

# Adverator Terms of Use Agreement

## Welcome to Adverator!

Thank you for visiting and using Adverator, a website created for you to make your advertising buying decisions less stressful and more affordable. This page explains the terms by which you may use our online services, website, and software provided on or in connection with Adverator's services.

## Agreement

This is an agreement between you ("you" or "your") and Adverator, LLC, a New York limited liability company ("Adverator", "we", "us" or "our"), that governs your use of the Adverator.com website, any mobile app we may provide, and any related tools and services (collectively, the "Services"). By accessing or using the Services, you signify that you have read, understood and agree to be legally bound by this Terms of Use Agreement ("Agreement") and to the collection and use of your information as set forth in our [Privacy Policy](#), whether or not you are a registered user of our Services. This Agreement applies to all visitors, users, and others who access the Services ("Users," individually referred to as "User").

PLEASE MAKE SURE YOU REVIEW THIS AGREEMENT CAREFULLY, AS IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHTS AND OBLIGATIONS.

### 1. Use of Our Services

#### A. Eligibility

This Agreement shall govern the purchase of inventory in media from Adverator by agencies ("Agencies," individually referred to as "Agency") and advertisers ("Advertisers," individually referred to as "Advertiser"). We may send Agencies or Advertisers email or other communications containing offers ("Offers") to purchase advertising inventory from time to time. You may not make an initial purchase of

inventory without first accepting this Agreement. All Offers and orders placed in response to Offers (“Orders”) by you at any time thereafter shall be governed by this Agreement, whether or not they reference this Agreement. In the event of a conflict between this Agreement and any Order or Offer, this Agreement shall prevail. Any additional terms inserted into an Order by you or by Agency or Advertiser, as applicable, shall not be binding on us unless we expressly consent in writing to such additional terms.

The Services are available only to individuals or business entities that can form legally binding contracts under applicable law. Any person, firm or corporation contracting for purchasing advertising media under this Agreement, whether as principal or as agent, is deemed to be duly authorized for all purposes relating to this Agreement. If an agent has accepted this Agreement on behalf of you, you and the agent shall be jointly and severally liable for all obligations under this Agreement.

We are committed to providing a positive experience for you and all Users in each transaction. The Services are designed to be convenient and useful, and it is important to us that they remain a safe, friendly and trustworthy means to interact with us and other Users. Accordingly, you and/or the agent accepting this Agreement on your behalf hereby agree that you will only use the Services in a manner consistent with their purpose and as described in this Agreement, including following the procedures and guidelines on the buying processes and conforming your practices to the rules on prescribed conduct and prohibited practices set forth herein.

## **B. Account Registration; Passwords and Security; Privacy**

Upon registration of your account you will be considered a member of Advertiser with user permissions eligible to use Advertiser for permitted activities, including buying media in accordance with this Agreement. You are responsible for keeping your account information accurate and current. You are responsible for maintaining the confidentiality of your password and account information and are fully responsible for all activities that occur under your password or

account. We permit only one account per Advertiser or Agency, unless such Advertiser or Agency has set up multiple separate accounts to distinguish different business entities or business divisions. Any Advertiser or Agency setting up more than one account shall be fully and solely responsible for each account pursuant to the terms of this Agreement as if it were the sole account held by such Advertiser or Agency. You may not share your password, except as you may require for your business purposes, and you shall be responsible for the sharing of such password. You may not provide false registration information or select a username that infringes third party rights or misleads about your credibility or affiliation.

You agree to notify Advertiser immediately of any unauthorized use of your account, username, or password. Advertiser shall not be liable for any loss that you incur as a result of someone else using your password, either with or without your knowledge. You may be held liable for any losses incurred by Advertiser or any of its affiliates, or any of their respective officers, directors, employees, managers, members, consultants, agents, and representatives due to someone else's use of your account or password. When you register with Advertiser or log in, you can do so directly through the Services by completing the required forms.

## **2. Fees and Payments; Transactions Policy**

### **A. Collection of Fees by Advertiser**

Although registering for an Advertiser account is free, we may charge you costs and fees for the use of our core Services, i.e., the purchase of advertising space offered by Advertiser (“Listing” or collectively, “Listings”). The cost of such purchases (“Proceeds”) will be clearly stated on the Advertiser website and will depend upon a number of factors including the publication, website or vendor, listing size, number of impressions, placement, length of campaign, and run date, among other things.

Further, Advertiser may charge other fees (“Fees,” individually referred to as “Fee”), including but not limited to an Advertiser transaction fee charged in connection with each Listing purchase.

Any transaction fee or fee for optional services we may provide will be fully and plainly disclosed on the website. Each time you use a Service that requires payment of a Fee, you have an opportunity to review and accept the charges, as modified by Advertiser from time to time in its sole discretion. Unless otherwise stated, all Fees are quoted in U.S. Dollars.

As a prerequisite to participating in any paid Services, you may be required to provide a valid credit card to Advertiser that we will keep on file. You are solely responsible for paying all Proceeds and Fees in a timely manner using a valid payment method, and you will pay any applicable taxes, if any, relating to any such payments, transactions or other monetary interactions.

If your payment method fails or your account is past due, we may collect any owed Proceeds or Fees from you by using other collection methods. These may include, without limitation, charging other payment methods that you have on file with us, retaining collection agencies and legal counsel, and for accounts over sixty (60) days past due, deducting any amounts owed from your account balance, if any. In the event we must initiate and use a collection agency or other agent to collect amounts owed by you to Advertiser, you also agree by using the Services that these Proceeds and Fees may be deducted by Advertiser from your account balance without notice to you. Should legal action be required in order to collect any amounts owed by you for your use of the Services, you agree to reimburse Advertiser for any attorney's fees or costs incurred in connection with any such collection effort.

## **B. Cancellations**

Orders for all Listings or Advertiser-produced inserts are only cancellable up to 4:30 pm EST of the published closing date of the media you are purchasing. You must contact your Advertiser advisor in order to do so. Should we agree to cancel an existing Order after this time, the Advertiser will be responsible for the cost of any work performed, content developed, or materials or digital space purchased on behalf of the Advertiser, including the cost of services, website development, paper and/or printing.

## C. Transaction Policies & Procedures

As a condition to your use of the Services, you agree to abide by the following procedures and guidelines when engaging in the purchase of any Listing. We may change these procedures and guidelines in the future, and such changes will be effective immediately upon posting without notice to you. It is important to note that Adverator is not, and shall not be deemed to be, the agent of any Advertiser, Agency or publisher or other inventory provider for any purpose. The following describes and explains the procedure to be followed in connection with a typical purchase completed via the Services:

- i. Adverator reserves the right in its absolute discretion, and at any time, to cancel any Order or reject any advertising copy, image or content whether or not the same has already been acknowledged and/or previously broadcast or published online or in print. In addition, Adverator reserves the right to remove from any website, selected copies of the applicable publication, or any other media advertisements containing matter, including video, software code associated, or a website to which digital advertising is linked, that such publishers or other media providers have deemed objectionable. In the event of such cancellation or rejection by Adverator, advertising already broadcast, published or run shall be paid for at the pro rata rate that would apply if the entire Order were broadcast, published or run.
- ii. Except where stated otherwise, Adverator print advertising appears exclusively in publications mailed to subscribers in specific zip code defined areas. The number of subscribers in each market is subject to change. Adverator advertising rates are based on a 6 month trailing average of the number of subscribers in each market, so a variance of +/- 5% is allowed for.
- iii. Orders for advertising containing restrictions or specifying positions, facings, editorial adjacencies or other requirements may be accepted and inserted as requested but such restrictions or specifications are at Adverator's sole discretion.
- iv. The Advertiser and its Agency, if any, each represent and

- warrant that any advertising (including product samples) submitted complies with all applicable laws and regulations and does not violate the rights (including but not limited to any intellectual property, privacy and/or publicity rights) of, and is not harmful to, any person, corporation or other entity. As part of the consideration to induce Advertiser to publish such advertisement, the Advertiser and its Agency, if any, each agrees jointly and severally to indemnify, defend and hold harmless Advertiser, the applicable publishers and broadcasters, and respective officers, employees and representatives, against all liability, loss, damage, and expense of any nature, including attorneys' fees, arising out of any claim in connection with a breach or alleged breach of this Agreement (including any Order) by Agency or Advertiser, as applicable, and/or any other claim or suit that may arise out of the copying, printing, publishing, distribution or transmission of such advertisement.
- v. In the event an Order is placed by an Agency on behalf of the Advertiser, such Agency warrants and represents that it has full right and authority to place such Order on behalf of the Advertiser and that all legal obligations arising out of the placement and timing of the advertisement will be binding on both the Advertiser and the Agency. Agency shall indemnify, defend and hold harmless Advertiser and the applicable publisher(s) and broadcaster(s) for a breach of this warranty.
  - vi. The Advertiser and its Agency, if any, agree to be jointly and severally liable for the payment of all bills and charges incurred for each advertisement placed or run on the Advertiser's behalf. Advertiser authorizes Advertiser, at its election, to tender any bill to the Agency, and such tender shall constitute due notice to the Advertiser of the bill and such manner of billing shall in no way impair or limit the joint and several liability of the Advertiser and Agency. Payment by the Advertiser to the Agency shall not discharge the Advertiser's liability to Advertiser. The rights of Advertiser shall in no way be affected by any dispute or claim between the Advertiser and the Agency.
  - vii. The Advertiser or Agency may not use any Listing either directly or indirectly for any business, organization, enterprise, product, or service other than that for which the Listing is provided by

- Adverator, nor may the Advertiser or Agency authorize any others to use any Listing.
- viii. Adverator reserves the right to use any of the commercially accepted printing processes and broadcast mediums.
  - ix. Adverator will not be required to submit a proof of an advertisement submitted by the Advertiser and/or Agency. The Advertiser and/or Agency assume all responsibility for artwork or other content submitted after a published materials or broadcast deadline or start date, whether or not Adverator-produced inserts or other content are employed,
  - x. The Advertiser and/or Agency agree that any advertisements published or broadcast may, at Adverator's option, be included in all media, whether now in existence or hereafter developed, in which the issue, website or other media containing the advertisement is published, reproduced, distributed, displayed, performed, broadcast or transmitted, in whole or in part.
  - xi. Agency and Advertiser shall each hold in strict confidence any non-public information it obtains about Adverator, including without limitation any rates, rate structure and this Agreement (including any Listings, Offers or Orders).
  - xii. Upon placement of an Order, Agency or Advertiser, as applicable, may be required to provide Adverator with a credit card number for purchase of the initial Order. Adverator will keep this credit card information on file for use for prepayment of all future Orders upon email approval of the applicable Order. Agency or Advertiser, as applicable, is required to notify Adverator of any changes to its credit card information before placing an Order. The Advertiser and/or Agency agree to reimburse Adverator for its attorneys' fees and costs in collecting any unpaid charge or portion of the charge for any advertisement.
  - xiii. With respect to Out of Home advertising offered through Intersection Media, LLC, additional terms and conditions apply as found [here](#).
  - xiv. With respect to Direct Mail advertising, Adverator utilizes licensed mapping content (i.e., zip code boundaries and centroids, carrier route boundaries and centroids, and context demographics) provided by Pitney Bowes Software, Inc. (the "Licensed Content"). With respect to Licensed Content and any

representation or utilization of such Licensed Content on Advertiser's website (the "Enhanced Offering"), you agree not to modify, directly or indirectly sell, distribute, reverse engineer, or otherwise utilize the Licensed Content or Enhanced Offering, in whole or in part, other than for the informative purpose of mapping your direct mail advertising campaign.

Advertiser does not act as a mediator between you and publishers, broadcasters, or other Users except as it relates specifically to advertisements placed on your behalf by Advertiser. If you are aggrieved by any aspect of the relationship with publishers, broadcasters, or other Users, it is your responsibility to contact the publisher, broadcaster or User directly to resolve the dispute once you have obtained our written consent as described above.

### **3. Disclaimer; Limitation of Liability**

Advertiser has no control over and is not responsible for the content, privacy or security of any third-party websites or applications linked to from the Services. We make no guarantees, nor can we be responsible for any such information, content, products or services, including their currency, safety, quality, copyright compliance or legality, or any resulting loss or damage. Advertiser is also not responsible for the conduct of Users on the site, the condition of Listings posted for sale on the Services or the accuracy or completeness of related information, failures or interruptions in the Internet, networks or systems, acts or omissions of third parties and other factors beyond its reasonable control.

Specifically with respect to Direct Mail advertising and the Licensed Content and Enhanced Offering described above in Section 2.xiv., you understand and agree that postal information changes frequently and certain delivery route types may not be captured, and that you may find deviations between what is in the Licensed Content and/or Enhanced Offering and what you might personally expect. You also understand and agree that the various scores available in context demographic data are compiled using multiple sources and complex algorithms, are for general information purposes only, and should not



serve as a sole basis for decision-making. Context is not intended to be representative of any particular property or exact location within the defined area. It is historically based and is not intended to predict any current or future conditions, events or outcomes. The underlying data change frequently and become less reliable over time. These scores are not subject to any generally accepted definition or metric, but are subject to individual interpretation. You must make your own decisions around the subject matter. Also, context scores are not available for every area. You may find deviations between what is in the Licensed Content and/or Enhanced Offering and what you may personally expect.

THE SERVICES INCLUDING WITHOUT LIMITATION ANY DELIVERY SERVICES, AS WELL AS ALL INFORMATION AND CONTENT WHICH MAY BE PROVIDED BY ADVERTOR THROUGH THE SERVICES, ARE PROVIDED AS IS AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF ACCURACY, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

IN NO EVENT SHALL ADVERTOR OR ITS AFFILIATES OR ANY OF ITS OR THEIR RESPECTIVE MEMBERS, MANAGERS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, PREDECESSORS, SUCCESSORS, PARENTS, SUBSIDIARIES, ASSIGNS, OR AFFILIATES BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION ANY DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA, LOSS OF BUSINESS INFORMATION AND THE LIKE), WHETHER IN AN ACTION BASED IN CONTRACT, TORT OR OTHERWISE, ARISING OUT OF OR IN CONNECTION WITH YOUR ACCESS OR USE OF THE SERVICES, OR ANY LISTING OR OTHER COMMUNICATION BY ANY USER, SELLER OR THIRD PARTY, WHETHER OR NOT MADE AVAILABLE THROUGH THE SERVICES. IN NO EVENT SHALL ADVERTOR'S TOTAL LIABILITY TO YOU UNDER THIS AGREEMENT, INCLUDING ANY SUCH LIABILITY CAUSED BY

FORCE MAJEURE, EXCEED A REFUND OF AMOUNTS PAID TO ADVERTOR FOR THE ADVERTISEMENT, IN THE AGGREGATE FOR ANY AND ALL CLAIMS, WHICH REFUND SHALL BE THE SOLE REMEDY FOR AGENCY OR ADVERTISER, AS APPLICABLE. THE FOREGOING LIMITATIONS OF LIABILITY REFLECT A DELIBERATE AND BARGAINED FOR ALLOCATION OF RISKS BETWEEN ADVERTOR AND YOU.

Some jurisdictions do not allow the disclaimer of warranties or exclusion of damages, so these provisions may not apply to you to the extent prohibited by law.

#### **4. Ownership; License**

Adverator retains all its rights, title, and interest in and to the Services, and any software or content of any kind used by Adverator in providing the Services or featured through the Services, including without limitation photos, text, videos, audios, design elements, and works of authorship. Any rights not expressly granted to you herein are reserved by Adverator. You acknowledge that the Services and the software used by Adverator in providing the Services may contain Adverator's proprietary and confidential information. You agree that except as may be expressly permitted in this Agreement or via the Services by Adverator, you will not copy, distribute, rent, lease, loan, modify or create derivative works, adapt, translate, perform, reproduce in whole or in part, display (except as necessary to exercise your rights hereunder), sublicense, or transfer the Services, any information contained therein, the content provided or featured through the Services by Adverator or other Users, or any software used by in providing the Services, without the prior written permission of Adverator.

On the condition that you comply with this Agreement and satisfy any and all of your applicable payment and other obligations related to the Services, Adverator grants you a nonexclusive, limited, revocable, non-transferable license to access and use the Services for your personal purposes and solely for the specific commercial purposes permitted by you using the Services to buy Listings. You may not resell or grant third-party access to the Services. If you violate the

terms of this section, Adverator may terminate your account without notice.

## **5. Infringement**

If you are a copyright owner or an agent thereof and believe that any third-party content made available by Adverator infringes upon your copyrights, you may submit a notification pursuant to the Digital Millennium Copyright Act (“DMCA”) by providing our Copyright Agent with the following information in writing (see 17 U.S.C § 512(c)(3) for further detail): (1) a physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed; (2) identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works are covered by a single notification, a representative list of such works at those locations; (3) identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled and information reasonably sufficient to permit Adverator to locate the material; (4) information reasonably sufficient to permit us to contact you, such as an address, telephone number, and, if available, an electronic mail address; (5) a statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and (6) a statement that the information in the notification is accurate, and under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

Adverator's designated Copyright Agent (“Copyright Agent”) to receive notifications of claimed infringement is Copyright Agent, e-mail: [info@adverator.com](mailto:info@adverator.com) or write to the following address: 483 Broadway, Suite 516, New York, NY 10013. For clarity, only DMCA notices should go to the Copyright Agent; any other feedback, comments, requests for technical support, and other communications should be directed to Adverator customer service. You acknowledge that if you fail to comply with all of the requirements of this Section, your DMCA notice may not be valid.

Adverator has a policy of terminating the account of, or denying

access or use of the Services to, in its sole and absolute discretion, any User who infringes the copyrights or other intellectual property rights of others. Advertiser reserves the right, in its sole and absolute discretion, to suspend or terminate the account of any User who infringes the intellectual property rights of Advertiser or others, and/or to remove, delete, edit or disable access to such person's User Content. Advertiser shall have no liability for any action taken pursuant to this Section.

## **6. Termination**

We may terminate this Agreement at any time for any reason whatsoever. However, should any open purchase transaction(s) remain between you and any other User or Seller at the time you attempt to terminate, this Agreement shall continue in effect until such time as all pending transactions have been finalized. The indemnity, limitation of liability, and payment provisions and all other provisions of this Agreement that, by their nature, are intended to survive any termination of this Agreement, shall do so. Effective upon the date of termination, your license to use the Services provided herein will immediately terminate.

## **7. Indemnity**

You shall indemnify and hold Advertiser and its affiliates and its and their respective owners, directors, officers, members, managers, employees, and agents harmless from all claims and demands, costs, damages and liabilities (including, without limitation, reasonable attorneys' fees) caused by or resulting from your use of the Services, your business or personal activities, any information or services furnished by you, or your breach of this Agreement.

## **8. Governing Law**

You agree that: (i) the Services shall be deemed solely based in New York; and (ii) the Services shall be deemed passive and do not give rise to personal jurisdiction over Advertiser, either specific or general, in jurisdictions other than New York. This Agreement shall be governed by the internal substantive laws of the State of New York,

without respect to its conflict of laws principles. The parties acknowledge that this Agreement evidences a transaction involving interstate commerce.

Any action, including any lawsuit relating to advertisements placed with Adverator may, at the sole direction of Adverator, be brought in the state or federal courts within New York County in the State of New York. Alternatively, and at the sole discretion of Adverator, any action by Adverator may be brought in a local, state or federal court where the Advertiser or Agency resides. Whichever court(s) is selected by Adverator, the parties hereby consent to the jurisdiction of such court(s).

## **9. Notification Procedures and Changes to the Agreement**

Adverator may provide notifications, whether such notifications are required by law or are for marketing or other business related purposes, to you via email notice, written or hard copy notice, or through posting of such notice on our website, as determined by Adverator in our sole discretion. Adverator reserves the right to determine the form and means of providing notifications to you, provided that you may opt out of certain means of notification as described in this Agreement. Adverator is not responsible for any automatic filtering you or your network provider may apply to email notifications we send to the email address you provide us. Adverator may, in its sole discretion, modify or update this Agreement from time to time, and so you should review this page periodically. When we change the Agreement in a material manner, we will update the 'last modified' date at the bottom of this page. Your continued use of the Services after any such change constitutes your acceptance of the new Agreement. If you do not agree to any of these terms or any future Agreement, do not use or access (or continue to access) the Services.

## **10. Entire Agreement/Severability**

This Agreement, together with any amendments and any additional agreements you may enter into with Adverator in connection with the Services, shall constitute the entire agreement between you and

Adverator concerning the Services, and supersedes any and all prior agreements or understandings between the parties whether written or oral. If any provision of this Agreement is deemed invalid by a court of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of this Agreement, which shall remain in full force and effect.

## **11. Independent Contractor/Waiver/Assignment**

Adverator and its Users are independent contractors, and no agency, employment or partner relationship exists between Adverator and any of these other persons. This Agreement and all Orders shall be binding upon the successors and assigns of each party. This Agreement, and any Order, is assignable by Adverator, and neither is assignable by you without our prior written consent. No waiver of any term of the Agreement will be valid unless in writing and acknowledged in writing by the party against whom enforcement is sought, and no failure on our part to enforce strict performance of any part of the Agreement will constitute a waiver of any provision of, or any of our rights, under the Agreement.

### **Questions**

To ask questions about this Agreement or about our services, please contact us at [info@adverator.com](mailto:info@adverator.com).

This Agreement was last modified on February 1, 2017.