

Terms of Use

The following terms of use (hereinafter "TERMS OF USE"), each order (collectively hereinafter "AGREEMENT") as well as any data processing agreement (hereinafter "DPA") govern the legal relationship between Midesk UG (haftungsbeschränkt), c/o next media accelerator GmbH, Am Sandtorkai 27, 20457 Hamburg (hereinafter "SERVICE PROVIDER"), and companies using the online platform offered by SERVICE PROVIDER.

1. Subject Matter and Conclusion of AGREEMENT

- 1.1 SERVICE PROVIDER offers companies the opportunity, through software as a service, to use the online platform operated by SERVICE PROVIDER for market and media intelligence and additional services ("PLATFORM") as specified below.
- 1.2 Orders by an individual company (hereinafter "CUSTOMER"; hereinafter SERVICE PROVIDER and CUSTOMER, individually, are also referred to as a "PARTY" and, collectively, are also referred to as the "PARTIES") can be placed in writing, electronically or by fax. The AGREEMENT is concluded when CUSTOMER has received a written confirmation in which the type and scope (subject of services, fees, etc.) of the order are precisely described (hereinafter collectively "ORDER"). CUSTOMER undertakes to check the details carefully and to contact SERVICE PROVIDER immediately in the event of deviations.

2. Description of Services

2.1 Description of SERVICES

- 2.1.1 SERVICE PROVIDER provides CUSTOMER with an AI-powered online platform that provides capabilities to its customers to obtain, create and manage market and media intelligence.

CUSTOMER is enabled to use the PLATFORM, which is installed and running on servers operated under the control of SERVICE PROVIDER, through an Internet connection during the term of this Agreement for CUSTOMER's own purposes and to store and process CUSTOMER's data with the PLATFORM. The PLATFORM allows CUSTOMER to monitor, collect, process and distribute information; and measure KPIs and collaborate with others in the provided system (hereinafter "SERVICES"). In particular, CUSTOMER can

- Extract metadata from own data or data from data providers
 - Create and distribute deliverables via email (via a third-party service) or web
 - Collaborate with other users in a form of comments, likes and other implemented means of collaboration
 - Monitor and measure basic performance of SERVICE PROVIDER deliverables. The basic measurement includes information opened articles (licences), newsletter reach or statistics of clicks.
 - Store qualitative and quantitative data in a database
 - Store and categorize files
 - Start projects, categorize content in projects
 - Use available report and email templates
- (hereinafter the "MINIMUM FUNCTIONALITIES").

2.1.3 DELIVERABLES can be emails, editable documents (such as PowerPoints or Words) and non-editable documents (files in a PDF format).

2.1.4 The MEDIA INTELLIGENCE SERVICE (NEWS HUB) allows CUSTOMER to monitor media through available data providers, get information from data providers, process media information, extract information from media articles, store media content, distribute media content via email, comment media, share media and like and measure licences and performance of media deliverables.

2.1.5 The MARKET RESEARCH SERVICE (RESEARCH HUB) allows CUSTOMER to conduct research online, categorize and share documents (such as presentations, spreadsheets, images, audios, videos); start projects that encapsulate information, and communicate with project team members via the platforms infrastructure. SERVICE PROVIDER will provide the customer with a storage space of 200 MB for this purpose. Further data storage may be purchased.

2.1.6 The DATA STORAGE SERVICE (BASELINES HUB) allows CUSTOMER to store data in quantitative and qualitative data in a structured way; build and share reports; store, categorize and share documents (such as presentations, spreadsheets, images, audios, videos); SERVICE PROVIDER will provide the customer with a database storage space of 200 MB for this purpose. Further database storage may be purchased.

2.1.7 The ADVANCED PROCESSING SERVICE allows CUSTOMER to use trained machine learning models and advanced algorithms to monitor and process content and extract or shorten information and further process this information in SERVICE PROVIDER system.

- 2.1.8. The PREMIUM SERVICE allows CUSTOMER to book additional services, including a priority technical support and product assistance with a guaranteed response time under 6 hours via phone/chat/email, on-premise training, early access to new features, up to 5 hours of custom development, high frequency backups and other services from a PREMIUM SERVICE CATALOGUE available on the website.
- 2.1.9 SERVICE PROVIDER takes care of the technical handling, maintenance and operation of the PLATFORM and its IT system. As part of the aforementioned tasks SERVICE PROVIDER will manage load balancers, production servers, email servers, and database servers.

2.2 SERVICE LEVEL of SERVICE PROVIDER

- 2.2.1 SERVICE PROVIDER shall make available to CUSTOMER
- 2.2.1.1 the SERVICES at the router exit of the data processing center in which the server with the PLATFORM is located, which connects the data processing center with the Internet backbone (hereinafter the "POINT OF DELIVERY");
 - 2.2.1.2 the storage space necessary for the unlimited agreed use, for data generated by CUSTOMER's use of the SERVICES and/or for data needed to use the PLATFORM.
- 2.2.2 SERVICE PROVIDER shall have no obligation to produce or maintain the data connection between the IT systems of CUSTOMER and the POINT OF DELIVERY.
- 2.2.3 The average annually availability of the SERVICES at the POINT OF DELIVERY to the Internet (backbone) shall be at least 99% on a monthly basis.

For malfunctions SERVICE PROVIDER shall make available to CUSTOMER year-round technical support by e-mail and/or telephone. The response time shall be 24 hours if CUSTOMER notifies SERVICE PROVIDER within its business hours Monday to Friday from 9 a.m. until 5 p.m. CET. The customer may purchase a priority support package that make the response time faster.

- 2.2.4 SERVICE PROVIDER shall maintain the PLATFORM and its own IT systems at regular intervals. Any resulting limitations of the availability of the SERVICES shall be disregarded for purposes of calculating the average monthly availability of the SERVICES. SERVICE PROVIDER will inform the CUSTOMER in due time, if maintenance has foreseeable impacts on the availability

- 2.2.5 The warranted availability excludes malfunctions of the Internet as well as malfunctions whose cause is not within the control of SERVICE PROVIDER (for example force majeure; malfunctions downstream of the POINT OF DELIVERY).
- 2.2.6 SERVICE PROVIDER shall have the right to access CUSTOMER data to the extent necessary for correcting errors. CUSTOMER shall assist the provider with the correction of errors, in particular by being available for an in-depth investigation of the relevant facts.
- 2.2.7 SERVICE PROVIDER assumes no responsibility for securing and storing data made available and/or generated in connection with SERVICES outside of the DPA between CUSTOMER and SERVICE PROVIDER.
- 2.2.8 SERVICE PROVIDER shall have the right to make changes to SERVICES or the PLATFORM at its sole discretion, e.g., by upgrading the IT system and adapting the IT system to the latest state of the art or making changes within the PLATFORM or SERVICES. However, SERVICE PROVIDER shall keep available the MINIMUM FUNCTIONALITIES of the SERVICES. SERVICE PROVIDER may also offer new and additional services.

2.3 Compliance obligations/Representation, Warranties and Covenants of CUSTOMER

- 2.3.1 CUSTOMER shall use the SERVICE in compliance with applicable law. In particular CUSTOMER represents and warrants to
- 2.3.1.1 ensure that the use of the SERVICES is lawful and does not e.g. infringe third party intellectual property rights (e.g. copyright, trademark, design, patent) or personality rights or data protection law;
 - 2.3.1.2 disseminate no content that violates public policy or rights or legitimate interests of third parties (for example publishers), including, without limitation, trademarks, rights to names, personality rights, or copyrights, or that violates unfair competition law;
 - 2.3.1.3 disseminate no viruses, Trojan horses, junk mail, any sort of malware whatsoever, or spam;
and
 - 2.3.1.4 implement no applications that may interfere with or change the physical or logical structure of the SERVICE PROVIDER IT systems.

- 2.3.2 SERVICE PROVIDER provides a PLATFORM with the help of which CUSTOMER can, among other things, conduct media monitoring. CUSTOMER is solely responsible for using this PLATFORM in compliance with all legal requirements, in particular to obtain copyright licenses. CUSTOMER is aware that licences must be obtained for copies of copyright-protected articles and therefore, in addition to the AGREEMENT between the parties, CUSTOMER may also require, for example, a corresponding contract between CUSTOMER and PMG Presse-Monitor GmbH (or comparable provider). SERVICE PROVIDER is permitted, upon request, to provide PMG (or comparable providers) with the name of CUSTOMER who receives articles electronically transmitted that are to be licensed through PMG (or comparable providers). The scope and content of the order may also be disclosed.
- 2.3.3 At the moment of extraction/importation into the PLATFORM of articles and as well as when posting into PLATFORM CUSTOMERS own articles and files, CUSTOMER is responsible for the observance and compliance with copyrights, property rights, industrial property rights and the observance of other rights of third parties and is solely liable for violations of these rights committed by CUSTOMER. He undertakes to indemnify, defend and hold harmless SERVICE PROVIDER as well as their legal representatives and employees from claims of third parties based on violations committed by CUSTOMER. This release from liability shall include not only the claims for damages but also the entire costs of legal prosecution and defence.
- 2.3.4 CUSTOMER will use commercially reasonable efforts to ensure that all of the DELIVERABLES are in material accordance with SERVICE PROVIDER's then existing policies (including content limitations, privacy policies, policies regarding consistency with SERVICE PROVIDER's public image, community standards or other editorial policies, and material due dates) (collectively "POLICIES"), provided SERVICE PROVIDER has provided such POLICIES to CUSTOMER.
- 2.3.5 CUSTOMER hereby acknowledges that SERVICE PROVIDER has no obligation, but has the right, to review and monitor the use of its SERVICE by CUSTOMER, including, without limitation, the content, keywords, and DELIVERABLES.
- 2.3.6 In the event of an obvious or proven breach of these obligations SERVICE PROVIDER shall have the right to prohibit the dissemination of the content in dispute, to block the USER ACCOUNT, and/or to assess a contractual penalty, the amount of which shall be determined by SERVICE PROVIDER at its sole discretion and, if disputed, shall be subject to review by a court of competent jurisdiction.

- 2.3.7 In the event of an obvious or proven infringement, SERVICE PROVIDER shall request a prompt response from CUSTOMER. If CUSTOMER fails to respond or if CUSTOMER's response fails to refute the alleged infringement, SERVICE PROVIDER shall, again, have the right to prohibit dissemination of the allegedly infringing content and/or block the USER ACCOUNT.
- 2.3.8 CUSTOMER is responsible for properly backing up its data at regular intervals. This shall also apply to data made available by SERVICE PROVIDER in the course of the performance of this Agreement.

3. PLATFORM for SERVICES

- 3.1 Access to the PLATFORM, is made available to CUSTOMER as a single user license for a limited number of clients and with storage limitations. CUSTOMER choose between various packages (e.g. "individual", "small team" or "custom package"). After conclusion of the AGREEMENT SERVICE PROVIDER will notify CUSTOMER by e-mail within 24 hours and provide CUSTOMER with the access data for the account (hereinafter the "USER ACCOUNT").
- 3.2 Following activation of the USER ACCOUNT, CUSTOMER may access the PLATFORM online using any standard Internet browser and use the SERVICES as agreed. Any action taken using CUSTOMER's access data shall be deemed to have been initiated by CUSTOMER.
- 3.3 CUSTOMER is granted access to certain PLATFORM functionalities based on the SERVICES agreed to.
- 3.4 Previews provided in the PLATFORM are for informational purposes only. Any use beyond mere viewing requires separate licensing.
- 3.5 Access data may not be disclosed to any third parties. CUSTOMER shall keep access data made available to CUSTOMER confidential and shall ensure that any employees to whom access data are made available will do likewise. If the username or password is lost, SERVICE PROVIDER must be informed immediately.

4. Billing

- 4.1 The prices of the price list valid at the time the AGREEMENT is concluded shall be deemed agreed. SERVICE PROVIDER reserves the right to make changes. Changes shall take effect with a period of four weeks after notification. In the event of a price increase, CUSTOMER has a right of termination

which must be exercised within two weeks of notification of the price increase. The termination shall only become effective at the time of the occurrence of the price increase.

- 4.2 Invoices are issued monthly from the start of the AGREEMENT. The invoice is due immediately without deduction upon receipt. The prices do not include the statutory value added tax.
- 4.3 If SERVICE PROVIDER procures separately identified external services for CUSTOMER from third parties, SERVICE PROVIDER is entitled to pass on increases in the prices to CUSTOMER.
- 4.4 If CUSTOMER is more than 3 weeks in arrears with payment, SERVICE PROVIDER is entitled to terminate the AGREEMENT without notice. The right to assert further claims due to default of payment remains unaffected.

5. Licenses regarding PLATFORM

- 5.1 SERVICE PROVIDER hereby licenses to CUSTOMER a non-exclusive (non-sublicensable and non-transferable) right to use the PLATFORM for the term and purposes of this Agreement. The PLATFORM and its underlying SOFTWARE will not be made available on any physical data carrier.
- 5.2 CUSTOMER hereby licenses to SERVICE PROVIDER a non-exclusive right to use DELIVERABLES and/or other materials uploaded or otherwise inserted into PLATFORM for the term and purposes of this AGREEMENT. In addition, it is hereby expressly agreed that SERVICE PROVIDER shall have the right to grant sublicenses to third parties for the purposes of the provision of the SERVICES under the AGREEMENT.

6. Data Protection

- 6.1 The PARTIES shall each comply with all applicable data protection laws, including, without limitation, the GDPR and all other data protection laws applicable.
- 6.2 CUSTOMER shall remain the controller of personal data within the meaning of data protection law and therefore shall review in each case whether processing personal data related to usage of the SERVICES is permitted under applicable data protection law. If CUSTOMER himself is a processor, he undertakes to ensure that the controller fulfils this obligation.

- 6.3 If and to the extent that CUSTOMER processes or causes SERVICE PROVIDER to process personal data on behalf of CUSTOMER on IT systems for which SERVICE PROVIDER bears technical responsibility, the PARTIES shall enter into the DPA.
- 6.4 SERVICE PROVIDER includes sub-processors in its data processing. SERVICE PROVIDER shall ensure that all sub-processors are properly integrated into the data processing activities of personal data by means of data processing agreements. These sub-processors may also process the data outside the EU/EEA. Where data processing of personal data takes place or is intended in third countries or international organizations as defined by the GDPR, SERVICE PROVIDER will ensure the necessary guarantees for an adequate level of data protection for the processing of personal data. To this end, CUSTOMER expressly grants SERVICE PROVIDER the power of representation to agree on any necessary EU Standard Contractual Clauses for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection (as of EC Decision 2010/87/EU or later) (“EU Standard Contractual Clauses”) in the name and on behalf of CUSTOMER. CUSTOMER waives Section 181 German Civil Code (“BGB”) and expressly permits SERVICE PROVIDER (and its representatives) to enter into a legal transaction in the name and on behalf of CUSTOMER with SERVICE PROVIDER in its own name or as an agent of a third party.
- 6.5 If CUSTOMER himself is a data processor, CUSTOMER is obligated to disclose any controller within the meaning of data protection law (hereinafter “CONTROLLER”) to SERVICE PROVIDER without undue delay. CUSTOMER represents and warrants that CUSTOMER has been granted the power of representation to enter into EU Standard Contractual Clauses in the name and on behalf of the respective CONTROLLER and that CUSTOMER is able to grant this power of representation to SERVICE PROVIDER, accordingly as a subagent, and that CUSTOMER is able to waive Section 181 BGB in the name and on behalf of the respective CONTROLLER. In this case, CUSTOMER grants SERVICE PROVIDER the power of representation to conclude any necessary EU Standard Contractual Clauses with sub-processors of SERVICE PROVIDER in the name and on behalf of the respective CONTROLLER and waives Section 181 (“BGB”) and expressly permits SERVICE PROVIDER (and its representatives) to enter into a legal transaction in the name and on behalf of the respective CONTROLLER with SERVICE PROVIDER in its own name or as an agent of a third party.

6.6 CUSTOMER hereby grants SERVICE PROVIDER the right to reproduce data to be stored by SERVICE PROVIDER for CUSTOMER, if and to the extent necessary for achieving the purpose of this AGREEMENT. Moreover, SERVICE PROVIDER shall have the right to store data in a backup system or at a remote backup site. To correct malfunctions, SERVICE PROVIDER further shall have the right to make changes to the structure of data or data format.

7. **Liability and Indemnity**

7.1 SERVICE PROVIDER shall be subject to unlimited liability for intentional and grossly negligent actions or omissions, for harm to life, limb, or health, for any violations of the German Product Liability Act (*Produkthaftungsgesetz*), and for any violations of applicable data protection law, as well as to the extent of any guarantee made by SERVICE PROVIDER.

7.2 Any liability of SERVICE PROVIDER for a material breach of contract caused by ordinary negligence shall be limited to reasonably foreseeable damages. Material contractual obligations are obligations the performance of which is a prerequisite for the due performance of this Agreement and on the performance of which CUSTOMER may reasonably rely.

7.3 Any other liability of SERVICE PROVIDER is hereby excluded. This shall also apply to any personal liability of legal representatives and agents of SERVICE PROVIDER.

7.4 CUSTOMER shall defend, indemnify and hold harmless SERVICE PROVIDER and its affiliates, directors, officers and employees from and against any and all claims brought by third parties (including any employees of CUSTOMER) against SERVICE PROVIDER based on or in connection with CUSTOMER's use of the PLATFORM or as a result or in connection with any breach by CUSTOMER of any of his representations and warranties set forth in this Agreement, including, without limitation, costs of prosecuting or defending claims against or by third parties (including without limitation, reasonable attorneys' fees). Any additional claims for damages SERVICE PROVIDER may have shall remain unaffected thereby.

SERVICE PROVIDER shall notify CUSTOMER of any third-party claims and, to the extent permitted by law, allow CUSTOMER to assume legal defense such third-party claims. Conversely, CUSTOMER shall promptly provide SERVICE PROVIDER with all available information about the circumstances giving rise to third-party claims.

8. Term and Termination

- 8.1 The contract term shall commence with activation of the USER ACCOUNT and is in principle indefinite.
- 8.2 CUSTOMER may terminate this AGREEMENT at any time in writing. The termination becomes effective at the end of the following month.
- 8.3 The right of the PARTIES to terminate the AGREEMENT for good cause shall remain unaffected thereby. Good cause for termination for SERVICE PROVIDER shall include, without limitation, any breach by CUSTOMER of its obligations under section 2.3.1-2.3.4 or 6.
- 8.4 If there is good cause for termination based on a breach of section 2.3.1-2.3.4 SERVICE PROVIDER shall have the right, instead of terminating the AGREEMENT for good cause, to opt for a more lenient remedy by blocking CUSTOMER's access to the PLATFORM and/or demanding that CUSTOMER pay a contractual penalty at the reasonable discretion of SERVICE PROVIDER. If CUSTOMER fails to remedy the breach providing good cause for termination within 24 hours, SERVICE PROVIDER may still terminate the AGREEMENT for good cause at that point.
- 8.5 Following termination of the AGREEMENT SERVICE PROVIDER shall – if and to the extent that there are no recordkeeping obligations for data of CUSTOMER – provide CUSTOMER with written confirmation of data deletion.

9. Transferability

- 9.1 CUSTOMER shall assign no rights or obligations under this AGREEMENT, in whole or in part, except with the prior written consent of SERVICE PROVIDER.
- 9.2 SERVICE PROVIDER shall have the right to associate third parties for the performance of its obligations under this AGREEMENT.

10. Miscellaneous

- 10.1 Any collateral agreements, modifications, or amendments to this AGREEMENT, including any waiver of this clause, shall be valid only if in text form (Section 126b BGB).

- 10.2 In addition to these TERMS OF USE, each ORDER, the provisions of the DPA and the EU Standard Contractual Clauses shall apply. In the event of any conflicts, the TERMS OF USE, the DPA or the EU Standard Contractual Clauses shall apply in the following order of priority:
- (1) EU Standard Contractual Clauses
 - (2) DPA
 - (3) ORDER
 - (4) TERMS OF USE.
- 10.3 Any general terms and conditions of CUSTOMER shall not become part of the AGREEMENT. SERVICE PROVIDER hereby expressly objects to any reconfirmations from CUSTOMER referencing CUSTOMER's general terms and conditions. There are no oral collateral agreements.
- 10.4 If any provisions of this Agreement should be or become invalid under current or future law, the validity of the remaining provisions shall remain unaffected thereby. If a provision is invalid, the PARTIES shall agree on such valid provision as most closely reflects the economic intent and purpose of the PARTIES, to the extent permitted by law.
- 10.5 If CUSTOMER is a merchant, public entity, or special assets (Sondervermögen) under public law, exclusive venue and jurisdiction for any and all disputes arising from or in connection with this AGREEMENT shall be in the courts of Hamburg, Germany. The same shall apply to persons for whom there is no proper venue and jurisdiction in Germany based on their residence or habitual abode, and to persons who relocate their residence or habitual abode to a location outside of Germany after the signing date of this AGREEMENT or whose residence or habitual upload is unknown at the time legal action is filed.
- 10.6 This AGREEMENT shall be governed by the laws of the Federal Republic of Germany, with the exception of German conflict of laws provisions and the UN Convention on Contracts for the International Sale of Goods (CISG).
- 10.7 SERVICE PROVIDER may change this Agreement and any part of it, provided that such change does not constitute an unfair disadvantage for CUSTOMER, at any time for the following reasons: for legal or regulatory reasons; for security reasons; to enhance existing features or add additional features to SERVICE PROVIDER's Services; to reflect advancements in technology; to make reasonable technical adjustments to SERVICE PROVIDER's Services; and to ensure the ongoing operability of

SERVICE PROVIDER's Services. If SERVICE PROVIDER makes changes, SERVICE PROVIDER will inform CUSTOMER in due time. CUSTOMER may terminate the AGREEMENT before any changes of the AGREEMENT enter into force. If any change is found invalid or for any reason unenforceable, that change is severable and does not affect the validity and enforceability of any remaining changes or conditions.