

# AppDirect Marketplace Terms of Service

## Vodafone ReadyApps

Welcome, and thank you for your interest in AppDirect, Inc. ("AppDirect"), and the AppDirect software as a service marketplace, management, and single sign-on platform consisting of the web sites located at AppDirect.com (including branded and white labeled subdomains of AppDirect.com) and other related web sites, services, applications, widgets, and networks owned or controlled by AppDirect (collectively referred to herein as the "**AppDirect Marketplace**"). Third parties who promote and market branded, white-labeled instances of the AppDirect Marketplace are referred to herein as "**Syndication Partners**".

The AppDirect Marketplace allows independent software as a service application vendors (each, a "Developer") to make certain features of their software as a service applications, or other product or service owned and operated by Developers (each, an "Application") available to You through the AppDirect Marketplace. Each Application is provided by a third party Developer, subject to separate terms of use and privacy policy concluded directly with the Developer. The definition of the AppDirect Marketplace excludes Applications.

PLEASE READ THE FOLLOWING TERMS OF SERVICE CAREFULLY, AS THEY CONSTITUTE A LEGAL AGREEMENT BETWEEN YOU AND APPDIRECT. BY REGISTERING FOR, ACCESSING, BROWSING, DOWNLOADING OR USING THE APPDIRECT MARKETPLACE, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE BOUND BY THE FOLLOWING TERMS AND CONDITIONS, INCLUDING THE PRIVACY POLICY AND ANY ADDITIONAL POLICIES AND FUTURE MODIFICATIONS (COLLECTIVELY, THE "TERMS"). IF AT ANY TIME YOU DO NOT AGREE TO THESE TERMS, PLEASE IMMEDIATELY TERMINATE YOUR USE OF THE APPDIRECT MARKETPLACE.

**Eligibility.** The AppDirect Marketplace is not available to persons under the age of 18 or to any users previously suspended or removed from the AppDirect Marketplace by AppDirect. YOU HEREBY REPRESENT THAT YOU ARE AT LEAST 18 YEARS OF AGE AND HAVE NOT BEEN PREVIOUSLY SUSPENDED OR REMOVED FROM THE APPDIRECT MARKETPLACE.

If You are using or opening an account with AppDirect on behalf of a company, entity, or organization (collectively, a "Subscribing Organization") then You represent and warrant that You are an authorized representative of that Subscribing Organization with the authority to bind such organization to these terms, and that You agree to these terms on behalf of such Subscribing Organization. In such a case "You" and "Your" in these terms refers to (i) Your Subscribing Organization, (ii) You, an individual user, and (iii) any other Subscribing Organization personnel accessing and using the AppDirect Marketplace on Subscribing Organization's behalf.

**Additional Terms and Policies.** The following terms and policies are incorporated by reference into, and made part of, the Terms. By registering for, accessing, browsing, downloading, or using the AppDirect Marketplace, You acknowledge that You have read, understood and agree to be bound by these linked policies, as well as the terms available on this page.

**Privacy Policy.** The AppDirect Privacy Policy [\[link\]](#), which describes AppDirect's policies related to the collection, use, and disclosure of Your personal information is hereby incorporated into these Terms by reference. Additional Policies. When using the AppDirect Marketplace, You will be subject to any additional posted policies, guidelines or rules applicable to specific services and features which may be

posted from time to time (the "Policies"). All such Policies are hereby incorporated by reference into these Terms. Permission to Access the AppDirect Marketplace; Accounts.

Access to the AppDirect Marketplace. Subject to Your ongoing compliance with these Terms, AppDirect hereby grants to You permission during the Term to use the AppDirect Marketplace solely for Your internal business purposes (i) to search and browse Applications available through the AppDirect Marketplace; (ii) to manage subscriptions to and sign on to use Applications purchased through the AppDirect Marketplace; and (iii) in the case of a Subscribing Organization, to create individual user accounts allowing personnel of the Subscribing Organization to access and use the AppDirect Marketplace and Applications.

Account. When You set up an account on the AppDirect Marketplace, You will be issued a password. You may also establish individual user accounts and passwords under Your master account. You are solely responsible for maintaining the confidentiality of Your accounts and passwords, and for restricting access to them, and You agree to accept responsibility for all activities that occur under Your accounts or passwords. Information You provide to AppDirect during registration and at all other times must be true, accurate, current, and complete. You also agree to keep this information accurate and up-to-date at all times. If You have reason to believe that Your account has been compromised, then You agree to immediately notify AppDirect.

### **Terms of Purchase.**

Applications. The Applications offered on the AppDirect Marketplace are made available by third party providers that are not affiliated with AppDirect and, as such, You agree that AppDirect is not responsible for such Applications. Your purchases of access to and use of Applications are concluded directly between You and the applicable Developer, and subject to that Developer's terms of use (the "Developer Application Terms"), which You will have the opportunity to review and accept before processing Your transaction. You agree to abide by the applicable Developer Application Terms. Customer Service. We are here to help! For assistance with questions regarding these Terms (including any of the related Policies) or other inquiries, please first refer to the help section of the AppDirect Marketplace. If You cannot find answers to Your questions there, You can contact us by email at support@appdirect.com. PLEASE NOTE THAT SUPPORT QUESTIONS RELATED TO DEVELOPER APPLICATIONS MADE AVAILABLE ON THE APPDIRECT MARKETPLACE SHOULD BE REFERRED DIRECTLY TO THE DEVELOPER OF THE APPLICABLE APPLICATION.

Transaction Processing. Transactions in respect of Your purchases, are processed directly (and applicable fees are collected) by AppDirect, irrespective of whether the transaction itself is concluded between You and AppDirect or You and a third party, such as an Developer. Recurring payments for periodic subscriptions are processed on the first of each calendar month in respect of that month.

Payments. You agree to pay for all Applications, products and services that You purchase through the AppDirect Marketplace, and we may charge Your payment instrument for any such payments. You are required to keep Your payment instrument information on file with AppDirect current, complete and accurate, and notify AppDirect if Your account is changed or canceled (e.g., if it is compromised or deactivated). You are responsible for all charges incurred under Your account made by You or anyone who uses Your account (including Your employees, contractors, agents, or other personnel). If Your payment instrument fails or Your account is past due, we may collect fees owed using other collection mechanisms. Your account may be deactivated without notice to You if payment is past due, regardless of the dollar amount.

Taxes. You are responsible for paying any governmental taxes imposed on Your use of the AppDirect Marketplace, including, but not limited to, sales, use or value-added taxes. To the extent AppDirect is obligated to collect such taxes, the applicable tax will be added to Your billing account.

**Refund Policy; Risk of Loss.** As between You and AppDirect, all fees relating to Applications, products and services are final and nonrefundable. Each Developer may have its own policies regarding refunds, as set forth in the applicable Developer Application Terms. If You have paid for access to a Developer Application that is later disabled, nonfunctioning, modified, or otherwise interfered with before the end of the period for which You purchased access, You may leave negative feedback for that Developer. Availability of Content; Purchases. AppDirect may make changes to or discontinue any of the Applications, products or services available within the AppDirect Marketplace at any time, and without notice. In the event that an Application that You have purchased access to through the AppDirect Marketplace is no longer accessible through the AppDirect Marketplace, You must contact the applicable Developer directly to ensure continuity of service during the remaining term of the applicable subscription.

**Ownership; Proprietary Rights.** The AppDirect Marketplace is owned and operated by AppDirect, Inc. The visual interfaces, graphics, design, compilation, information, computer code (including source code or object code), products, software, services, and all other elements of the AppDirect Marketplace provided by AppDirect (the “**Materials**”) are protected by United States copyright, trade dress, patent, and trademark laws, international conventions, and all other relevant intellectual property and proprietary rights, and applicable laws. All Materials contained on the AppDirect Marketplace are the property of AppDirect or its subsidiaries or affiliated companies and/or third party licensors. All trademarks, service marks, and trade names are proprietary to AppDirect or its affiliates and/or third party licensors. You may not sell, license, distribute, copy, modify, publicly perform or display, transmit, publish, edit, adapt, create derivative works from, or otherwise make unauthorized use of the Materials. AppDirect reserves all rights not expressly granted in these Terms.

**Prohibited Conduct.** BY USING THE APPDIRECT MARKETPLACE YOU AGREE NOT TO:

use the AppDirect Marketplace for any purposes other than (i) to browse Applications, purchase and manage subscriptions to Applications, and sign on to Applications You have purchased through, or imported into the AppDirect Marketplace, and (ii) to access other features of the AppDirect Marketplace as such services are offered by AppDirect;

rent, lease, loan, sell, resell, sublicense, distribute or otherwise transfer the licenses granted herein or any Materials, or use the AppDirect Marketplace on behalf of any third party;

post, upload, or distribute any User Submission or other content that is defamatory, libelous, inaccurate, unlawful (including in violation of any intellectual property or similar laws), or that a reasonable person could deem to be objectionable, offensive, indecent, pornographic, harassing, threatening, embarrassing, distressing, vulgar, hateful, racially or ethnically offensive, or otherwise inappropriate;

impersonate any person or entity, falsely claim an affiliation with any person or entity, or access the AppDirect Marketplace accounts of others without permission, forge another persons’ digital signature, misrepresent the source, identity, or content of information transmitted via the AppDirect Marketplace, or perform any other similar fraudulent activity;

use the AppDirect Marketplace if You are under the age of eighteen (18) years old;

remove, circumvent, disable, damage or otherwise interfere with security-related features of the AppDirect Marketplace or User Submissions, features that prevent or restrict use or copying of any content or Applications accessible through the AppDirect Marketplace, or features that enforce limitations on the use of the AppDirect Marketplace or Applications;

reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the AppDirect Marketplace or any Application, or any part thereof, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation;

modify, adapt, translate or create derivative works based upon the AppDirect Marketplace or any part thereof, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation; interfere or attempt to interfere with the proper workings of the AppDirect Marketplace or any activities conducted on the AppDirect Marketplace;

access the AppDirect Marketplace with any bot, spider, crawler, or other automated system or process, or bypass robots.txt exclusion files or other measures AppDirect may use to prevent or regulate access to the AppDirect Marketplace;

**Third Party Sites, Products and Services; Links.** The AppDirect Marketplace includes links or references to other web sites or services, including without limitation advertisers' and Developer's web sites and Applications, and Syndication Partner websites, solely as a convenience to Users (collectively referred to herein as "Reference Materials"). AppDirect does not endorse any such Reference Materials or the information, materials, products, or services contained on or accessible through Reference Materials. In addition, Your correspondence or business dealings with, or participation in promotions of, third party Developers, Syndication Partners, or advertisers found on or through the AppDirect Marketplace are solely between You and such third party. Access and use of Reference Materials and Applications, including the information, materials, products, and services on or available through Reference Sites is solely at Your own risk.

#### **User Submissions License Grant; Representations and Warranties.**

License Grant to AppDirect. The AppDirect Marketplace may allow You to submit content, including text, images, and other media files ("User Submissions"), such as when You create a profile or submit a comment on an Application. You retain all right, title and ownership to all intellectual property rights in original aspects of Your User Submissions. By submitting User Submissions to the AppDirect Marketplace, You hereby grant to AppDirect a worldwide, non-exclusive, perpetual, irrevocable, transferable, sublicensable, assignable, fully paid-up, royalty-free, license to host, transfer, display, perform, reproduce, distribute, modify and otherwise utilize Your User Submissions in connection with developing, enhancing, providing, syndicating, promoting, and advertising the AppDirect Marketplace. You also agree to waive (and cause to be waived) any claims and assertions of so called "moral rights" with respect to Your User Submissions.

User Submissions Representations and Warranties. You are solely responsible for Your User Submissions and the consequences of posting or publishing them. By uploading and publishing Your User Submissions, You affirm, represent, and warrant that: (1) You are the creator and owner of, or have all the necessary licenses, rights, consents, and permissions to authorize AppDirect to use and distribute Your User Submissions in the manner consistent with the features of the AppDirect Marketplace and these Terms; (2) Your User Submissions do not and will not: (a) infringe, violate, or misappropriate any third party right, including any copyright, trademark, patent, trade secret, moral right, privacy right, right of publicity, or any other intellectual property or proprietary right or (b) slander, defame, libel, or invade the right of privacy or other property rights of any other person; and (3) Your User Submissions do not contain any viruses, adware, spyware, worms, or other malicious code or any content or file that may have the effect of compromising any security or access control feature of the AppDirect Marketplace or of any Application. Violators of third party rights may be subject to criminal and civil liability. AppDirect reserves all rights and remedies against any Users who violate these Terms.

User Submissions Disclaimer. You understand that when using the AppDirect Marketplace You will be exposed to User Submissions or other content from a variety of sources, and that AppDirect is not responsible for the quality, accuracy, usefulness, or intellectual property rights of or relating to such User Submissions and other content. You further understand and acknowledge that You may be exposed to User Submissions (including without limitation communications with other users through public postings, private messaging, chat, or other similar features) and other content that is inaccurate, offensive, indecent or objectionable, and You agree to waive, and hereby do waive, any legal or equitable rights or remedies

You have or may have against AppDirect with respect thereto. AppDirect does not endorse any User Submissions, and AppDirect expressly disclaims any and all liability in connection with User Submissions and other content. AppDirect reserves the right to determine in its sole discretion whether to remove any User Submission or other content. For clarity, AppDirect does not permit copyright infringing activities on the AppDirect Marketplace.

**Digital Millennium Copyright Act.** It is AppDirect's policy to respond to notices of alleged infringement that comply with the Digital Millennium Copyright Act. In addition, AppDirect will promptly terminate without notice the accounts of those determined by AppDirect to be "repeat infringers". If You are a copyright owner or an agent thereof, and You believe that any content hosted on the AppDirect Marketplace infringes Your copyrights, then You may submit a notification pursuant to the Digital Millennium Copyright Act ("**DMCA**") by providing AppDirect's Designated Copyright Agent with the following information in writing:

(i) A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;

(ii) Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works on the AppDirect web site are covered by a single notification, a representative list of such works on the AppDirect Web site;

(iii) Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit AppDirect to locate the material;

(iv) Information reasonably sufficient to permit AppDirect to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted;

(v) A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law (for example, "I am under the good faith belief that the use of the copyrighted content that is identified herein is not authorized by the copyright owner, its agent, or the law."); and

(vi) A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed (for example, "I swear, under penalty of perjury, that the information in this notification is accurate and that I am the copyright owner, or authorized to act on behalf of the copyright owner, of the copyright(s) that is allegedly infringed by the aforementioned content.").

AppDirect's Designated Copyright Agent to receive notifications of claimed infringement can be reached as follows: Attention: Copyright Agent at 650 California Street, 25th Floor, San Francisco, CA, 94108, or [copyright@appdirect.com](mailto:copyright@appdirect.com). For clarity, only DMCA notices should go to the AppDirect Designated Copyright Agent. Any other feedback, comments, requests for technical support or other communications should be directed to AppDirect customer service. Please note that if You fail to comply with all of the requirements of this section, Your DMCA notice may not be valid and any removal requests may not be acted upon. **Please also note that under Section 512(f) of the DMCA, any person who knowingly materially misrepresents that material or activity is infringing may be subject to liability.**

#### **Modification of these Terms; Modification of Fees.**

Terms. AppDirect reserves the right, at our discretion, to change, modify, add, or remove portions of these Terms at any time by posting the amended Terms to the AppDirect Marketplace. Please check these

Terms and any Policies periodically for changes. In the event that such modifications materially alter Your rights or obligations, AppDirect will use commercially reasonable efforts to notify You of the change, such as through the use of a pop-up window in the AppDirect Marketplace, or by sending an email to the address You provide upon registration. Your continued use of the AppDirect Marketplace after the changes become effective constitutes Your binding acceptance of such changes. Except as stated elsewhere, such amended Terms or fees will automatically be effective upon the earlier of (a) Your use of the AppDirect Marketplace with actual notice of the new terms, or (b) thirty (30) days after they are initially posted on the AppDirect Marketplace; provided however, that any dispute that arises under this Agreement shall be resolved according to the version of the Terms that were in place at the time the dispute arose.

**Fees.** Certain functions on the AppDirect Marketplace may have fees associated with them. When You use a service that has a fee, You have an opportunity to review and accept the fees that You will be charged based on our stated fees, which we may change from time to time. AppDirect may choose to temporarily change the fees for AppDirect's services for promotional events or new services, and such changes are immediately effective when AppDirect posts the temporary promotional event or new service on the AppDirect Marketplace. Any changes to fees for the AppDirect Marketplace or any AppDirect services that are not temporary or promotional will be effective thirty (30) days after we provide You with notice by posting such changes on the AppDirect Marketplace. Unless otherwise stated, all fees are quoted in U.S. Dollars. For avoidance of doubt, this section does not refer to changes to fees for use of Applications.

#### **Termination; Terms of Service Violations.**

**AppDirect.** You agree that AppDirect, in its sole discretion, for any or no reason, and without penalty, may terminate any account (or any part thereof) You may have with AppDirect or Your use of the AppDirect Marketplace and remove and discard all or any part of Your account, user profile, and any User Submission, at any time. You agree that any termination of Your access to the AppDirect Marketplace, or any account You may have, or portion thereof may be effected without prior notice, and You agree that AppDirect will not be liable to You or any third party for any such termination. Any suspected fraudulent, abusive, or illegal activity may be referred to appropriate law enforcement authorities. These remedies are in addition to any other remedies AppDirect may have at law or in equity.

**You.** Your only remedy with respect to any dissatisfaction with (i) the AppDirect Marketplace, (ii) any of these Terms, (iii) any policy or practice of AppDirect in operating the AppDirect Marketplace, or (iv) any content or information transmitted through the AppDirect Marketplace, is to terminate these Terms and Your account. If You are dissatisfied with the Developer Applications You access through the AppDirect Marketplace, You may leave negative feedback for the applicable Developer. You may terminate these Terms by discontinuing use of any and all parts of the AppDirect Marketplace and notifying AppDirect customer service at [help@appdirect.com](mailto:help@appdirect.com).

**Indemnification.** You agree to indemnify, defend, and hold AppDirect, its affiliated companies, contractors, employees, agents and its third party suppliers, licensors, and partners (including Syndication Partners) harmless from any claims, losses, damages, liabilities, including legal fees and expenses, arising out of Your use or misuse of the AppDirect Marketplace or any Application, Your violation of these Terms, or any breach of Your representations, warranties, and covenants. AppDirect reserves the right, at Your expense, to assume the exclusive defense and control of any matter for which You are required to indemnify AppDirect, and You agree to cooperate with AppDirect defense of these claims. AppDirect will use reasonable efforts to notify You of any such claim, action, or proceeding upon becoming aware of it.

**Warranty Disclaimer.** YOU EXPRESSLY AGREE THAT THE USE OF THE APPDIRECT MARKETPLACE IS AT YOUR SOLE RISK. THE APPDIRECT MARKETPLACE AND ANY DATA, INFORMATION, THIRD PARTY SOFTWARE, USER SUBMISSIONS, APPLICATIONS, REFERENCE SITES, SERVICES, OR APPLICATIONS MADE AVAILABLE IN CONJUNCTION WITH OR THROUGH THE APPDIRECT MARKETPLACE ARE PROVIDED BY APPDIRECT ON AN "AS IS" AND "AS AVAILABLE", "WITH ALL FAULTS" BASIS AND WITHOUT WARRANTIES

OR REPRESENTATIONS OF ANY KIND EITHER EXPRESS OR IMPLIED. YOU MAY, HOWEVER, HAVE ADDITIONAL WARRANTY RIGHTS DIRECTLY FROM THE APPLICABLE DEVELOPER. TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, APPDIRECT, AND ITS AFFILIATES, PARTNERS (INCLUDING SYNDICATION PARTNERS), AND SUPPLIERS DISCLAIM ALL WARRANTIES, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF PROPRIETARY RIGHTS. APPDIRECT, AND ITS AFFILIATES, PARTNERS (INCLUDING SYNDICATION PARTNERS), AND SUPPLIERS DO NOT WARRANT THAT THE DATA, USER SUBMISSIONS, FEATURES, FUNCTIONS, OR ANY OTHER INFORMATION OFFERED ON OR THROUGH THE APPDIRECT MARKETPLACE OR ANY REFERENCE MATERIALS WILL BE UNINTERRUPTED, ACCURATE, USEFUL, OR FREE OF ERRORS, VIRUSES OR OTHER HARMFUL COMPONENTS AND DO NOT WARRANT THAT ANY OF THE FOREGOING, IF ENCOUNTERED, WILL BE CORRECTED. APPDIRECT, ITS SUPPLIERS, LICENSORS, AFFILIATES, AND PARTNERS DO NOT WARRANT OR MAKE ANY REPRESENTATIONS ABOUT DEVELOPERS OR DEVELOPER APPLICATIONS. ANY WARRANTY MADE REGARDING ANY DEVELOPER APPLICATION IS MADE DIRECTLY BY SUCH DEVELOPER. CERTAIN JURISDICTIONS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES. IF YOU RESIDE IN SUCH A JURISDICTION, SOME OR ALL OF THE ABOVE DISCLAIMERS AND LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MAY HAVE ADDITIONAL RIGHTS. THE EXCLUSIONS OF WARRANTIES CONTAINED IN THESE TERMS APPLY TO YOU TO THE FULLEST EXTENT SUCH LIMITATIONS OR EXCLUSIONS ARE PERMITTED UNDER THE LAWS OF THE JURISDICTION WHERE YOU ARE LOCATED.

#### **Limitation of Liability and Damages.**

Limitation of Liability. UNDER NO CIRCUMSTANCES, INCLUDING, BUT NOT LIMITED TO, WILL APPDIRECT OR ITS AFFILIATES, CONTRACTORS, EMPLOYEES, AGENTS, OR THIRD PARTY DEVELOPERS, PARTNERS, LICENSORS, OR SUPPLIERS BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE, OR EXEMPLARY DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES ARISING FROM ANY UNSUCCESSFUL COURT ACTION OR LEGAL DISPUTE, LOST BUSINESS, LOST REVENUES OR LOSS OF ANTICIPATED PROFITS ARISING OUT OF OR RELATING TO THESE TERMS OR THAT RESULT FROM YOUR USE OR YOUR INABILITY TO USE THE MATERIALS, THE APPDIRECT MARKETPLACE OR ANY REFERENCE SITES, OR ANY OTHER INTERACTIONS WITH APPDIRECT, EVEN IF APPDIRECT OR AN APPDIRECT AUTHORIZED REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. APPLICABLE LAW MAY NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. IN SUCH CASES, APPDIRECT'S LIABILITY WILL BE LIMITED TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

Limitation of Damages. IN NO EVENT WILL APPDIRECT OR ITS AFFILIATES, CONTRACTORS, EMPLOYEES, AGENTS, OR THIRD PARTY DEVELOPERS, PARTNERS (INCLUDING SYNDICATION PARTNERS), LICENSORS, OR SUPPLIERS TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION ARISING OUT OF OR RELATING TO THESE TERMS, OR YOUR USE OF THE APPDIRECT MARKETPLACE, OR YOUR INTERACTION WITH OTHER APPDIRECT MARKETPLACE USERS (WHETHER IN CONTRACT, TORT INCLUDING NEGLIGENCE, WARRANTY, OR OTHERWISE), EXCEED THE AMOUNT PAID BY YOU, IF ANY, TO APPDIRECT (OTHER THAN AMOUNTS PAID SPECIFICALLY FOR THE RIGHT TO ACCESS AND USE APPLICATIONS) DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE OF THE CLAIM OR ONE HUNDRED US DOLLARS (\$100 USD), WHICHEVER IS GREATER.

**Basis of the Bargain.** YOU ACKNOWLEDGE AND AGREE THAT APPDIRECT HAS OFFERED THE APPDIRECT MARKETPLACE, ITS PRODUCTS AND SERVICES, SET ITS PRICES, AND ENTERED INTO THESE TERMS IN RELIANCE UPON THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN, THAT THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN REFLECT A REASONABLE AND FAIR ALLOCATION OF RISK BETWEEN YOU AND APPDIRECT, AND THAT THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN YOU AND APPDIRECT. APPDIRECT WOULD NOT BE ABLE TO PROVIDE

THE APPDIRECT MARKETPLACE TO YOU ON AN ECONOMICALLY REASONABLE BASIS WITHOUT THESE LIMITATIONS.

**Disputes With Third Parties.** If You have a dispute with one or more Users, or with a Developer, You release AppDirect (and AppDirect's officers, directors, agents, subsidiaries, joint ventures and employees) from claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, arising out of or in any way connected with such disputes. If You are a California resident, You waive California Civil Code Section 1542, which says:

**"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."**

#### **Miscellaneous.**

Notice. AppDirect may provide You with notices, including those regarding changes to AppDirect's terms and conditions, by email, regular mail or postings on the AppDirect Marketplace. Notice will be deemed given twenty-four hours after email is sent, unless AppDirect is notified that the email address is invalid. Alternatively, we may give You legal notice by mail to a postal address, if provided by You through the AppDirect Marketplace. In such case, notice will be deemed given three days after the date of mailing. Notice posted on the AppDirect Marketplace is deemed given thirty (30) days following the initial posting.

Waiver. The failure of AppDirect to exercise or enforce any right or provision of these Terms will not constitute a waiver of such right or provision. Any waiver of any provision of these Terms will be effective only if in writing and signed by AppDirect.

Dispute Resolution. If a dispute arises between You and AppDirect, our goal is to provide You with a neutral and cost effective means of resolving the dispute quickly. Accordingly, You and AppDirect agree that we will resolve any claim or controversy at law or equity that arises out of this Agreement or our services (a "Claim") in accordance with one of the subsections below or as we and You otherwise agree to in writing. Before resorting to these alternatives, we strongly encourage You to first contact us directly to seek a resolution. We will consider reasonable requests to resolve the dispute through alternative dispute resolution procedures, such as mediation or arbitration, as alternatives to litigation.

a) *Choice of Law; Forum.* These Terms shall be governed in all respects by the laws of the State of California as they apply to agreements entered into and to be performed entirely within California between California residents, without regard to conflict of law provisions. You agree that any claim or dispute You may have against AppDirect must be resolved by a court located in Santa Clara County, California, except as otherwise agreed by the parties or as described in the Arbitration Option paragraph below. You agree to submit to the personal jurisdiction of the courts located within Santa Clara County, California for the purpose of litigating all such claims or disputes.

b) *Arbitration Option.* For any claim (excluding claims for injunctive or other equitable relief) where the total amount of the award sought is less than \$10,000, the party requesting relief may elect to resolve the dispute in a cost effective manner through binding non-appearance-based arbitration. In the event a party elects arbitration, they shall initiate such arbitration through an established alternative dispute resolution ("ADR") provider mutually agreed upon by the parties. The ADR provider and the parties must comply with the following rules: i) the arbitration shall be conducted by telephone, online and/or be solely based on written submissions, the specific manner shall be chosen by the party initiating the arbitration; ii) the arbitration shall not involve any personal appearance by the parties or witnesses unless otherwise mutually agreed by the parties; and iii) any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

c) *Improperly Filed Claims.* All claims You bring against AppDirect must be resolved in accordance with this Section 17.4 (Dispute Resolution). All claims filed or brought contrary to this Section 19.4 (Dispute Resolution) shall be considered improperly filed. Should You file a claim contrary to this Section 17.4 (Dispute Resolution), AppDirect may recover attorneys' fees and costs up to \$1000, provided that AppDirect has notified You in writing of the improperly filed claim, and You have failed to promptly withdraw the claim.

Severability. If any provision of these Terms or any Policies is held to be unlawful, void, or for any reason unenforceable, then that provision will be limited or eliminated from these Terms to the minimum extent necessary and will not affect the validity and enforceability of any remaining provisions.

Assignment. These Terms, and any rights and licenses granted hereunder, may not be transferred or assigned by You under any circumstances, but may be assigned by AppDirect without restriction, including by operation of law, or in connection with merger, sale of stock or assets, or change of control. Any assignment attempted to be made by You in violation of these Terms shall be void. Subject to the foregoing, these Terms shall bind and inure to the benefit of the parties and their respective successors and permitted assigns.

Survival. Upon termination of these Terms, any provision which, by its nature or express terms should survive, will survive such termination or expiration.

Headings. The heading references herein are for convenience purposes only, do not constitute a part of these Terms, and will not be deemed to limit or affect any of the provisions hereof.

Entire Agreement. This is the entire agreement between You and AppDirect relating to the subject matter herein and will not be modified except in writing, signed by both parties, or by a change to these Terms or Policies made by AppDirect as set forth in section 4 above. Independent Contractors, No Agency. The relationship between You and AppDirect is one of independent contractors. No agency, partnership, joint venture, employee-employer or franchiser-franchisee relationship is intended, nor shall anything herein be interpreted or construed to or create, either expressly or by implication, any such relationship.

Disclosures. The services are offered by AppDirect, Inc., located at: 650 California St., 25th Floor, San Francisco, CA, 94108. If You are a California resident, You may have this same information emailed to You by sending a letter to the foregoing address with Your email address and a request for this information.