

General Terms and Conditions of Use

1. Scope

- 1.1. These General Terms and Conditions of Use apply to all contracts entered into between Objective-Cloud and a customer (hereinafter referred to as The User) regarding the use of the Cloud-Service on servers provided by Objective-Cloud regardless of whether or not fees are charged for the use and whether or not The User has to register with Objective-Cloud to use the service.

These General Terms and Conditions of Use do not apply particularly to contracts where The User has been provided with Objective-Cloud program code, regardless of the form, to operate a Cloud-Service on its own servers.

If sections of Objective-Cloud code are published as open-source code, the licensing terms stipulated at the time of publication take precedence over these General Terms and Conditions of Use.

- 1.2. The User's General Terms and Conditions are not accepted and their applicability is hereby repudiated.
- 1.3. Side agreements have not been entered into and any that are entered into must be made in writing to be effective. Rescission of the written-form requirement must be made in writing.
- 1.4. Objective-Cloud is entitled to revise these General Terms and Conditions of Use. If it does, Objective-Cloud will inform The User 1 month prior to the change via email containing the revised version of the General Terms and Conditions of Use. The User may object to the revised General Terms and Conditions of Use within 2 weeks from receipt of the email. If The User does not object, the revised General Terms and Conditions of Use will be considered accepted.

2. Definitions

- 2.1. A Cloud-Service is all of the content offered by Objective-Cloud to save, compile, install, load, and execute Cloud-Apps on the servers operated by Objective-Cloud as well as to allow access to them.
- 2.2. A Cloud-App is any customer application designed to operate as part of the Cloud-Service.
- 2.3. The Cloud-App-Source is the source code of an application which can be compiled without errors and warnings by the particular Xcode build system used.
- 2.4. A Cloud-App-Executable is the compiled, executable application produced by compiling the Cloud-App using the build system.
- 2.5. A Client-App is any application produced or offered by The User which communicates with a Cloud-App regardless of the form.
- 2.6. Developer-Kits are supplied by Objective-Cloud for integration into a Cloud-App or Client-App, or for developing the content supplied by Cloud-Apps or Client-Apps.
- 2.7. Content is any program code, regardless of the form, particularly source code or a compiled file as well as data such as text, images, sound, graphics, websites, and movies and also includes all associated documentation regardless of whether it is available statically or generated.
- 2.8. User content is any content transferred to the Cloud-Service or generated on it by The User regardless of whether or not it is transferred when the Cloud-App is created or changed, transferred as a result of queries or stored permanently.
- 2.9. End-user content is content transferred to the Cloud-Service or generated on it by the end user regardless of whether or not this is saved.

- 2.10. End users are third parties that use a Client-App.
- 2.11. Compiling means converting the Cloud-App-Source into a Cloud-App-Executable.
- 2.12. Working days are weekdays from Monday to Friday. The official working hours of the Federal Republic of Germany apply.

3. Usage models

- 3.1. The maximum system resources and their prioritization, particularly main, mass, and database storage capacity, transfer volumes, and CPU load distribution which are either based on an invoice or that can be utilized by a Cloud-App/user account are described in the service package selected by The User.
- 3.2. If at least one of the usage limits is exceeded, Objective-Cloud is entitled, but not obliged, to deactivate the Cloud-App-Executable and stop forwarding any queries to it if 3 days have lapsed since The User has been notified accordingly by email or when at least one of the usage limits has been exceeded by at least 20%.
- 3.3. Technologies which serve to mask the utilization or prioritization of resources or permit resources to be utilized or prioritized above the limits that can be utilized are not permitted.
- 3.4. If Objective-Cloud does accept the usage limits being exceeded – even over a longer period – this does not mean this will be accepted in the future.
- 3.5. The actual utilization of a system resource will be determined by Objective-Cloud using standard procedures by means of the tools offered by the operating system and the associated tools and code libraries. Objective-Cloud is entitled to change the methods used to determine system-resource utilization provided these remain standard procedures following the change.
- 3.6. The User will be given the opportunity to view the utilized system resources used to determine usage limits and fees at any time online. The corresponding statistics will be updated daily unless the updating period is longer owing to the nature of the system resources utilized.
- 3.7. The User must pay the fee for each service offering purchased to Objective-Cloud. Payment will be collected by credit card or – if offered by Objective-Cloud – cash transfer.

Regular usage fees are payable monthly (accounting period) in advance.
- 3.8. Objective-Cloud is entitled to change usage models particularly in relation to the system resources that can be utilized or which are to be based on an invoice, or in relation to the fee to be paid for these. The change will be announced by email and will enter into force at the end of the month after next.

4. System changes

- 4.1. If changes are made to the third-party components used, particularly to the Xcode build system and the operating system, Objective-Cloud is entitled, but not obliged, to update to these. This also applies if the changes cause the application to stop compiling, loading or executing correctly. Objective-Cloud will give 1 month's notice of this. Objective-Cloud may also make such an update without complying with this deadline if security concerns exist regarding the continued use of the version to be updated or the update serves to fix errors.

The User will be informed of the opportunity to learn more about upcoming changes via corresponding Developer-Previews.
- 4.2. Furthermore, Objective-Cloud is entitled, but not obliged, to update self-developed components. Moreover, Objective-Cloud is entitled, but not obliged, to replace self-developed components with third-party components or vice versa.

If an update changes a documented operation, 3 months' notice will be given before the update is performed.

5. **Granting of rights by Objective-Cloud**

5.1. Objective-Cloud grants The User the non-exclusive global right, limited to the term of the contract, to use the Developer-Kit supplied by Objective-Cloud as part of using the Cloud-Service. This includes the following rights in particular:

- to install and execute the supplied applications;
- to integrate, compile, and, together with the Cloud-App or Client-App, execute the supplied frameworks and libraries in Cloud-Apps or Client-Apps;
- to use the supplied templates as templates for its own code as well as to edit, compile, and execute them in a compiled form together with the Cloud-App or Client-App;
- to copy the content intended for integration into Client-Apps in a compiled state as part of the Client-App, to also distribute it for a fee, and to also make it publicly accessible for a fee.

The permitted actions may only be performed for the purposes of developing or executing a Cloud-App or Client-App for the Cloud-Service. In particular, The User must not use supplied content, even in part, in self-developed Cloud-Services or in Cloud-Services provided by third parties.

5.2. The User must indicate that it is using the Cloud-Service as described on the Trademark Protection page [LINK TO BRAND PAGE].

5.3. The usage rights granted are non-transferable and non-sublicenseable. The User is neither entitled to provide Developer-Kits or parts thereof to third parties nor to make them available in any other way. However, The User is permitted to commission third parties to develop, troubleshoot, and fix errors and in this respect provide Objective-Cloud content to third parties or make it accessible in other ways provided the third party is commissioned to develop The User's Cloud-App or Client-App.

5.4. Under no circumstances may a user decompile or reverse engineer the content supplied by Objective-Cloud.

5.5. If Objective-Cloud trademark rights such as brand rights or name rights exist, The User is entitled to use these as described on the Trademark Protection page [LINK TO BRAND PAGE].

6. **Granting of rights by The User**

6.1. The User shall grant Objective-Cloud the non-exclusive global right to the supplied content limited to the term of the contract. Furthermore, The User shall grant Objective-Cloud the right to use the said content as part of the Cloud-Service and to perform actions serving this purpose. This includes the following rights in particular:

- to copy content for storage purposes as well as to make backup copies;
- to compile content;
- to load and terminate versions compiled by The User, Objective-Cloud or a third party on any number of computers.

The permitted actions may only be performed for the purpose of developing or executing a Cloud-App or Client-App. This also expressly includes the performing of actions on a system managed by Objective-Cloud to conduct tests (mirror system) which cannot be accessed by The User or end user.

6.2. The rights granted are non-transferable and non-sublicenseable. Objective-Cloud is, however, permitted to commission third parties and to have the necessary actions performed if the commissioning is for the purposes of running the Cloud-Service.

- 6.3. Under no circumstances may a user decompile or reverse engineer the content supplied by Objective-Cloud. Objective-Cloud is, however, entitled to study the implementation of user content for the purpose of troubleshooting and error fixing.
- 6.4. Objective-Cloud is entitled to use The User's trademarks such as brands or names for marketing purposes to advertise that The User is using Objective-Cloud.

7. Improper user content

- 7.1. The User shall ensure that its content and the implementation of the Cloud-App and Client-App are free from third-party rights, particularly personal rights, and that they do not violate intellectual property rights of third parties such as originator, registered design, brand, name, trademark, patent, utility model, and personal rights.
- 7.2. The User shall also ensure that the use of the Cloud-Service and the implementation of the Cloud-App and Client-App do not violate laws of the Federal Republic of Germany or laws where the Cloud-App or Client-App is used. This also applies expressly to the German Data-Protection Act and the German Protection of Young Persons Act or comparable acts in The User's country.
- 7.3. The User must neither implement the Cloud-Service for right-wing extremist or pornographic purposes nor in a way that glorifies violence.
- 7.4. If a third party asserts a claim against Objective-Cloud that user content violates sections 7.1 to 7.3, The User shall, at first request, indemnify Objective-Cloud against any resulting damages including the costs for legal defense including through the use of a lawyer.
- 7.5. Sections 7.1 to 7.3 also apply if the actual or alleged violation is owing to end-user content attributable to The User or if a third party alleges that end-user content is attributable to Objective-Cloud.
- 7.6. Furthermore, The User must not take actions or have actions taken aimed at using the Cloud-Service or data in an unintended way, making it difficult to execute or preventing the execution of other Cloud-Apps, or reading, expanding or changing the data of other Cloud-Apps. In particular, The User must not use or attempt to use technologies which:
 - enable a higher level of resources to be utilized than is agreed in the usage model;
 - affect the execution of other Cloud-Apps or influence the intended running of their programs;
 - enable data from other Cloud-Apps to be spied on or affect the security of this data;
 - represent attacks on other computers within or beyond the Cloud-Service, particularly DoS attacks;
 - circumvent security technologies in or for OS X and Cocoa.

8. Warranty and liability

- 8.1. Despite constant efforts to ensure availability and error-free operation, Objective-Cloud is not liable for the Cloud-Service being available continuously or at certain times.

Insofar as Objective-Cloud is able to foresee downtimes, such as due to maintenance work, Objective-Cloud will publish this on the Cloud-Service's website providing, where possible, 1 week's notice. Objective-Cloud will take into consideration the interests of users when selecting downtimes. In particular, Objective-Cloud will endeavor to schedule maintenance work at times of lowest possible usage.
- 8.2. The User will be granted the opportunity to use and extensively test the Cloud-Service free of charge. On conclusion of a payable usage model, the current state applies as the agreed target state unless an error was unable to be discovered through the option of free-of-charge use.
- 8.3. Objective-Cloud gives no assurance that the Cloud-Service is entirely error-free. A fault will only be deemed to exist when an error appears that makes the software unsuitable for standard use.

- 8.4. The Cloud-Service starts with the receipt of a signal on Objective-Cloud's servers and ends with the transmission of a signal from Objective-Cloud's servers. Objective-Cloud is therefore not responsible for the transmission of a signal from and to The User or end user in the network being used, particularly the internet.
- 8.5. Objective-Cloud is not liable for the Cloud-Service being usable for a specific purpose or for it producing a specific result.
- 8.6. Objective-Cloud accepts no liability whatsoever for damages attributable to simple negligence provided they are not based on a main contractual obligation or represent a harm to health as well as a danger to life and limb.

9. **Term**

- 9.1. The User may upgrade its usage model with immediate effect at any time without stating a reason. The usage model can be downgraded at any time without stating a reason and will become effective at the end of the month after next.
- 9.2. Objective-Cloud is permitted to terminate the contractual relationship at any time and without stating a reason. The termination will become effective at the end of the month after next.
- 9.3. This does not affect the right to termination for exceptional reasons due to a substantial cause.
Substantial cause is shown particularly if:
 - The User is over one month in arrears with a monthly usage fee;
 - The Users falls into arrears more than twice with part or all of the monthly usage fee;
 - The User culpably violates the usage terms;
 - The User violates the usage terms more than twice through no fault of its own;
 - The User violates section 7 through its own fault or through no fault of its own.
- 9.4. The User must provide notice of termination either using the web interface provided or in writing. Objective-Cloud will provide notices of termination either in text or written form.

10. **Applicable law, place of fulfillment, and jurisdiction**

- 10.1. German law applies with the exception of the UN Convention on Contracts for the International Sale of Goods.
- 10.2. Place of fulfillment is Cologne, Germany.
- 10.3. Cologne, Germany, is hereby agreed as the court of jurisdiction for businesspersons, public officials, and special public funds for any legal disputes as to the existence of the contract, arising from the contract or on grounds of the contract.