

## TERMS OF USE PRIVACY POLICY

Please read the following Terms of Use / Privacy Policy attentively, they contain important points. You should only use the services if you agree to these Terms of Use / Privacy Policy.

### SCOPE OF THE TERMS OF USE

1. These Terms of Use govern the use of the platform "Welser Profile AR", which is available through an application/applications for mobile devices (smartphones, tablets etc) ("**Application**"). The Application is provided free of charge to end-users.
2. AV-Media Productions Gesellschaft m.b.H, with its registered seat in A-6063 Rum, Austria, is the provider and operator of the Application (the "**Provider**").
3. This Application may only be used by natural persons, who agree to abide to these Terms of Use / Privacy Policy at all times (the "**User**", always referring to both, female and male persons alike).
4. The services of Provider include the making available of software, which is downloaded to a respective mobile device of User ("**Software**"). Provider might have to update the Software from time to time (which might be carried out automatically) – the present Terms of Use / Privacy Policy apply to any such updates and updated versions of the Software, unless otherwise agreed upon in the context of the respective update.
5. Any violation of the Terms of Use / Privacy Policy can result in blocking of the User and/or exclusion of the User from services at the sole discretion of Provider. User is not entitled to any claims against Provider on the basis of such measures.

### RIGHTS IN THE APPLICATION / SOFTWARE

6. Provider grants User a limited, personal, non-exclusive, non-transferrable/licensable and revocable license to use the Application and (where applicable) Software on the basis of the Terms of Use / Privacy Policy. Provider and its co-operation partners (in particular the software-developer) reserve all rights in and to the Software. The Software may contain components (in particular open-source elements), which are freely available and in respect of which Provider does not hold any rights – Provider does not claim any rights in or to such components. The Software may also contain elements for which the Provider and/or its co-operation partners hold a respective license.
7. The Application and the Software contain elements and content which do or may enjoy protection (pursuant to e.g. Copyright and Allied Copyright Law, Trademark Law, Patent / Utility Model Law, Design Law, Competition Law or other laws) for the benefit of Provider or co-operation partners of Provider (with the exception of possible open-source elements referred to above). Provider and its co-operation partners expressly reserve(s) any and all rights in and to the same. Any use of these elements and content (or parts thereof), extending beyond what is necessary for using the Application or Software by User under normal circumstances, is inadmissible without the prior written consent of Provider. This applies in particular, but without limitation, to the Software (excluding possible open-source elements), names, characters, GINNS (as described below) trademarks and other marks/signs, content, layout, design and interface of the Application, databases, videos, photographs, texts and graphics.

### USING THE APPLICATION, USER-CONTENT

8. The Platform allows users to activate animated content (like figurines, characters etc, called "**GINNS**") by scanning particular markers (QR-Codes, symbols or similar) which appear in e.g. print-materials, advertisements, posters other carriers etc (as determined by Provider). These

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GINNS may be (but not necessarily are in any given case) linked to special content, benefits, promotions or discounts (as described in proximity to the respective marker to be scanned) for the User which can be redeemed by e.g. taking a photo / video with the GINN and showing the photo / video to an advertising or co-operation partner of Provider.

9. When User makes a photo / video containing the GINN, it might be the case that in the background of said photo / video other persons or objects become visible. Provider has no influence thereon and accepts no responsibility or liability in this respect – all such photos / videos made by User are considered user-generated-content (“**User Content**”).
10. User hereby acknowledges that such User-Content may potentially be perceived by an unlimited, indeterminable number of persons worldwide when distributed (“shared”). User-Content may also be further distributed (“shared”) and made publicly available by third parties through other applications, in particular social-media platforms.
11. User bears the sole responsibility for its User-Content (including its title/denomination, description and comments, content as well as relating information). Provider does not embrace User-Content and does not assume any responsibility, warranty or liability for the lawfulness, correctness, completeness or accuracy of User-Content or for freedom from third-party-rights. User-Content is in particular not subject to any pre-examination or categorisation in terms of legality or content by Provider.
12. User-Content (including its title/denomination, description and comments, content as well as relating information, where applicable) must not, at any time, violate against applicable laws or established principles of morality and must not contain any content which constitutes a criminal offense, is pornographic, liable to corrupt the youth, glorifying violence, shocking, immoral, indecent or similar. User-Content must not threaten, disparage, denounce, insult and/or put into an incorrect, inappropriate and/or misleading context, any user, persons/group of persons, religions/religious communities, entities, trademarks, products or similar. In particular, the GINNS must not be put in a context violating any of the aforementioned. The same applies to descriptions left in the context of User-Content or sent with User-Content.
13. Provider is under no obligation to examine User-Content in respect of its lawfulness but reserves the right (where technically possible) to immediately delete or block User-Content (as well as similar infringements) so that the same cannot be perceived within the Application, should any third party assert an infringement (of rights) and/or claim own rights in and to the User-Content (“notice-and-takedown”). Provider is not obligated to verify the entitlement of such third party and/or the asserted infringement (of rights). User is not entitled to any claims against Provider on the basis of such measures.
14. User hereby guarantees, represents and warrants, that:
  - a. User-Content has been generated and created by User, has not been copied and User holds all necessary rights in respect of the User-Content provided (including its content, title/denomination and description but not in respect of the GINN) and has the power and authority to grant the rights hereunder to the extent that the User-Content can be used by Provider and addressee(s) accordingly;
  - b. User-Content (including its content and title/denomination, where applicable) is clear and free of rights of any third party and (User-Content, its transmission / making available, distribution, dissemination or use) does not violate against any third party rights. This includes, without limitation, Intellectual Property Rights (copyrights and allied copyrights, synchronisation rights, patent rights, designs rights, trademark rights), personality rights (including moral rights under copyright, rights to be named as creator / inventor and similar rights, persons depicted in User-Content), interests in confidentiality and securities;
  - c. User has been irrevocably authorised by potential co-authors/co-creators and other entitled persons to use the User-Content according to these Terms of Use and grant the respective rights therein to Provider and the addressee(s);

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- d. User-Content has not been created, generated and/or made available by infringing applicable laws, contractual provisions or any limitations (e.g. house-rules, access restraints or the like);
  - e. User-Content and/or its transmission/making-available does not violate any confidentiality- or other contractual obligations of User and the same are not in conflict with the granting of rights pursuant to these Terms of Use;
  - f. User-Content (including its content and title/denomination) does not violate clause 12. of these Terms of Use;
  - g. all data and details provided in respect of the User-Content are correct and complete and can be used and disseminated by Provider and all related moral rights under copyright, rights to be named as creator / inventor and similar rights have been observed and properly communicated by User;
  - h. User-Content is free of any defects, viruses, computer-worms, malware, spyware or any other potentially detrimental elements for the Application and/or the Software and the systems of any addressee(s).
15. User agrees to fully indemnify and hold harmless Provider, its co-operation partners as well as their respective organs, employees, representatives, agents and/or vicarious agents from and against any claims of third parties asserted in direct or indirect connection with the User-Content (including its content, title/denomination or description) or its transmission, making available, dissemination or use by Provider, other users, addressees or successors / licensees which are directed against Provider and/or co-operation partners (including their respective organs, employees, representatives, agents and/or vicarious agents). This includes any associated costs (e.g. legal costs).
16. Use of the Application is granted on a Fair-Use-Basis. Provider reserves the right to delete or block User-Content temporarily or permanently and/or to block any User-account, should Provider become aware of Users or groups of Users occupying (at a certain time or over a certain duration) a disproportionately high amount of capacity. User is not entitled to any claims against Provider based on such measures.
17. Use of the Application by User is for personal and non-commercial purposes only. User hereby agrees (i) not to use the Application for own commercial purposes or for commercial purposes of any third party without the Provider's written consent; (ii) not to engage in any advertising or sponsoring on the Application and not to use or sell affiliate-URLs or similar.
18. Use of the Application may require internet access, additional charges can apply (dependent on the location and the applicable contract with the network provider). User is advised to make sure that a WIFI network is used or that the network-contract of the User has sufficient bandwidth and data-capacity.

### **NON-EXCLUSIVE GRANTING OF RIGHTS**

19. User remains the author under copyright and owner of its User-Content and retains the rights therein. With transmission / making available of the User-Content, User grants Provider a royalty-free, non-exclusive right to use the User-Content by any all means now known or hereafter devised, without limitation as to time, geographical extent or content, in any and all media, by any process and any quantity. This includes, without limitation, the right to copy and reproduce, save, distribute, disseminate, rent/lend, display, broadcast, publicly perform, make publicly available (through wire or wireless) User-Content (and/or parts thereof), as well as to synchronise the User-Content with other works of similar or different nature, to adapt and edit the same to the fullest extent, to shorten and modify the User-Content and to use such adaptations in the aforementioned manner.

20. Provider has the right to transfer the rights granted hereunder for valuable consideration or free of charge and/or to grant sublicenses or similar limited rights to any third party. Provider is entitled but not obligated to make use of the User-Content in the aforementioned manner. This granting of rights to Provider does not limit in any way Provider's potentially existing rights in or to the User-Content (e.g. pursuant to other existing agreements).
21. Provider is in particular authorised to permit other users of the Application and addressees the use of User-Content.

### **WARRANTY, LIMITATION OF LIABILITY**

22. The Application and Software are provided on an "as is" basis, without warranty of any kind. Provider accepts no responsibility and assumes no liability for (i) a particular characteristic, suitability, merchantability or fitness for a particular purpose of the Application or the Software, (ii) uninterrupted or error-free availability and accessibility of the Software or the Application or the possibility of access or interaction, (iii) transmission-, hardware-, software- or network-errors, (iv) lost, damaged, incomplete, corrupted or delayed transmission of User-Content or other data, (v) availability or accessibility of User-Content, (vi) the conduct of other users of the Application, (vii) attacks or access by unauthorised third parties within the Application or by external parties, (viii) the availability or scope of any special content, benefits, promotions or discounts by co-operation partners through the GINN.
23. Provider reserves the right to interrupt (in part or in full) the operation of the Application at any time and without prior notice (e.g. for maintenance works, updates etc) or to cease the operation of the Application altogether. The latter may lead to a deletion of User-Content and other settings or data from the Application and/or that the same cannot be accessed (by User and/or third parties) any more. User is not entitled to any claims against Provider based on such measures.
24. As far as the liability of Provider is not excluded pursuant to these Terms of Use and as far as legally permissible, Provider is only liable for intent and gross negligence and only for typical and foreseeable direct damages.
25. The liability of Provider and User for ordinary negligence, consequential damages, indirect damages, third-party damages, immaterial damages and for loss of profits is hereby excluded.
26. Exclusions or limitations of liability of Provider apply also to the liability of co-operation partners and their respective organs, employees, representatives, agents and/or vicarious agents.
27. User is solely responsible for the use of the features of the Application and to ensure that such use is safe at all times by monitoring the environment and surroundings where the Application is used. The use of the Application while conducting any kind of vehicle and/or any other situation where the use of a mobile device is forbidden by law or could otherwise distract its user is strongly advised against.

### **LINKS, THIRD-PARTY-CONTENT, ADVERTISING**

28. The Application may contain links to other websites, advertisements (e.g. in the form of banners or placements), offers or the like of third parties ("**Third-Party-Content**"), which do not originate with Provider and are not controlled by Provider. Provider does not embrace Third-Party-Content and does not assume any responsibility, warranty or liability in respect of the same, offered products, services or information or the secure / risk-free access or retrieval of the website the link is leading to. The access, retrieval and utilisation of such Third-Party-Content is at User's sole responsibility and risk.
29. Provider retains the right to place advertisements within the Application, which will be visible by User.
30. Any placement of advertisements will be selected by Provider, any and all limitations of liability and restrictions for Third-Party-Content shall apply to such placements.

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31. User hereby explicitly agrees to be contacted by Provider via e-mail, also for advertising purposes. Such e-mail communication may include newsletters, advertising for own services and/ or advertising for products or services of advertising partners. User can revoke this consent with future effect at any time: [info@av-media.at](mailto:info@av-media.at).

### **PRIVACY POLICY, DATA PROTECTION**

32. The processing of personal data of User is subject to the General Data Protection Regulation (Nr 2016/679, the "GDPR") and national data protection provisions. Provider is the controller pursuant to Art 4 (7) GDPR.
33. By downloading, accessing or using the Application / Software, the following (partly personal) data may be transmitted to and processed by Provider: (i) log-data like IP-address, date and time of access, information concerning the operating system and the internet browser used, website, from which the access occurred ("referrer-URL"), (ii) cookies, (iii) location-specific information and information about the device used (depending on the settings of the device), (iv) photographs, (v) videos.
34. Personal data of User (if provided) will be used by Provider solely for the purposes of providing the services to users (Art 6 (1) (b) GDPR), for maintenance and improvement of services in the context of the Application and the Software (Art 6 (1) (f) GDPR). User's personal data will not be transferred to third parties (unless User has given its prior authorisation).
35. Provider uses certain analysis- and tracking-tools, which might use cookies and register, record and evaluate the conduct of users on the Application. The registration, recording and evaluation of data (age, sex, place of residence etc) is carried out in anonymised and non-personal form, cannot be traced back to a certain user and will not be used for identifying users. Such data will not be consolidated with other types of data. Provider uses such anonymised data for market research purposes and for optimising its services and might transmit such anonymised data to third parties.
36. The protection of personal data is ensured through organizational and technical measures, including protection against unauthorized access and technical data protection precautions. Notwithstanding these efforts, it cannot be completely excluded that data, which User makes available through the internet can be perceived and potentially be used by others. Provider assumes no responsibility or liability for errors in the communication of data or unauthorized access by third parties (e.g. through hacker-attacks, spyware, malware etc).
37. Personal data will be stored by Provider only for the period necessary to fulfill contractual and/or legal obligations (respective obligations may arise, e.g. from fiscal or from product liability provisions). Where the storing is not necessary any longer, such data will be deleted.
38. In the case of insolvency proceedings or a merger, takeover, restructuring or a sale of assets of Provider's undertaking, personal data can be transmitted and/or transferred in such transaction. The provisions of this section apply also to data which are transmitted in such transaction and/or to a new legal entity.
39. **User hereby expressly consents to the use of its personal data (pursuant to clauses 32. to 38.) for the purposes and in the manner and scope described in this section "PRIVACY POLICY, DATA PROTECTION".**
40. Subject to the existence of statutory confidentiality obligations, User has the right to access its personal data and demand disclosure regarding the source of its personal data, the purpose for which it is being processed and - as the case may be - potential recipients. Furthermore, User has the right to have their personal data rectified, transmitted, their processing restricted or deleted, should the data be incorrect or should the basis for processing personal data cease to apply (Art 15, 16, 17, 18, 20 GDPR). User also has the right to object to the processing of its personal data based on Art 6 (1) (f) GDPR („legitimate interests") pursuant to Art 21 GDPR.

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Please note that a possible objection does not affect the lawfulness of the processing of personal data on the basis of other legitimate grounds listed in Art 6 (1) GDPR.

41. Should User be of the opinion that the processing of its personal data infringes applicable data protection laws or User's claims pursuant to data protection laws are otherwise violated, User has the right to lodge a complaint with the competent supervisory authority (Art 77 GDPR).
42. User also has the right to withdraw its consent in respect of the consent for the processing of personal data or of being contacted by Provider via e-mail as well as the use of analysis- and tracking-tools for the future.
43. Any such requests should be directed to the following address: [info@av-media.at](mailto:info@av-media.at).
44. The Application will - solely upon a respective activation by User - access the built-in camera(s) of the device used in order to fulfill its function. Accordingly, pictures/videos can be taken by User that might contain personal data of User or other persons. Such photographs/videos will not be transmitted to and cannot be accessed by Provider.

### **APPLICABLE LAW, VENUE, CHANGES**

45. These Terms of Use / Privacy Policy shall be subject to and construed in accordance with the laws of the Republic of Austria, excluding its conflict-of-laws provisions. All direct or indirect disputes arising in the context of the Terms of Use / Privacy Policy, the Application or the Software shall be subject to the exclusive jurisdiction of the competent court for the seat of Provider in A-6020 Innsbruck. This is without prejudice to legal restrictions, in particular consumer protection laws.
46. Provider reserves the right to change the Terms of Use / Privacy Policy from time to time, make the then valid version available on the Application and inform the users thereof at its discretion. The use of the Application thereafter will then be subject to the modified Terms of Use / Privacy Policy. User are, however, free to deactivate or delete their respective User-Account should they not concur with the modified version of the Terms of Use / Privacy Policy.