

Service Provider Agreement



TERMS AND CONDITIONS

1 Structure and Proposition

This Agreement sets out the terms on which the Partner will provide Technical Information to Vodafone and Vodafone may use such Technical Information to support Proposition(s) in its Local Market. In individual cases, content provider which do not offer an app can also participate as partner of Vodafone Pass.

2 Provision of Technical information and Testing

- 2.1 Within no more than 14 days of the date of this Agreement, Partner shall provide the Technical Information to Vodafone, in writing and in accordance with Vodafone's reasonable instructions as notified at the time of entry into this Agreement.
- 2.2 As soon as reasonably possible following receipt of the Technical Information, Vodafone shall apply reasonable testing processes, using the Technical Information, in order to verify that the Service (or each Service if more than one) meets the Testing Criteria. Vodafone shall use reasonable commercial endeavours to conclude the testing within 90 days.
- 2.3 Vodafone shall notify the Partner (email shall suffice) once the Testing Criteria has been satisfied in respect of the Service (or each Service if more than one) ("**Acceptance**").
- 2.4 In the event that, as a result of the testing process in clause 2.2, Vodafone finds that the Service (or any) does not satisfy the Testing Criteria:
 - 2.4.1 Vodafone shall notify the Partner (email shall suffice) as soon as reasonably possible; and
 - 2.4.2 Upon receipt of the notice the Partner and Vodafone shall cooperate in good faith to identify any grounds for failure as soon as reasonably possible, and the Partner shall use reasonable commercial endeavours to remedy any deficiencies such that the Technical Information enables the identification of the affected Service(s) in accordance with the Testing Criteria within a period of 10 business days from the date of the notice.
 - 2.4.3 Should the Service Traffic not meet the Testing Criteria despite the Partner's efforts pursuant to clause 2.4.2, then Vodafone may, in its sole discretion, elect not to include the affected Service(s) in its local Propositions.
- 2.5 Vodafone may update the Testing Criteria throughout the Term upon providing reasonable prior notice to the Partner.

3 Use and Maintenance of Technical Information

- 3.1 Following Acceptance, Vodafone shall include the accepted Service(s) in its relevant Proposition(s) within a reasonable time, subject to and in accordance with the terms of this Agreement, the Proposition Rules and Testing Criteria.
- 3.2 Following Acceptance, Partner shall:
 - 3.2.1 ensure that at all times throughout the Term the Technical Information is accurate and up-to-date in accordance with clause 3.2.2; and
 - 3.2.2 throughout the Term, notify Vodafone of (i) any updates to the Technical Information and (ii) any changes to the technology the Partner uses to stream content (to the extent such change may have an impact upon Vodafone's ability to identify the Service Traffic), no later than 30 days prior to the update or change being implemented in the Local Market.
 - 3.2.3 Notwithstanding clause 3.2.2, where an update is deemed critical by Partner acting reasonably (including, by way of example, to address a hacker attack or legal requirement), Partner may make such changes without prior notice provided that the Partner notifies Vodafone of such update as soon as reasonably possible.

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- 3.3 Vodafone may, from time to time during the Term, re-test and/or monitor the accuracy and effectiveness of the Technical Information. In the event that Vodafone identifies any deficiencies, the process set out in clause 2.4 shall apply.
- 3.4 In the event that (a) Partner notifies Vodafone of any updates to the Technical Information pursuant to clause 3.2.2, and/or (b) Vodafone notifies Partner of a planned change to the Testing Criteria pursuant to clause 2.5, the process set out in clauses 2.2, 2.3 and 2.4, shall apply. Partner shall use reasonable commercial endeavours to ensure that any required updates to the Technical Information are made and accepted by Vodafone prior to the implementation date of the change set out in this clause 3.4.
- 3.5 Partner acknowledges that Vodafone may, in its sole discretion, apply reasonable traffic management to the Service Traffic as part of a Proposition.
- 3.6 The Parties acknowledge that, whilst this Agreement provides for the supply of Technical Information to enable Vodafone to identify and serve Service Traffic reliably and consistently, notwithstanding the existence of this Agreement, Vodafone retains the right in its sole discretion to identify any traffic over its networks without reliance on the Technical Information and determine the tariffs applicable to such traffic.
- 3.7 Vodafone shall have sole discretion (a) as to whether it will make a Proposition available in the Local Market to retail or wholesale customers, and (b) in respect of all aspects of such Propositions and how they may be offered to customers (including, but not limited to, the price plans to which the Proposition may apply, the end user terms and conditions, Proposition Rules, the service categories that may be part of the Proposition (if any) and in which category a service may be included).
- 3.8 Partner acknowledges that Vodafone offers tariffs to wholesale partners. Wholesale partners are permitted to offer mobile services to end customers on their own behalf and for their own account. Mobile services will be offered to them on a wholesale basis and may include the unchanged proposition. Partner also grants the right to include services in the unchanged proposition for wholesale partners.
- 3.9 Partner shall be responsible for all user support issues relating to the Service(s) and Vodafone shall be responsible for all user support issues relating to the Proposition(s).

4 Partner Marks and Marketing

- 4.1 Licence: Partner hereby grants to Vodafone and their wholesale partners a non-exclusive, royalty-free licence to use Partner Marks to describe, advertise and promote any Proposition during the Term in the Local Market, subject to the approval process described in clause 4.2 and in accordance with the Partner Brand Guidelines and this Agreement.
- 4.2 Marketing Process: Vodafone will provide to Partner a request that will describe how the Partner Marks or any other asset of the Partner will be used by Vodafone ("**Request**") or wholesale partners. Partner shall confirm or reject the Request no later than 10 business days following the date of receipt of the Request. In the event no approval or rejection is received by Vodafone from Partner, the notification shall be deemed accepted. Partner's consent shall not be unreasonably withheld or delayed.
- 4.3 Partner shall provide the Partner Marks to Vodafone or the wholesale partners within 14 days from the signature of this Agreement. Partner shall use reasonable endeavours to provide prior written notice to Vodafone of any changes to the Partner Marks. Upon receipt of the foregoing notice, Vodafone shall implement the required changes to its use of the Partner Marks within a reasonable time (taking into account the quantity of existing material bearing the Partner Marks at the date of such notice).
- 4.4 Vodafone may provide Partner access to a partner platform in order to facilitate the Marketing process described in clause 4.2.

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- 4.5 Nothing will afford Vodafone or the wholesale partners any right, title or interest in respect of any of the Partner Marks save as set out in this Agreement.

5 Term and Termination

- 5.1 Term: This Agreement shall come into full force and effect on the Effective Date and shall continue, unless and until terminated either (a) upon a minimum of 6 months' prior written notice, such notice not to take effect prior to the first anniversary of the Effective Date, or (b) in accordance with clause 5.3.
- 5.2 Upon a minimum of 6 months' prior written notice, such notice not to take effect prior to the first anniversary of the Effective Date, Partner may request that, where there is more than one Service, the Vodafone cease to use the Technical Information in respect of any Service. From the effective date of a Service revocation in accordance with this clause 5.2, the effects set out in clause 5.4 below shall apply solely in respect of the specified Service.
- 5.3 Termination for cause: Either Party shall be entitled to terminate this Agreement immediately upon written notice to the other Party at any time following the Effective Date (a) if the other Party becomes subject to an Insolvency Event; or (b) if the other Party commits a material breach of its obligations hereunder and such breach has not been remedied within 30 days (or such longer period as may be specified in the notice) from receipt of the written notice specifying the breach and requiring it to be remedied; or (c) in the event that either Party is prevented from complying with this Agreement due to a change in Applicable Law (including but not limited to any binding decision from a national authority or the courts).
- 5.4 Effect of termination: Following any termination of this Agreement or any revocation in respect of specified Service(s) (subject to clause 5.2) and save as agreed otherwise, (i) all rights and obligations of the Parties under this Agreement shall immediately cease, (ii) each receiving Party shall return, destroy or permanently erase without retaining copies thereof all confidential information save where it is necessary to keep it for regulatory reasons in secure archives, and (iii) the Parties will cooperate to the extent reasonably required to facilitate any disconnection of any interoperability features of the Service(s) and any Vodafone systems as soon as reasonably possible.
- 5.5 Survival: Clause 5.4 and clauses 7, 8, 10, 11 and 12 herein shall survive termination of this Agreement.
- 5.6 Suspension: Without prejudice to any other right or remedy of Vodafone, Vodafone shall be entitled to suspend the Service from any Proposition upon 3 days' prior written notice to the Partner if, in Vodafone's reasonable opinion the Service may be unlawful, infringe third party intellectual property rights or otherwise bring Vodafone into disrepute or damages their reputation or goodwill, until such time as the Partner is able to demonstrate to Vodafone's reasonable satisfaction that such issue has been resolved.

6 Warranties

- 6.1 Each Party warrants that: (i) it has full authority to enter into this Agreement and to fully perform its obligations hereunder which it shall perform in compliance with any Applicable Law; (ii) it owns or controls the necessary rights in order to make the grant of rights, licenses and permissions herein, and that the exercise of such rights, licenses and permissions by the other Party hereto shall not violate or infringe the rights of any third party; and (iii) it shall discharge its obligations under this Agreement with all due skill, care and diligence including in accordance with best industry practice.
- 6.2 Partner warrants that the Service and the Service Traffic shall (i) not infringe any third party's rights (including any Intellectual Property Rights); and (ii) not be in (or result in Vodafone being in) breach

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of any Applicable Law. Notwithstanding the foregoing, Partner shall not be responsible for any Third Party Content provided Partner acts reasonably and in accordance with Applicable Law.

6.3 Vodafone warrants that it will comply with Applicable Law in respect of the use of the Technical Information.

7 Indemnities and Limitation of Liability

7.1 Partner shall, to the extent permitted by law, indemnify Vodafone and keep Vodafone fully and effectively indemnified against all Losses incurred or suffered by Vodafone for any claim brought against Vodafone for actual or alleged infringement of a third party's intellectual property rights arising out of use of the Partner Marks in accordance with this Agreement.

7.2 Vodafone shall, to the extent permitted by law, indemnify Partner and keep the Partner fully and effectively indemnified against all Losses incurred or suffered by Partner for any claim brought against Partner for actual or alleged infringement of a third party's intellectual property rights arising from Vodafone's use of Partner Marks in violation of this Agreement.

7.3 Vodafone shall be liable for damages - on any legal basis whatsoever - only in cases of wrongful intent or gross negligence on the part of Vodafone, its statutory representatives or its authorised agents or in cases where material contractual duties have been culpably breached. In cases where material contractual duties have been culpably breached without wrongful intent or gross negligence, Vodafone's liability shall be limited to compensation for the typical and foreseeable loss, for monetary losses up to a maximum amount of 25,000 EUR per case of loss, and for monetary losses in any contractual year up to 25 % of the Customer's average net annual spend under this Contract, however no more than 500,000 EUR.

7.4 Apart from the foregoing, Vodafone's liability is hereby excluded.

7.5 The above shall not prejudice liability under the Produkthaftungsgesetz [Product Liability Act] or under statutory provisions that include strict liability.

8 Confidentiality

8.1 Each Party shall handle the other Party's confidential information received by it in connection with this Agreement on the following basis: (i) keep it confidential for 3 years after date of disclosure; (ii) use it solely for the purpose of performing its obligations or exercising its rights under this Agreement; (iii) not disclose it to any person save to its own directors, officers, employees or professional advisors and, for Vodafone, those of the Group Affiliates and third party suppliers (bound by at least as strict confidentiality obligations as set out herein) who need it to perform the obligations herein, exercise rights or conduct audits in connection with this Agreement, or as required by Applicable Law or by any judicial or regulatory authority of competent jurisdiction (provided that, where permitted, the disclosing Party informs the other Party prior to any such disclosure); and (iv) ensure that such persons keep it confidential.

8.2 These provisions do not apply where the confidential information received: (i) is or becomes public knowledge without breach of this Agreement; (ii) was already in a Party's possession free of obligations of confidentiality; or (iii) is received from a third party free of obligations of confidentiality.

8.3 Neither Party shall make or issue any public statement or press release regarding this Agreement or its subject matter without prior written approval from the other Party, save that either Party may respond to any enquiry in order to confirm it has entered into the standard terms of this Agreement. Notwithstanding the foregoing, nothing herein shall prohibit Vodafone from communicating to the public the fact the Service(s) are included in a publicly available Proposition(s).

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9 Force Majeure

Neither Party shall be responsible for any failure to fulfil any obligation under this Agreement for so long as, and to the extent to which, the fulfilment of such obligation is impeded by an event outside the reasonable control of such Party (“**Force Majeure Event**”) and the affected Party: (i) has promptly notified the other Party of the Force Majeure Event; and (ii) uses its best endeavours to minimise the consequences that any failure in performance of its obligations may have, and to return the performance of such obligations to normal as soon as possible.

10 Law, Jurisdiction, Dispute resolution

This Agreement shall be governed in accordance with the laws of Germany and each Party irrevocably submits to the exclusive jurisdiction of the Courts of Germany.

11 Miscellaneous

11.1 This Agreement constitutes the entire agreement between the Parties and supersedes all previous agreements, understandings and arrangements between them in respect of its subject matter.

11.2 Vodafone and Partner may enter into a separate agreement in respect of additional marketing activity, including but not limited to the use of trade marks relating to the Service and/or Service provider.

11.3 This Agreement does not create a partnership, agency, or joint venture relationship between the Parties.

11.4 No Party may assign, novate, sub-contract or otherwise transfer its rights or obligations under this Agreement without the prior written consent of the other Party, unless (i) from Vodafone to a Vodafone Group Affiliate or (ii) Partner to a Partner Affiliate, or (iii) a sub-contract from Vodafone/Vodafone Group Affiliate to a third party for the purposes of providing services in respect of testing of Technical Information and/or identification of Service Traffic. Each Party acknowledges and agrees that any act or omission of its subcontractor in relation to that Party’s obligations under this Agreement shall be deemed to be an act or omission of that Party itself.

11.5 This Agreement is made solely for the benefit of the Parties. This Agreement is not for the benefit of and shall not be enforceable by any other person or entity.

11.6 Each Party is individually responsible for any costs and expenses it incurs in performing this Agreement.

11.7 Failure to require performance of any provision hereof shall not affect the full right to require such performance at any time thereafter, nor shall the waiver of a breach of any provision hereof be taken or held to be a waiver of any such breach or succeeding breach.

11.8 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be then deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Agreement.

11.9 Unless otherwise stated in this Agreement, any notice under this Agreement shall be in writing sent by recorded delivery to the address of the other Party as notified in writing from time to time and shall be deemed received two business days after the date it was sent.

11.10 The Parties shall comply with Applicable Law on data protection. The Parties shall not access or use, or attempt to access or use, any customer sensitive data collected or developed by the other Party or Group Affiliates regarding the customer’s access or use of the Service in the Proposition.

11.11 Unless otherwise agreed under this Agreement, no amendment or variation of this Agreement will be valid unless agreed in writing by an authorised signatory of each Party.

12 Definitions and Interpretation

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12.1 All capitalised terms shall have the meaning given to them below:

"Applicable Law" means all laws, legislation, regulations, codes of practice, technical standards, guidelines, or rules or requirements of any relevant industry body or competent government or governmental agency applicable in the Local Market, which are binding upon the Parties, or either Party, from time to time in force;

"Group Affiliate(s)" means Vodafone Group Plc, Vodafone and any company in which Vodafone Group Plc owns (directly or indirectly) 30% or more of the issued share capital; and (ii) any Vodafone entity or partner market listed from time to time on the "Where we are" page at www.vodafone.com;

"Insolvency Event" means that the Party concerned has become subject to bankruptcy, an administration order or has gone into liquidation (otherwise than for the purpose of solvent amalgamation or reconstruction) or that the relevant Party has ceased, or threatened to cease to carry on business;

"Local Market" means Germany;

"Losses" means all costs, expenses, damages, claims, losses and liabilities (including but not limited to direct interest, penalties and legal costs (calculated on a full indemnity basis) but excluding any indirect or consequential losses described in clause **Fehler! Verweisquelle konnte nicht gefunden werden.** Any sums payable by an Indemnified Party to a third party as a result of a claim brought by a third party shall be deemed to be a direct loss and be included within this definition of Losses;

"Partner Affiliate" means Partner's ultimate holding company and any company in which Partner's ultimate holding company owns (directly or indirectly) 50% or more of the issued share capital;

"Partner Brand Guidelines" means the Partner's written guidelines, if any, regarding the use of its brands to be provided by Partner to Vodafone and each Group Affiliate and updated from time to time;

"Partner Marks" means the trademarks, trade names, brand or other proprietary words or symbols owned or licenced to the Partner and used by the Partner from time to time and provided to Vodafone for the purposes of this Agreement;

"Proposition Rules" means the reasonable rules and guidance, if any, made available by Vodafone to Partners and which may, inter alia, describe the nature of the Proposition and considerations that may be applied when determining eligibility of a service for inclusion in a Proposition;

"Service(s)" means the Partner's service(s) as set out in the first page of this Agreement, and/or each of them as the context may require;

"Service Traffic" means the data traffic used by Vodafone's customers when accessing or using the Service;

"Technical Information" means, as provided by the Partner to Vodafone pursuant to this Agreement, (a) all the technical information reasonably necessary to enable Vodafone to identify 99.9% of all of the Service Traffic in its Local Market; and (b) to the extent that it is reasonably anticipated that any element of the Service Traffic may not be identifiable through the use of the foregoing information, details of the affected element(s) of the Service;

"Term" means the period from the Effective Date until termination of the Agreement in accordance with clause 5;

"Testing Criteria" means Vodafone's reasonable requirements of accuracy, quality and effectiveness of the identification of Service Traffic, determined by Vodafone in its reasonable discretion and as amended from time to time;

"Third Party Content" means any content uploaded by a third party delivered to users on the Service.

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12.2 Headings are for ease of reference only and shall not constitute a part of the Agreement or affect its interpretation; use of the singular includes the plural and vice versa; any phrase introduced by the terms "including", "include", "in particular", "for example" or any similar expression shall be construed as illustrative and do not limit the sense of the words, description, definition, phrase or term preceding those terms.