



Terms & Conditions

for Software Providers

Preamble

Zaikio GmbH, based in Mainz, Germany („**Zaikio**“) operates a cloud-based platform for the print media industry („**Zaikio Platform**“). The Zaikio Platform enables software providers („**Providers**“), among other things, to connect their software to the systems of customers („**Customers**“) via the Zaikio Platform and to offer their software via the Zaikio App Store („**App Store**“).

Providers can connect different types of software to Zaikio („**Software**“), such as

- Existing on-premise software installations of the Provider at the customer's site („**Existing Software**“);
- Software that the Provider offers to its customers via the cloud („**Cloud Software**“).

In order for the Provider to offer its Software to Customers via the Zaikio Platform, the Provider must create a representation of the Software on Zaikio that describes the Provider's Software and includes all necessary information and settings to enable the Provider's Software to communicate with the Zaikio Platform („**App**“).

Zaikio divides Apps into the following categories:

- Generally available Apps that are offered in the App Store („**Public Apps**“);
- Apps that only a specific Customer can use and that are invisible to other Customers („**Private Apps**“);
- Add-ons that only work in connection with a specific App („**Add-ons**“).

1. Subject matter

- 1.1.** These terms and conditions form the legal framework for the cooperation between Zaikio and the Provider and in particular for the Provider's access to the Zaikio platform for the purpose of providing Apps on the Zaikio platform and for the conclusion of subscription contracts.
- 1.2.** Deviating, conflicting or supplementary terms and conditions of the provider only become part of the contract if they are expressly accepted by Zaikio in writing. The mere knowledge of the general terms and conditions of the Provider does not make them part of the contract.
- 1.3.** Zaikio reserves the right to make changes and amendments to these Terms. Any changes will be announced to the Provider in advance by e-mail. Changes are considered approved, if the Provider does not object to them in text form (e.g. e-mail) within one month after the announcement of the respective change. Zaikio will specifically point out this consequence when announcing the changes.

2. Role of Zaikio

- 2.1. Zaikio is the operator of the Zaikio Platform and therefore does not enter into any contract with the Customer for the sale, rental or other provision of the Provider's Apps and/or the provision of the Provider's Services and, for the avoidance of doubt, shall not be deemed to be a party to any such contract between the Provider and any Customer.
- 2.2. Zaikio enables the Provider to connect to the Zaikio Platform to provide a path for data exchange to and from other Apps and Services on the Zaikio Platform using a common data model. This connection and the integration of Zaikio's single sign-on functionality with the Provider's inventory software forms the basis for user or organisation management and authentication and other services on the Zaikio Platform.
- 2.3. Zaikio enables the Provider to offer subscription-based Apps to Customers through the Zaikio App Store in accordance with the terms set out in Sections 6 and 7 of these Terms.
- 2.4. Zaikio allows the Provider to offer Private Apps to selected Customers.
- 2.5. Zaikio allows Customers to search the Zaikio Platform and the Zaikio App Store for Apps from the Provider and other providers.

3. Zaikio obligations

- 3.1. Zaikio will provide the Provider with the following access: Zaikio Hub (admin interface), API and related technical documentation, developer documentation for the integration of the API and, if applicable, other apps on the Zaikio Platform that the Provider needs to be able to connect to the Zaikio Platform.
- 3.2. The IT infrastructure of the Zaikio Platform must be able to guarantee fail-safety, traffic handling and data security, as well as to process all incoming commands in a response time acceptable to the user.
- 3.3. Zaikio ensures access to the Zaikio platform of at least 99.0%, calculated on a 12 month basis.
- 3.4. Zaikio makes commercially reasonable efforts to inform the Provider two (2) weeks in advance of access interruptions. If advance notice is not possible, Zaikio will use commercially reasonable efforts to inform the Provider as soon as possible of any interruption and the reasons for it.

- 3.5. In case of an unforeseen failure, Zaikio will inform the provider immediately and make commercially reasonable efforts to eliminate the failure as soon as possible. In this case Zaikio will inform the Provider about the current status at regular intervals and is available for queries outside the usual business hours during this time.
- 3.6. Zaikio undertakes to comply with all applicable laws and regulations, in particular, but not exclusively, all applicable data protection laws and regulations.
- 3.7. Zaikio offers free support to the Provider within its usual business hours (Monday to Friday 9:00–17:00 CET except holidays in Mainz, Germany). Enquiries will be received and answered via a live chat application selected by Zaikio in German and English. Zaikio will use commercially reasonable efforts to answer the questions asked in a timely manner, however, the support offered is specifically for questions regarding the actual integration of the Apps into the Platform.

4. Provider obligations

- 4.1. The Provider undertakes to set up all technical and organisational matters related to the Zaikio Platform in a way that supports the Zaikio Platform's goals of digitalising processes and enabling real-time communication.
- 4.2. The IT infrastructure of the Provider must be able to guarantee fail-safety, traffic handling and data security, as well as to process all incoming commands via the Zaikio Platform in a response time acceptable to the User.
- 4.3. The availability for access to the Provider's software connected to Zaikio must be at least 99.0%, calculated on a 12-month basis.
- 4.4. The Provider notifies Zaikio immediately about any failure of its IT infrastructure or in case of security incidents.
- 4.5. The Provider agrees to comply with all applicable laws and regulations when using the Zaikio Platform, including but not limited to all applicable data protection laws and regulations.
- 4.6. The Provider undertakes not to take any action which infringes the rights of other persons or which impairs the availability or appearance of the Zaikio Platform.

4.7. The Provider warrants that it has obtained and will obtain all rights, licences, consents and permissions necessary to perform its obligations under these terms and in particular to connect Software to the Zaikio Platform. The Provider further warrants that Software connected to Zaikio does not and will not violate any applicable laws and regulations or infringe any rights, in particular intellectual property rights, of any third party.

5. Remuneration

The services provided under this agreement by Zaikio are free of charge, unless explicitly regulated otherwise within these terms.

6. Connecting software to the Zaikio Platform

- 6.1.** The following provisions of this section apply insofar as the Provider decides to connect its Software to the Zaikio Platform and/or to offer Apps on the Zaikio Platform.
- 6.2.** The connection of Software to the Zaikio Platform and the offering of Apps on the Zaikio Platform is free of charge.
- 6.3.** If the Provider decides to offer Apps on the Zaikio Platform, they will be tested by Zaikio before they are made available to potential customers. Zaikio checks in particular whether the Apps are functional, have a functionality that is useful for the customers and fit into the general features of the Zaikio Platform.
- 6.4.** Zaikio reserves the right to re-run tests as described in section 6.3 above to ensure that all Apps offered through the Zaikio Platform comply with Zaikio's valued criteria and quality standards. If an App no longer meets these criteria and quality standards, Zaikio is entitled to remove it from the Zaikio Platform at any time.
- 6.5.** In case the Customer intends to use an App of the Provider, the Zaikio Platform will inform the Provider about this request in order to enable the Provider to conclude a contract on provision between the Provider and the Customer.
- 6.6.** Zaikio will also provide the Customer with access to information about a specific connectivity status. Confirmation of connectivity must be confirmed by the Provider by a separate email or other form of message.
- 6.7.** Any contract for the provision of an App of the Provider to Customers is concluded exclusively between the Provider and the Customer. In particular, Zaikio does not act as a

representative of the Provider and/or the Customers.

6.8. In the event of disputes arising from a contract concluded via the Zaikio platform for the provision of apps of the Provider with Customers, the Provider must work directly with the relevant Customer with whom the Provider has concluded a contract and find a solution. To the extent necessary, the Provider must ensure adequate cooperation from the Customer.

7. Commission for using the App Store

- 7.1.** The Provider can offer Apps in the Zaikio App Store in the form of a subscription model. In this case the Provider commissions Zaikio with the billing of his Apps to the Customers. Zaikio acts in its own name but for the account of a third party (commission business). Zaikio invoices the services purchased by the customer on the Zaikio platform for the respective Provider. Subsequently, the respective Provider receives the invoiced amount by crediting procedure minus a commission for Zaikio according to section 7.4.
- 7.2.** The Provider decides whether his Apps are offered for free, via a fixed recurring monthly fee, a transaction-based fee or a mixture of these options.
- 7.3.** Zaikio engages a Payment Provider to process the payment of Subscription Fees paid by the Customer for the use of the Provider's Apps. The Payment Provider will collect all Subscription Fees due from the Customer via the payment methods chosen by the Customer. If the Payment Provider is unable to collect the fee from the Customer, a second attempt will be made by the Payment Provider. If this fails again, Zaikio and the Payment Provider will have no further obligation to charge the Customer or collect any overdue fees. Should such a case occur, the Provider will be informed about it by the Zaikio Platform.
- 7.4.** A commission of 30% („Commission“) is calculated from the net subscription fees charged to the Customer. Zaikio can change the percentage of the Commission, with 90 days notice via the Partner Portal.
- 7.5.** Zaikio will cause the Payment Provider to pay to the Merchant all Subscription Fees due, less the Commission, no later than 30 days after the end of the month in which the fees were billed to the Customer.
- 7.6.** The Provider has the right to change the Subscription Fee at any time with 30 days writ-

ten notice to Zaikio. Price increases will apply to all Subscribed Apps after the effective date of such price changes.

- 7.7.** The Provider is only entitled to exercise a right of retention insofar as his counterclaim is undisputed, legally established or ready for decision.
- 7.8.** The Provider may only offset a claim that is undisputed, legally established or ready for a decision.

8. Tax aspects

All amounts payable under this agreement do not include any taxes, duties or other assessments levied or based on such amounts. If Provider is or may be required by any law or regulation of any domestic or foreign governmental body or authority to withhold or deduct any withholding tax from any amount payable to Zaikio under this Agreement, the amount payable to Zaikio shall be increased to the extent necessary to ensure that Zaikio receives and withholds, after making such deduction or withholding, a net amount equal to the amount it would have received prior to the required deduction or withholding (Gross-Up). Notwithstanding the foregoing, the parties will cooperate to obtain a reduction or elimination of such withholding taxes and, if applicable, apply for treaty benefits. Zaikio agrees to assist the Provider in such applications and to return any resulting tax refund to the Provider after grossing up. All external costs and the risk of success of such applications are borne by the Provider.

9. Trusted Providers

- 9.1.** Zaikio only cooperates with Providers who ensure a positive customer experience at premium level. To this end, Zaikio carefully selects Providers on the basis of the evaluation criteria described in Section 9.2 below before it allows the offering of their services on the Zaikio Platform.
- 9.2.** The following evaluation criteria will be considered for prospective Providers:
 - (a)** Supporting the goals of the Zaikio Platform (digitising processes and enabling communication in real time);
 - (b)** Customer value and benefit (e.g., time-saving, convenience, experience, cost-saving, problem-solving, etc.);

- (c)** Premium factor (e.g., premium company image, premium quality of goods and/or services);
- (d)** Process suitability for delivering services seamlessly;
- (e)** Innovativeness of Providers and corresponding goods and/or services;
- (f)** Legal conformity of company (e.g., data sensitivity factors).

The status as a Provider will also be subject to regular re-evaluation, also considering Customer feedback as described in Section 10.

10. Service Ratings / Service Partner Evaluations

- 10.1.** Customers can rate Apps on the Zaikio Platform and send their feedback to Zaikio. It is not possible to provide individual comments in connection with such ratings. However, the Provider may receive detailed feedback directly from Customers via the contact details provided by the Provider.
- 10.2.** Customer reviews will be communicated to the Provider and taken into account by Zaikio in connection with the regular evaluation of the Provider as described below. Repeated bad reviews of goods and/or services or of the Provider itself may lead to an exclusion of the Provider from the Zaikio platform.
- 10.3.** The status as a Provider will be subject to regular re-evaluation on the basis of the following evaluation criteria:
 - (a)** Customer satisfaction with Provider;
 - (b)** Relevance of apps to Zaikio Customers;
 - (c)** Customer complaint rate;
 - (d)** Availability and quality of the Apps offered.

11. Marketing

Both parties allow the respective other party to announce their engagement in the Zaikio Platform in connection with their marketing and advertising activities.

12. Liability

12.1. Zaikio's contractual and statutory liability for damages caused by slight negligence shall, irrespective of its legal ground, be limited as follows:

- (a) Zaikio shall be liable up to the amount of the foreseeable damages typical for this type of contract due to a breach of material contractual obligations;
- (b) Zaikio shall not be liable for the slightly negligent breach of any other applicable duty of care.

12.2. The aforesaid limitations of liability shall not apply to any mandatory statutory liability, in particular to liability under the German Product Liability Act (*Produkthaftungsgesetz*), and liability for culpably caused personal injuries. In addition, such limitations of liability shall not apply if and to the extent Zaikio has assumed a specific guarantee

12.3. Numbers 12.1 and 12.2 apply accordingly for Zaikio's liability for futile expenses.

12.4. Both parties are obliged to take reasonable efforts for the prevention and minimisation of damages.

12.5. In furtherance of Section 12.1 of these terms, and for the avoidance of doubt, Zaikio shall not be responsible or deemed liable for (i) any inaccuracies or omissions contained in the Provider Information provided by the Provider, (ii) a breach of any provision of a contract between the Provider and any Customer in connection with the Zaikio Platform or (iii) any damage, liability or loss incurred by a Customer in connection with its contract with the Provider.

13. Rights of use

13.1. Zaikio grants the Provider a non-exclusive, worldwide right to use the API to connect its Software to the Zaikio Platform and to provide Apps to Customers through the Zaikio Platform.

13.2. The Provider grants Zaikio a non-exclusive right to use the price and product information, including images, entered by the Provider into the Zaikio Platform, as well as all information necessary to establish a connection of the Apps with the Provider's software („**App Information**“), in any currently known or future manner, spatially and temporally unlimited on the Zaikio Platform.

14. Indemnification

The Provider shall indemnify, defend and hold harmless Zaikio and its officers, directors and employees from and against any damages, losses and expenses as a result of any third party claim arising from any breach of any of the representations or warranties Provider made under these terms, in particular arising from any infringement of third party rights.

15. Commencement and term of the agreement

15.1. To participate on the Zaikio Platform, Provider has to apply for participation and to be approved by Zaikio. With receipt of the email from Zaikio, confirming the approval, Provider and Zaikio enter into a valid agreement under these terms. This agreement can be terminated by Provider without cause with 30 days prior written notice and by Zaikio with 90 days prior written notice.

15.2. The right to terminate the agreement for cause remains unaffected. Zaikio shall have the right to terminate the agreement without prior notice for cause in particular but not limited to if:

- (a) Provider repeatedly fails to fulfill its contracts concluded via the Zaikio Platform in a way that could harm Zaikio or the reputation of Zaikio or the Zaikio Platform;
- (b) There is a material breach of these terms by either party.

16. Confidentiality

16.1. Each party can provide the other party with certain confidential, non-public information, including diagnostic routines, business information, projections, financial plans and data, user data, marketing plans, hardware, software as well as not publicly made available product information („**Confidential Information**“). The communication of Confidential Information can be made orally or in writing.

16.2. Neither party may use or disclose Confidential Information of the respective other party unless it is explicitly allowed by these terms or the party was authorized to do so in writing. In order to protect the Confidential Information of the other party the receiving

party exercises the same degree of care that it exercises to protect its own confidential Information and, in doing so, applies at least a reasonable standard of due care.

16.3. The aforementioned confidentiality obligations do not apply to information for which the receiving party can prove that the information:

- (a) was already known to it at the time of the communication without having been subject to an obligation to confidentiality;
- (b) was developed by it independently and without access to the Confidential Information;
- (c) was authorised for disclosure by the party that provided the information in advance;
- (d) was publicly known without a violation of these terms; or
- (e) was rightfully obtained from a third party which is not obliged to confidentiality.

16.4. Furthermore, the receiving party is allowed to disclose Confidential Information to the extent that this is required by law or was ordered by a court or regulator, provided that the receiving party informs the party that provided the information about the instance without undue delay in writing and cooperates with it in order to minimise the extent of the disclosure as far as possible and supports it with obtaining an injunction.

17. Applicable law and jurisdiction

17.1. Where the Provider is a merchant, legal person under public law, or special assets (*Sondervermögen*) under public law or has no legal venue in Germany, Mainz (Germany) will be the exclusive venue for any disputes arising out of or in connection with the agreement. Any mandatory venue rules will remain unaffected hereof.

17.2. The agreement concluded based on these terms is subject to the laws of the Federal Republic of Germany, with exception of mandatory consumer protection laws of the jurisdiction of the Provider's usual place of residence where the Provider uses the Zaikio Platform for purposes that are outside his/her trade or profession.

17.3. Zaikio may assign any right under the agreement concluded based on these terms to

use the Zaikio Platform without the Provider's consent to any company that is affiliated with Zaikio within the meaning of section 15 German Stock Corporation Act (*Aktien-gesetz*).

17.4. If one of the provisions of these terms or any provision in other agreements should be or become invalid, this shall not affect the validity of all other provisions or agreements.