories of Data Specify the different types of Personal Data that will be processed by the Data Processor	<p><i>The following Personal Data is processed by default. If the Data Controller intends to process other categories of Personal Data with the Application Services of the Data Processor, the latter must be notified hereof, and an additional agreement must be concluded.</i></p> <ul style="list-style-type: none"> • Email Address • IP Address • Timestamps • Name (on a voluntary basis)
Special categories of Personal Data Specify the different special categories of Personal Data that will be processed by the Data Processor	<p><i>The Controller does not intend to and will not instruct the Processor to process any special categories of Personal Data.</i></p> <p><i>In the event that the Data Controller instructs the Data Processor to process special categories of Personal Data on its behalf, the Data Controller shall ensure that all legal requirements for the processing of such special categories of Personal Data by the Data Processor (esp. those set forth in art. 9 (2) GDPR) are met at all times.</i></p>
Data Subjects Specify the categories of data subjects whose personal data will be processed by the Data Processor.	<p><i>The following categories of data subjects are affected by the data processing operations by default. If the Data Controller intends to process Personal Data of other categories of data subjects with the Application Services of the Data Processor, the latter must be notified hereof, and an additional agreement must be concluded.</i></p> <ul style="list-style-type: none"> • Users of the Application Services
Processing Operations Specify all processing activities to be conducted by the Data Processor	Collect, store, and process data to enable access to the Data Processor's Application Services.
Sub-processor(s) Specify the Sub-processors engaged by the Data Processor (if any) and the purposes for which the personal data is processed by such Sub-processor	<p><i>Applicable in case of Application Services hosting by Data Processor:</i></p> <ol style="list-style-type: none"> 1. Google's legal entity contracting with Austrian companies (https://cloud.google.com/terms/google-entity). Purpose: Hosting infrastructure for server and databases. <p>In case that the Data Controller processes personal data of additional Data Subjects or additional Categories of Personal Data within the Adverity Application Services, the following Sub-Processor is mutually agreed between the Parties:</p> <ol style="list-style-type: none"> 2. Snowflake Computing Netherlands B.V. (Gustav Mahlerlaan 300, 1082 ME Amsterdam, The Netherlands). Purpose: Cloud-based data warehouse, that provides the infrastructure, storage and processing engine to power data reporting and analysis.

Hosting Location Location where the Personal Data will be hosted by the Data Processor responsible for hosting	<ul style="list-style-type: none">• If the Data Controller selects the region “Europe” when filing in the registration form for the Application Services, the data will be hosted on servers located in a data center in the EU.• If the Data Controller selects the region “North America” when filling in the registration form for the Application Services, the data might be hosted on servers inside or outside the EU. <p>At the request of the Data Controller, the specific location will be communicated to the Data Controller.</p>

Appendix 2 - Technical and Organizational Measures (“TOMs”)

The Data Processor confirms that the implemented technical and organizational measures provide an appropriate level of protection for the Data Controller’s Personal Data considering the risks associated with the processing.

General Description of Measures	Description of Measures Implemented
<u>Access Control (premises)</u> Preventing unauthorized persons from gaining access to data processing systems	<ul style="list-style-type: none"> • Used hosting provider complies: • with ISO 27018 which is based on ISO 27000 • Access control systems (smart cards, biometric control) • Security personnel at entrances (backgrounds checked) • Right to access generally limited • List of authorized people (manager approval required) • Surveillance systems (alarm system, door prop alarm, motion detectors, 24x7 CCTV) • Visitor logbook (time and purpose of entry, time of exit)
<u>Access Control (systems)</u> Preventing data processing systems from being used without authorization	<ul style="list-style-type: none"> • Database security controls restrict access • Access rights based on roles and need to know • Password policy • Automatic blocking of access (e.g. password, timeout) • Protocol of failed log-in attempts
<u>Access Control (data)</u> Ensuring that persons entitled to use a data processing system have access only to the data to which they have a right of access, and that Personal Data cannot be read, copied, modified or removed without authorization	<ul style="list-style-type: none"> • Access rights based on roles and need to know • Approval process for access rights; periodical reviews and audits • Signed confidentiality undertakings • Optional restricted to Office IPs
<u>Transmission Control</u> Ensuring that Personal Data cannot be read, copied, modified or removed without authorization during electronic transmission or transport, and that it is possible to review and establish which bodies are to receive the Personal Data	<ul style="list-style-type: none"> • Encrypted transfer (HTTPS, SSL, SSH; RSA, 4096-bit keys) • Log files
<u>Input Control</u> Ensuring that it is possible to review and establish whether and by whom Personal Data have been input into data processing systems, modified, or removed	<ul style="list-style-type: none"> • Access rights based on roles and need to know • Approval process for access rights • Log files

<u>Job Control</u> Ensuring that the Personal Data is processed exclusively in accordance with the instructions	<ul style="list-style-type: none"> • Diligently selecting (Sub-)processors and other service providers • Documenting selection procedures (privacy and security policies, audit reports, certifications) • Backgrounds of service providers are checked, subsequent monitoring • Standardized policies and procedures (including clear segregation of responsibilities); documentation of instructions received from data controller • Signed confidentiality undertakings
<u>Availability Control</u> Ensuring that Personal Data is protected from accidental destruction and loss	<ul style="list-style-type: none"> • Redundant uninterruptible power supply (UPS) • Air-conditioning, temperature and humidity controls (monitored 24x7) • Disaster-proof housing (smoke detection, fire alarm, fire suppression, water detection, raised flooring, protection against severe weather conditions, pest repellent system) • Electrical equipment monitored and logged, 24x7 support • Daily backup procedures • Disaster recovery plan • Routinely test-running data recovery
<u>Separation Control</u> Ensuring that data collected for different purposes can be processed separately	<ul style="list-style-type: none"> • Separate processing possibilities in the Application Services for HR data, production data, supplier data, customer data • Separation between productive and test data • Detailed management of access rights
<u>Frequency of the Transfer</u> Specify whether the data is transferred on a one-off or continuous basis	Data transferred on a continuous basis
<u>Duration of the Processing</u> The period for which the personal data will be retained, or, if that is not possible, the criteria used to determine that period	As per Section 12 of the DPA

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