

Service Agreement

Last modified: 05-09-2019

1. Interpretation

Customer ("you"):

person, firm or company who purchases Services from the Supplier.

Contract:

the contract between the Customer and apilayer for the Subscription Services in accordance with these Terms.

Intellectual Property:

means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Subscription Plan:

the periodically renewing plan selected by the Customer in his purchase order, setting out the Services to be provided by the Supplier (as well as the price and periodic basis for payment) in accordance with the Contract.

Free Plan:

a free version of subscription with a number of limitations of use.

Upgrade/Downgrade:

the upgrading or downgrading of the Customer's Subscription Plan to a lower or higher level, resulting in the availability of different features, the arising of certain limitations, lower or higher amounts to be paid periodically by the Customer, etc.

Invoice Types:

(1) Initial Invoice: The invoice delivered to the Customer after signing up for a paid Subscription Plan.

(2) Upgrade Invoice: The Invoice delivered to the Customer immediately after upgrading from a paid Subscription Plan to a higher Subscription Plan.

(3) Recurring Invoice: The Invoice delivered to the Customer on the periodic basis set out in the Subscription Plan.

Services:

the API services to be provided by the Supplier under the Contract, as described in further detail (where relevant) throughout this website.

Supplier ("we", "our", "us"):

apilayer Data Products GmbH ("apilayer", "weatherstack") registered in Vienna, Austria with our main office at Elisabethstrasse 15/5, 1010 Vienna, Austria.

2. Basis Of Contract

2.1 A Customer's request through this Website for the provision of the Subscription Services constitutes an offer by the Customer to purchase the Services in accordance with these Terms & Conditions and any other applicable legal documents referred to herein.

2.2 The Customer's request shall only be deemed to be accepted if apilayer has received cleared payment in full of the relevant Subscription Fees at which point and on which date the Contract between us shall come into existence ("Commencement Date").

2.3 These Terms apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

4. Subscriptions & Services

4.1 apilayer shall, during the Subscription Term, use reasonable endeavours to provide the Services in accordance with the Subscription Plan in all material respects and subject to these Terms.

5. Customer's Obligations

5.1 The Customer shall ensure to make use of the Subscription Services, the Website and the Content in accordance with these Terms & Conditions and shall be responsible for any breach (user-side) of these Terms & Conditions.

5.2 The Customer shall further co-operate with the Supplier in all matters relating to the Services; and provide in a timely manner such information as the Supplier may request, and ensure that such information is accurate in all material respects.

6. Charges & Payment

6.1 The Customer shall carry out payment of the total amount set out in the Subscription Plan using one of the following payment methods: Credit Card (Visa, MasterCard, Diner's Club, Discover, American Express).

6.2 All Credit Card payments are being processed by PayLane Sp. z o.o., located at Arkońska Business Park, ul. Arkońska 6/A3, 80-387 Gdańsk, Poland.

6.3 The Customer shall make the first payment immediately pursuant to the purchase order and thereafter on the first day of each new period the Customer's Subscription Plan is renewed. The Customer agrees that, for each period, the amount set out in the Subscription plan may be withdrawn automatically from the Customer's account.

6.4 **One-Time-Payments:** The Customer shall be given the possibility to use PayPal to pay one or more recurring invoices manually via the Account Dashboard.

6.5 **Change of Subscription - Upgrade:** Should the Customer decide to upgrade to a higher Subscription Plan, he shall be advised that any remaining days or amounts of his previous Subscription Plan will be deducted from the new Upgrade Invoice amount.

6.6 **Change of Subscription - Downgrade:** Should the Customer decide to downgrade to a lower or free Subscription Plan, he shall be advised that his current Subscription Plan will remain active until the end of the current billing period.

6.7 Without prejudice to any other right or remedy that the Supplier may have, if the Customer fails to:

- pay a Recurring Invoice within 30 days; or
- pay an Initial Invoice or Upgrade Invoice within a maximum of 2 hours,

the Supplier may:

- cancel the Upgrade process; or
- Downgrade the Customer's Subscription to the Free Plan; or
- terminate the Contract with immediate effect.
- suspend all or some Services until payment has been made in full; or

6.8.1 Refunds - Unassigned Payments: Any payments made by the Customer that cannot be assigned to pay any of the Customer's open invoices will be automatically refunded in full after a maximum of 32 days.

6.8.2 Refunds - Other: The Customer shall be aware that, if not specified or declared otherwise, due amounts paid by the Customer which are used as payments for open invoices (as set out in the Subscription Plan) are not refunded. However, under distinct circumstances and in case of appropriate reasons for the Customer's dissatisfaction, applying only for Customers on a yearly subscription, partial or complete refunds of paid amounts for the individual billing period may be offered.

6.9 The Customer shall be given the possibility to change his Payment Frequency by:

- downgrading to the Free Plan and upgrading once the Free Plan becomes effective; or
- contacting the weatherstack support team and requesting a manual change.

7. Term & Termination

7.1 The Contract shall, unless otherwise terminated as provided in this clause, commence on the Commencement Date and shall be automatically renewed for each following billing period (as set out in the Customer's initial purchase order), unless:

- either party notifies the other party of termination, in writing, at least 30 days before the end of the Initial Subscription Term or any Renewal Period, in which case this Contract shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period;
- otherwise terminated in accordance with the provisions of these Terms;

7.2 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Contract without liability to the other if:

- the other party commits a material breach of any of these Terms and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
- an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the other party; or
- an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors

or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or

- a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or
- the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or
- the other party ceases, or threatens to cease, to trade; or
- the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

7.3 On termination of this agreement for any reason:

- all licences granted under the Contract shall immediately terminate;
- the Customer shall make no further use of any Content or the Subscription Services;
- apilayer shall cancel all user name, email addresses and passwords used in connection with the Customer's subscription so that the Customer is no longer able to access the Subscription Services;
- the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

- If the Customer terminates the Contract, apilayer shall not be obliged to refund any part of the Subscription Fees already paid by the Customer, unless the terms and requirements stated in 6.8.2 entitle the Customer to a partial or complete refund.

7.4 The Customer may terminate the validity of the chosen Subscription Plan at any time, being aware that, in case of a Downgrade, the current Subscription Plan remains active and available for use until the end of the current period, and that, in case of an Account Deletion, any use of this service including any paid features set out on the Subscription Plan will become unavailable immediately.

7.5 If not terminated by the Customer or Supplier, the Customer agrees that the Customer's contract will remain valid for each period and periodically renew as set out in the Subscription Plan.

7.6 The Customer may terminate the contract and the validity of the Customer's Subscription Plan, being aware of condition 9.3, by:

- deleting his or her account; or
- downgrading his or her Subscription Plan; or
- giving notice via e-mail to "support@apilayer.com".

8. Notices

8.1 Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent

by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.

8.2 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.

8.3 This condition shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

9. Force Majeure

9.1 apilayer shall have no liability to the Customer under the Contract if it is prevented from or delayed in performing its obligations under the Contract, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of apilayer or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of apilayer or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

10. Waiver

10.1 A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

10.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

11. Severance

11.1 If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

11.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

11. No Partnership

12.1 Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

12. Third Parties

13.1 A person who is not a party to the Contract shall not have any rights under or in connection with it.

14. Governing Law

14.1 This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

Contacting Us

Should you have any questions, complaints, or comments about this Service Agreement, this service, or website, or require further clarification of any kind, please do not hesitate to contact us.