



Vodafone Cloud Services Marketplace

General Terms

1. About These Terms and the Agreement

- 1.1 This Agreement will govern Vodafone's relationship with Customer regarding the provision of the Services to Customer. The Order/Commercial Terms, the Content Terms, these General Terms, and the AUP together form Vodafone's contract with Customer and apply in decreasing order of precedence (together the "Agreement").
- 1.2 By entering into this Agreement, Customer confirms that it is contracting as a business and not as a consumer.
- 1.3 In this Agreement, capitalised words are given specific meanings which are set out in clause 18.

2. The Service - Overview

- 2.1 The Vodafone Cloud Services Marketplace (the "Vodafone Cloud Services Marketplace") is a website through which Vodafone provides customers with access to a variety of products and services including (without limitation) apps, resources, software and merchandise (collectively "Content") and provides the Customer with the ability to manage the number of licences for such Content.
- 2.2 The Service is provided by or on behalf of Vodafone Limited and intended for use in the UK only.

3. Commencement and Duration

- 3.1 This Agreement begins on the earlier of (i) the date on which an Order for the Services becomes binding and (ii) the Commencement Date. It continues thereafter until the earlier of either (i) Customer having no valid subscription for any Content or (ii) termination in accordance with the Agreement.
- 3.2 An Order for the Services is binding when Vodafone has accepted it by giving Customer written confirmation or, if Vodafone doesn't provide Customer with written confirmation, when Vodafone connects the Services or commences implementation of the Order.
- 3.3 Any dates Vodafone gives Customer are estimates only and time is not of the essence in relation to such dates.
- 3.4 Vodafone will provide the Services to Customer from the Commencement Date for the remainder of the term of the Agreement in relation to those Services.

4. Charges

- 4.1 Customer will pay Vodafone the Charges for the Services.
- 4.2 All Charges for Services are stated exclusive of VAT which is charged at the current rate.
- 4.3 Vodafone will invoice Charges in accordance with the Order. Customer must pay all Charges by direct debit or other agreed method within the payment period specified.
- 4.4 If this Agreement is terminated before the end of a billing cycle, Customer will pay the outstanding Charges relating to the terminated End Users and the monthly Charges until the end of that billing cycle. This clause 4.4 shall survive the termination of this Agreement.
- 4.5 Customer will raise any billing queries within one month of the date of the relevant invoice.
- 4.6 If Customer commits to a minimum number of Licences and does not meet that commitment, Vodafone may charge Customer in respect of the committed Licences.
- 4.7 Vodafone may apply any payment which Customer owes to it against any payment which Vodafone owes to Customer under this Agreement or any other agreement. Customer shall not make any deductions from amounts which it owes to Vodafone.
- 4.8 Vodafone may credit assess Customer from time to time as reasonably required to assess Vodafone's risk. Each credit assessment will entitle Vodafone to put a credit limit on Customer's Vodafone account (details of which are available on request).

5. Use of the Services

- 5.1 By accessing or using the Services Customer accepts this Agreement and confirms that it is contracting as a business and not as a consumer.
- 5.2 The individual accessing the Services represents and warrants that they are an authorised representative of that Business with the authority to bind it to this Agreement, and agrees to this Agreement on behalf of such Business. In such a case "Customer" in this Agreement refers to (i) the Business and (ii) Business personnel accessing the Services on behalf of the Business.
- 5.3 To use the Services, Customer needs its own compatible hardware, software and internet access. The performance of the Services may be affected by these factors.
- 5.4 Using the Services requires a password. Customer is responsible for maintaining its confidentiality and security. Vodafone does not guarantee the security of the Services against unauthorised or unlawful access or use and is not responsible for any losses arising from the unauthorised use of passwords.

5.5 The Services and pricing of Content may be updated from time to time. Customer should check and read the terms made available via the Services, to ensure it has the latest information.

5.6 Customer will use Services in accordance with Vodafone's AUP and will indemnify Vodafone against any and all liability and costs which Vodafone suffers if Customer breaches the AUP. In addition, Customer will not:

- commercially distribute, publish, license, or sell any information or services obtained via the Services;
- make available the Services (or any part of them) for any commercial purpose to a third party;
- make available the Services or Services (or any part of it) for any unlawful purpose;
- permit or make any attempt to disassemble, deconstruct, break down, hack or otherwise interfere with the Services; or
- tamper with or circumvent any security technology included with the Services.

5.7 Vodafone may monitor Customer's use of the Services to ensure that Customer is following these usage rules.

5.8 Vodafone and/or the Platform Subcontractor (as the case may be) retains all right, title and interest in and to the Vodafone Cloud Services Marketplace and reserves all rights not expressly granted to Customer in this Agreement or otherwise in the Agreement.

6. The Content

6.1 Unless otherwise specified, Content is for use by the purchaser or the purchaser's Business.

6.2 The Content includes Apps and may contain links to third party sites. Purchases of access to all third party products and services are subject to terms of use which Customer will have the opportunity to review and accept before processing its purchase transaction. Customer shall abide by the applicable developer terms of use or end user licence agreements relating to those products and services.

6.3 The Content offered on the Vodafone Cloud Services Marketplace is made available by third party providers and neither Vodafone nor its Platform Subcontractor is responsible for such third party products and services. In addition, the inclusion of Apps or links to third party sites does not imply Vodafone's endorsement of the same and unless expressly stated elsewhere, Vodafone is not responsible or liable for third party materials included within Apps or linked via the Services.

6.4 Supply of the Content via the Services does not constitute a grant or waiver of any rights of the copyright owners.

6.5 If Vodafone is no longer authorised to provide the Services, for example following termination of a contract between Vodafone and a third party supplier, Vodafone may terminate the affected Content with immediate effect on written notice to Customer. If this happens, Vodafone will credit Charges paid in advance in relation to the terminated Content for the period following termination without affecting Customer's rights under this Agreement.

7. Availability

7.1 The Services are supplied to Customer on an 'as is' basis and Vodafone (for itself and on behalf of the Platform Subcontractor) makes no warranties, express or implied, regarding their satisfactory quality, fitness for a particular purpose, reliability, timeliness, accuracy, completeness, security or that they are free from error.

7.2 Access to the Services may occasionally be suspended or restricted for operational reasons such as maintenance or the introduction of new Content.

8. Changing the Agreement

8.1 Vodafone may change the Agreement (including changing or introducing new Charges or changing or withdrawing the Services or Third Party Services) where required:

- to comply with Applicable Law;
- due to a change imposed by a third party supplier; or
- due to a change in Vodafone's operations or services.

8.2 Subject to the rest of this clause 8, Vodafone shall provide Customer as much written notice as is reasonably practicable of a change made under clause 8.1(a), and at least 30 days' written notice for a change made under clauses 8.1(b) or 8.1(c). Vodafone may update or withdraw its Services without notice only where such change (in Vodafone's reasonable opinion) does not cause Customer any detriment or where Customer does not regularly use that Service.

8.3 The Customer may terminate the affected part of the Agreement where a change under clause 8.1(b) or clause 8.1(c) causes the Customer a material detriment which cannot be offset by Vodafone to the Customer's reasonable satisfaction on 30 days'



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- written notice to Vodafone and if Customer does this, the changes will not apply to Customer during the notice period. This right to terminate ends 30 days after the effective date of the change.
- 8.4 Save as set out in clause 8.1, changes to this Agreement must be made by written agreement of both Parties, and shall be executed by an authorised signatory of each Party.
- 9. Suspending the Services**
- 9.1 Vodafone may suspend the Services: (a) to carry out necessary planned maintenance, modification or in the event of technical failure of the Services; or (b) where it is necessary to comply with law or regulation (including any orders or directions given by emergency services, law enforcement or regulatory agencies) provided that in each case Vodafone will keep all suspensions to a minimum.
- 9.2 Vodafone may suspend the Services if Vodafone reasonably believes that Customer is in breach of this Agreement.
- 9.3 Vodafone will give Customer prior notice of any suspensions where reasonably practicable.
- 10. Terminating This Agreement**
- 10.1 Subject to clause 11, each party may end this Agreement in whole or in part by giving the other 30 days' notice in writing. Customer must pay the Charges during the notice period.
- 10.2 Each party may terminate this Agreement in whole or part with immediate effect (by serving written notice of termination to the other party): (a) if the other party becomes subject to an Insolvency Event; or (b) if the other party is in material breach of this Agreement (provided that where such breach is capable of remedy, the breaching party is given 30 days to rectify such breach from the date of the other party's notice of the breach).
- 10.3 If Vodafone is no longer authorised to provide the Services, for example, following termination of a contract between Vodafone and a third party supplier, Vodafone may terminate the affected Service(s) with immediate effect on written notice to Customer. If this happens, Vodafone will credit Customer Charges paid in advance in relation to the terminated Service(s) for the period following termination without affecting Customer's rights under clause 8.1.
- 11. Effects of Termination**
- 11.1 On termination of this Agreement (in whole or part), the following will apply to all or part of this Agreement terminated: (a) Vodafone will cease to provide the Services; (b) Vodafone will terminate access to the Content; (c) Customer and Customer's End Users will stop using the Service(s) and Content; and (e) Customer will immediately pay Vodafone all sums due.
- 12. Liability**
- 12.1 Nothing in this Agreement restricts Vodafone's liability for death or personal injury resulting from Vodafone's negligence or for anything which cannot be restricted by law.
- 12.2 Vodafone is not liable under or in relation to this Agreement for: (i) any loss (whether direct or indirect) of profit, revenue, business, data, anticipated savings or goodwill; or (ii) any indirect or consequential losses, regardless of whether such losses were contemplated.
- 12.3 Subject to clause 12.2, to the fullest extent permitted by law Vodafone's liability under or in relation to this Agreement or any Content Terms is limited in total to 100% of the Charges paid or payable by Customer in the first twelve months of this Agreement, or if this Agreement has not been in place for 12 months, the average monthly Charges payable for the months from the Commencement Date of this Agreement to the date of the first claim, multiplied by 12. This shall be Customer's sole and exclusive remedy.
- 12.4 Vodafone's commitments expressed in this Agreement are in lieu of all implied terms conditions and warranties which are excluded to the full extent permitted by law.
- 13. Confidentiality**
- 13.1 Each Party ("**Receiving Party**") will keep confidential the Confidential Information of the other Party ("**Disclosing Party**") and not disclose the same to any other person except as permitted below.
- 13.2 A Receiving Party may disclose Confidential Information to any director, officer, employee, contractor, or adviser, of the Receiving Party where necessary to fulfil the purpose of this Agreement provided that the Receiving Party ensures those recipients comply with this clause 13. A Receiving Party may disclose Confidential Information where it is required to do so by law or to comply with a court order or request from a regulatory authority.
- 13.3 Confidential Information will not include information that: (a) is publicly available other than through breach of this Agreement; (b) is lawfully in the possession of the Receiving Party before disclosure under this Agreement; (c) has been obtained from a third party who is free to disclose it; (d) is independently developed without access to the Confidential Information.
- 13.4 Upon written request, as soon as reasonably practicable, the Receiving Party will return all Confidential Information (as far as technically reasonably possible) to the Disclosing Party. The Receiving Party may retain Confidential Information as required by law or as required for archive purposes. This Agreement will continue to apply to any retained Confidential Information.
- 13.5 The obligations in this clause 13 will survive termination of this Agreement for a period of 3 years from the date of termination.
- 14. Data Protection**
- 14.1 Both parties will comply with Applicable Privacy Law.
- 14.2 Where Vodafone acts as Data Processor and processes any Personal Data for and on behalf of Customer acting as Data Controller, the following provisions shall apply:
- i. **Processing of User Personal Data:** Vodafone may only Process User Personal Data for the purposes of providing and monitoring the provision of the relevant Service. Customer's prior written consent is required for any other purpose.
- ii. **Use of anonymous data:** Vodafone may use User Personal Data to create anonymous, aggregated, statistical data and information about service usage and devices that does not, and cannot be, used to identify a User.
- iii. **Disclosure of User Personal Data:** Vodafone may only disclose User Personal Data to third parties or other members of the Vodafone Group: (i) for the purposes of providing the relevant Service; (ii) if required by Applicable Privacy Law, court order, Privacy Authority or any other statutory body or agency; or (iii) to third parties lawfully sub-processing for Vodafone to deliver the Service.
- iv. **Retention of User Personal Data:**
- (a) Vodafone may retain the User Personal Data for as long as is required to deliver the Service.
- (b) Upon termination of the relevant Services, Vodafone shall (except where required otherwise by Applicable Privacy Law) destroy or return (at Customer's option) User Personal Data in its possession.
- (c) In the event that Customer opts for Vodafone to retain User Personal Data post termination, the Parties shall enter in a Service Agreement for hosting.
- v. **Access to User Personal Data:**
- (a) Vodafone shall limit access to User Personal Data to those Authorised Persons as necessary to meet Vodafone's obligations in relation to the Service and to such part or parts of the User Personal Data as are strictly necessary for the performance of that Authorised Person's duties.
- (b) Vodafone shall take reasonable steps to ensure the reliability of any of its Authorised Persons who have access to the User Personal Data and will make sure that all Authorised Persons are: (i) informed of the confidential nature of the User Personal Data; (ii) trained in Vodafone's policies relating to handling User Personal Data; and (iii) aware of Vodafone's and their own obligations in this respect.
- vi. **Security of User Personal Data:** Vodafone shall:
- (a) taking into account the state of technological development and to the cost of implementing any measures: (i) provide a level of security (including appropriate technical and organisational measures) appropriate to the harm that might result from unauthorised or unlawful Processing, or the accidental loss, destruction or damage, of any User Personal Data pursuant to the relevant Service and the nature of the User Personal Data; and (ii) comply with the security requirements contained in the Vodafone Information Security policies based on ISO 27001;
- (b) provide the Customer with such information, assistance and co-operation as the Customer may reasonably require to establish compliance with the security measures contained in these Data Protection Terms and inform the Customer as soon as reasonably practicable of any particular risk of which it becomes aware to the security of any User Personal Data; and
- (c) promptly notify the Customer of any unauthorised access to User Personal Data of which Vodafone becomes aware.
- vii. **Transfer of User Personal Data out of the EEA:** Vodafone may transfer User Personal Data to countries outside the European Economic Area only to the extent that:
- (a) User Personal Data is transferred to a territory outside the European Economic Area on terms substantially in accordance with the European Union standard contractual clauses for the transfer of Personal Data to processors established in third countries under Directive 95/46/EC; or
- (b) that the transfer of User Personal Data does not put any member of the Customer Group in breach of its obligations under Applicable Privacy Law.
- viii. **Law enforcement authorities:** Vodafone: (i) may receive legally binding demands from a law enforcement authority for the disclosure of, or other assistance in respect



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of, User Personal Data, or be required by law, including court order, warrant or subpoena to disclose User Personal Data to persons other than the Customer; (ii) will not be in breach of its obligation to Customer in complying with such obligations to the extent legally bound; and (iii) shall notify the Customer as soon as reasonably possible of any such demand unless otherwise prohibited.

ix. **Enquiries from Users:** Vodafone shall promptly, and in any event not later than required in order to enable each member of the Customer Group to fulfil its duties under Applicable Privacy Law, pass on to the Customer any enquiries or communications (including subject access requests) from Users relating to their User Personal Data or its Processing, provide such information as may be required to enable the Customer to respond to those enquiries or communications and otherwise to comply with its duties under Applicable Privacy Law.

14.3 Where applicable, Customer will inform Customer's End Users of Vodafone's processing of Personal Data and will ensure that they have consented to such processing prior to using the Services.

14.4 Customer agrees that where it is reasonably requested by a Content Supplier, Vodafone may provide Customer's billing and contact information to the relevant Content Supplier for the purposes of management, calculating commissions and administration of the account.

15. Transferring This Agreement

15.1 Neither Party may transfer, novate, or assign this Agreement (in whole or in part) without the other Party's prior written consent, such consent not to be unreasonably withheld.

15.2 Despite clause 15.1, Vodafone may transfer, novate, or assign this Agreement (in whole or part) without Customer's consent to: (a) a company within Vodafone's Group; or (b) a debt collection agency where Vodafone has terminated this Agreement for Customer's non-payment.

15.3 Vodafone may perform some or all of Vodafone's obligations under this Agreement by using subcontractors.

16. Notices

16.1 Vodafone will send Customer notice by any of post, voicemail, text or other form of electronic message. Vodafone will treat Customer as having received the notices 48 hours after Vodafone has sent them. Any bills and notices served by post will be sent to the address Customer has given Vodafone. Customer must tell Vodafone about any changes to Customer's address. Customer must send Vodafone notices by post or email to Vodafone's address shown on the bill. Customer can assume Vodafone has received these notices 48 hours after Customer have sent them.

17. General

17.1 This Agreement and (where applicable) the relevant additional terms that Customer accepts as part of the registration or purchasing process for Content and (if applicable) any third party terms, form the entire understanding between Customer and Vodafone concerning Customer's use of the Services and Content and supersede all previous agreements relating to such use.

17.2 Unless expressly provided in this Agreement, no term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

17.3 If Customer or Vodafone fails to enforce its rights under this Agreement, it will not prevent Customer or Vodafone from taking further action.

17.4 The Parties acknowledge that, in entering into this Agreement, neither Party has relied upon any statement or warranty made, or agreed to, by any person, except those expressly set out within this Agreement and the Parties agree that the only remedy available for breach of the warranties shall be for breach of contract under the terms of this Agreement.

17.5 Neither Party will be responsible or liable for the failure or delay in the performance of its obligations due to a cause beyond its reasonable control. Each Party may terminate this Agreement if the other Party is prevented from performing its obligations due to a cause beyond its reasonable control which continues for a period of 30 days or more.

17.6 Customer and Vodafone will not make any public announcement regarding this Agreement unless Vodafone has agreed with Customer otherwise although Vodafone may include Customer in Vodafone's generic list of customers which Vodafone may publish from time to time.

17.7 The agreement set out in this Agreement is made under English law.

18. Definitions

Applicable Privacy Law - The relevant local data protection and privacy law to which the data controller is subject.

Apps - Without limitation, all or any of the following: apps, in-app purchases and subscriptions made available in an app.

AUP - Vodafone's acceptable use policy at <http://www.vodafone.co.uk/cs/groups/configfiles/documents/contentdocuments/vfcon058965.pdf> (this link may need to be copied into a web browser) or as otherwise made available via the Services.

Authorised Person - Any director, officer, employee, sub-contractor or adviser of a Party or of any company within such Party's group being either the Vodafone Group or the Customer Group.

Business - A company, entity, or organisation.

Charges - all fees which are payable by Customer for use of the Services including fees for access, Content, Software, Recovery Charges, usage charges and any 'one-off' charges.

Commencement Date - The date that Vodafone starts providing the Services to Customer, which will be the date on which Vodafone begins to provide Services or commence implementation of Customer's order. If Customer makes further orders after the initial Commencement Date, the commencement date for the additional ordered Services will be the date Vodafone begins to provide the additional Services to Customer.

Commercial Terms - The Order or other document provided to the Customer which details the commercial offer to Customer for the Services.

Confidential Information - Information which would reasonably be regarded as confidential by a business person concerning the operations, business, services, knowhow, suppliers, customers, or products of the disclosing party disclosed by one party to the other party before or after the Commencement Date. Vodafone's Confidential Information includes passwords, PINs and security information which are used to access the Services.

Content - Has the meaning set out in clause 2.1.

Content Supplier - A third party supplier to Vodafone of Content.

Content Terms - The terms and conditions applicable to any Content.

Customer - The contracting party set out in the Order/Commercial Terms.

Data Controller - The person that determines the purposes and means for which data is Processed.

Data Processor - The person that Processes data on behalf of the Data Controller.

End User - An individual end user of the Services (who is Customer's employee or contractor) under this Agreement.

General Terms - These Vodafone Cloud Services Marketplace general terms.

Insolvency Event - An event where the other party goes into liquidation, makes an arrangement with creditors, appoints a receiver or administrator, or has bankruptcy or insolvency proceedings brought against it; or suffers a similar event in any jurisdiction.

Licence - A licence for an End User to access Content.

Order - An order placed by Customer in a format prescribed by Vodafone, and accepted by Vodafone, for the supply of Content.

Platform Subcontractor - The subcontractor engaged by Vodafone for the supply of software supporting the Vodafone Cloud Services Marketplace.

Price Plan Guide - A document which details out of bundle Charges and individual terms for a particular standard price plan, as updated from time to time.

Privacy Authority - The relevant statutory or supervisory authority with responsibility for the Applicable Privacy Law in the jurisdiction of the Data Controller.

Process/Processed/Processing - Obtaining, recording or holding information or data or carrying out any operation or set of operations on it.

Services - The Cloud Service Marketplace, including any and all Content made available through the Cloud Service Marketplace.

Third Party Services - Those Services provided by a third party or parties which are charged in addition to Customer's pricing and which may include:

- (a) premium rate services;
- (b) content services;
- (c) calls to non-geographic numbers;
- (d) calls to call-forwarding numbers;
- (e) to the extent that such services are at Standard List Price, using Customer Equipment and/or SIM Card(s) or Equipment and/or SIM Card(s) abroad, or
- (f) making calls and sending texts to a country outside the UK.

UK - England, Wales, Scotland, Northern Ireland and adjacent islands (e.g. Isle of Wight) but excluding the Channel Islands and the Isle of Man.

User Personal Data - Any information that relates to an identified or identifiable User

Vodafone - Vodafone Limited registered number 01474587, and registered office Vodafone House, The Connection, Newbury, Berkshire RG14 2FN.