

Phygrid – Terms of Service

VERSION: 1/2024

1. SCOPE OF AGREEMENT

1.1. These Terms of Service (the "Terms") govern the Use of the Phygrid Platform ("Platform") and the Phygrid Marketplace ("Marketplace") (jointly the "Service"). The Service is provided by Phygrid AB (publ), a limited liability company with reg.no. 556841-1333, incorporated under the laws of Sweden and having its registered office at Saltmätargatan 8, 113 59 Stockholm, Sweden ("Phygrid").

1.2. The contract between Phygrid and Customer related to the Service consists of these Terms and the Data Processing Addendum and any schedules or addenda thereto. In addition, the Acceptable Use Policy and the Privacy Policy will apply for Use of the Service and the Customer shall ensure that its Users comply with the Acceptable Use Policy and the Privacy Policy.

1.3. Notwithstanding the foregoing, the Customer may enter into a Customer Agreement with Phygrid relating to the Service. In case of any conflict or inconsistency between these Terms and a Customer Agreement, the Customer Agreement shall take precedence, provided that such Customer Agreement has been signed by an authorized signatory of Phygrid.

2. THE PLATFORM AND THE MARKETPLACE

Phygrid is a solution provider for digital experiences in physical spaces and serves customers in various industries using the Platform and the Marketplace to power seamless customer journeys and to offer its customers ready-to-use apps that can be deployed in the customer's environment. The Service consist of an online marketplace for purchase and deployment of standard apps and a platform for application development. The Service is described in more detail at <https://ombori.com/grid>.

3. DEFINITIONS

In addition to terms defined throughout the Terms, the following definitions shall apply whenever used with a capital initial letter and whether used in singular or plural:

"Acceptable Use Policy" means the acceptable use policy for the Service, as made available through the Service and as updated by Phygrid from time to time.

"Account" means a Customer or a User account that enables the Customer or a User to Use the Service.

"Affiliate" means, with respect to Phygrid or the Customer, any other entity which directly or indirectly controls, is controlled by or is under common control with that Party, where "control" means having more than 50% ownership or the right to direct the management of an entity by way of contract or otherwise.

"Agreement" means these Terms, the Data Processing Addendum and any schedules or addenda thereto.

"App Provider " means a party who has developed or is otherwise providing an App available on the Marketplace, e.g. Phygrid (for Phygrid Content), Customer (for Customer Apps) or a third party (for Third-Party Content).

"App Terms" means separate terms and conditions (if any) applicable for specific Apps, as made available in each App.

"App" means an application, including any content therein, available on or offered through the Marketplace, including any Customer Apps developed on the Platform. An App may constitute Phygrid Content, a Customer App or Third-Party Content.

"Approved Partner" means a reseller, distributor, partner, agent or other intermediary (including, without limitation, an Authorized Reseller or a Certified Solution Provider) authorized by Phygrid or any of its Affiliates to market, distribute, offer or solicit orders for the Service and/or Apps.

"Certified Devices" has the meaning ascribed to it in Section 11.2.

"Committed Consumption" means a predefined minimum consumption level for the Service over a set time period, prepaid by the Customer in advance at the start of each set time period, as specified in the Master Service Agreement (where applicable).

"Confidential Information" means all non-public, business related or technical information, written or oral or in any other form, disclosed by a Party under this Agreement, whether marked as confidential or not, including, but not limited to, the existence of this Agreement, any trade secrets, know how, inventions, software programs, source code, object code, applications, documentation, contracts, information, knowledge, data, databases, processes, techniques, designs, drawings, programs, formulas or test data, or any similar information. The Service and information generated or made available by Phygrid through or in connection with providing the Service (including, without limitation, Third-Party Content, Phygrid Content and Derived Data) constitutes Confidential Information of Phygrid. Customer Data constitutes Confidential Information of the Customer. Feedback is not Confidential Information.

"Customer Agreement" means a separate agreement entered into by the Customer with Phygrid regarding the Customer's Use of the Service, e.g. a Master Service Agreement.

"Customer App" means an application, including any content therein, developed by the Customer or by Phygrid or any third party on behalf of the Customer.

"Customer Data" means any data processed by Phygrid, its Affiliates or Approved Partners on behalf of the Customer, including any data or other information uploaded by the Customer and/or any User to the Service, but excluding any Feedback.

"Customer" means the legal entity subscribing to or Using the Service under this Agreement.

"Data Processing Addendum" means the data processing addendum entered into between Phygrid and the Customer.

"Data Residency" means the country or region where the data of the Customer's Tenant is located.

"Derived Data" means anonymized and aggregated data (such as metadata, generated data, by-product data and information about usage of functions or features) which is collected, derived or obtained by Phygrid, its Affiliates or Approved Partners and is based on Customer Data, or otherwise in connection with the Customer's or the Users Use of the Service, through which neither the Customer nor Users are identifiable.

"Developer Account" means an Account permitting Use of the Platform solely to develop new Apps or offer Third-Party Content. All Use or customization of Apps on the Marketplace requires additional Account(s).

"Devices" means any third-party computer, mobile handset, tablet, screen, wearable device, speaker, hardware or any other device provided as part of the Service, or otherwise used together with the Service as specified in Section 11, including Certified Devices. Supply of Devices is subject to separate terms and conditions.

"Feedback" means any feedback, suggestions, ideas, materials or similar that the Customer or any User shares, uploads or otherwise makes available to Phygrid or via the Service.

"Fees" means the prices for the Service, the Apps and any services offered by Phygrid from time to time, including, any Use of the Service or the Apps, any Service Level Agreement or any support offered by Phygrid, and any Tenant Plans and Support Plans.

"Force Majeure Event" means war, natural disaster, order of any government, court or regulatory body having jurisdiction, blockade, embargo, riot, civil disorder, epidemic, pandemic or other similar event, in each case where such event was not foreseeable at the time of entering into this Agreement by the parties and its effects not capable of being overcome without unreasonable expense or loss of time of the Party who is obligated to render performance under this Agreement.

"Grid Usage Unit" means the billing unit that may be used by Phygrid to charge and bill the Fees when an agreement for Use of the Service with the Customer is entered through an Approved Partner.

"Installation" means the combination of an App, a Customer specific configuration of that App, and the number of chosen instances for that App. The same App can have multiple installations but only one configuration is possible per Installation.

"Managed Tenant" means a Tenant created in the Service for a specific Customer and for the Customer's use, which belongs to the Customer but can be managed by an Approved Partner on the Customer's behalf.

"Master Service Agreement" means a separate agreement entered into between Phygrid or any of its Affiliates or an Approved Partner and the Customer for the supply of the Service, sale of Apps and/or development of Customer Apps and/or the provision of other services to the Customer, including any schedules or addenda thereto.

"Phygrid Content" means any Apps, templates, methods, designs, tools, widgets, tool data, and any other information made available by Phygrid or any of its Affiliates to the Customer via the Service from time to time.

"Party" and "Parties" means either Phygrid or the Customer and Phygrid and the Customer jointly, respectively.

"Personal Data" shall have the meaning given to it in the General Data Protection Regulation (EU) 2016/679 ("GDPR").

"Pricing Policy" means PhygridGrid's Pricing and Billing Policy, as amended from time to time.

"Privacy Policy" means PhygridGrid's privacy and cookie policy as made available through the Service and as updated by Phygrid from time to time.

"Service Level Agreement" means a service level agreement for the Service entered into between Phygrid and the Customer through the Service. A Service Level Agreement template, as amended from time to time, and the Fees for the Service Level Agreement are available in the Service.

"Support Plan" means any plan offered by Phygrid setting out the support offered by Phygrid to the Customer, in each case as described in the Service.

"Tenant" means an instance of the Service used by a Customer which provides a single place to manage the Users, permissions, roles, Devices, Installations and any other unit which generates billable consumption. A Tenant may consist of one or several Sub-Tenants. Each Tenant is billed separately. If a Tenant has one or multiple Sub-Tenants, the billing for the Tenant will include the Sub-Tenants.

"Tenant Plan" means any plan offered by Phygrid which contains a certain consumption amount and certain additional features (where applicable), in each case as described in the Service.

"Third-Party Content" means applications, software, software services, licenses, plugins, open source software, materials, user-generated content, or other content provided by third parties as part of, or made available via links in the Service, or otherwise used together with the Service as specified in Section 10.

"Sub-Tenant" means a sub-instance of a Tenant. The content available in a Sub-Tenant is managed by and billed through the Tenant to which the Sub-Tenant belongs.

"Trademark Guidelines" means the Guidelines for the Use of PhygridGrid's Trademarks and Copyrights, as amended and as made available in the Service from time to time.

"Use" or "Using" means to access or otherwise use the Service or any part thereof.

"User" means an individual who is authorized by the Customer to use a Service, for whom the Customer has ordered and paid for the Service, and to whom the Customer (or when applicable, Phygrid at Customer's request) has supplied a user identification and password. Users may include, for example, employees, consultants, contractors and agents of the Customer.

4. ACCESS TO THE SERVICE AND SUPPORT

4.1. By entering into this Agreement, and subject to payment of applicable Fees and compliance with this Agreement, the Customer receives a non-exclusive, non-transferable, non-sublicensable and time-limited license and right to Use the Service within the Customer's business and in the specified territory on a subscription basis until terminated in accordance with this Agreement.

4.2. Phygrid will use commercially reasonable efforts to keep the Service available and accessible at all times. Nonetheless, interruptions and incidents may occur and Phygrid hereby disclaims any and all obligations or guarantees to keep the Service available. Upon Customer's request, Phygrid may offer the Customer to enter into a separate Service Level Agreement. The Customer shall enter into separate Support Plans, Service Level Agreements and Tenant Plans for each Tenant and Sub-Tenant.

4.3. The Customer agrees and acknowledges that Phygrid has no responsibility for providing any support and maintenance as regards the Apps, unless explicitly stated in the App Terms for a particular App.

4.4. The Customer is solely responsible and liable for Customer Apps, including any content therein, and acknowledges and agrees that Phygrid will not be liable for the correctness, contents, availability or function or any Customer App and that Phygrid has no responsibility for providing any support and maintenance as regards the Customer Apps to the Customer, any User or any third party.

4.5. Phygrid may update, improve, modify or otherwise change the Service at PhygridGrid's discretion and without prior notice to the Customer. Such changes and modifications to the Service may include changes to the functionality, quality and/or scope of the Service. The Customer acknowledges that such changes and modifications, or other maintenance work, may lead to downtime and decreased availability in the Service. In the event of any changes to the scope or quality of the Service that is likely to have a material impact on the Customer's ability to use the Service, Phygrid will use reasonable efforts to notify the Customer in advance, (unless otherwise set out in the relevant Support Plan).

4.6. Phygrid will provide Customer with support for the Service (where applicable), as described and at the prices set out in the Service.

4.7. The Customer acknowledges and agrees that Phygrid may provide certain Approved Partners and PhygridGrid's Affiliates access to the Service, including any Customer Data. The Customer may at any time oppose to such Approved Partner's use of the Customer Data, in which case Phygrid and/or the Approved Partner shall be given reasonable time to revoke the Approved Partner's access to the Customer Data.

4.8. By entering into this Agreement, the Customer authorizes any of its Users to accept and enter into any App Terms thereby entering into binding agreements as regards the Apps on behalf of the Customer.

5. USE OF THE SERVICE

5.1. Subject to the Terms and/or a Customer Agreement, Customer is entitled to Use the Service on a subscription basis. The details of the subscription licenses, including the term and duration of Customer's subscription period, applicable Fees and payment terms, details on the scope of the Service and number of Users and other usage limits, are set out in the Customer Agreement.

5.2. When subscribing to the Service, a Tenant will be set up for the Customer. The Customer is able to create multiple Sub-Tenants within the Service. If the Customer has subscribed to the Service via an Approved Partner who is a "Certified Solution Provider", a Managed Tenant will be set up for the Customer by the Approved Partner.

5.3. The Customer acknowledges and approves that its access to a Tenant may be suspended or revoked by Phygrid, an Approved Partner or any third party which is responsible for the infrastructure of the Service, at any given time and at such party's sole discretion, if the Customer is in violation of its obligations in relation to Phygrid, and/or an Approved Partner, and/or a third party responsible for the infrastructure of the Service. To access the Service, the Customer and individual Users will need to create an Account. The Customer shall be solely responsible for all activities conducted through its Account and by individual Users through the Customer's Account or each individual User's Account. All use of the Service must be in strict compliance with the Acceptable Use Policy, and this Agreement.

5.4. The Customer undertakes to indemnify and hold Phygrid, its Affiliates, and/or any Approved Partner, harmless and upon Phygrid's request defend Phygrid, its Affiliates and/or an Approved Partner, from any claim, proceeding, liability, loss, cost or expense inflicted upon or incurred by Phygrid, its Affiliates and/or an Approved Partner, resulting from any Use of the Service by the Customer, any User or by a third party who has obtained, lawfully or unlawfully, access to the Service (including any content therein) from the Customer or any User, including, but not limited to, claims from third parties, damages, lost profits, additional fees, or other any other costs (including reasonable attorney's fees) resulting from such access.

5.5. The Customer shall not (and shall not allow any User or any third party to), during the term of this Agreement or at any time thereafter:

a) transfer, sublicense, or assign the Customer's rights under this Agreement to any other person or entity;

b) modify, adapt or create derivative works of any part of the Service or reverse engineer, decompile, decrypt, disassemble or otherwise attempt to derive any source code, underlying ideas, algorithms, libraries, file formats, data, databases or programming interfaces for the Service;

c) access the Service or Phygrid Content in order to build a competitive product or service;

d) distribute, publish, or otherwise make any Phygrid Content, or other part or functionality of the Service available to third parties, whether as an application service provider, or on a rental, service bureau, hosted service, cloud service or other similar basis;

e) remove, modify, or conceal any product identification, copyright, proprietary, intellectual property notices or other marks on or within the Service or Phygrid Content;

f) upload or otherwise make available any data to the Service which is illegal, which may violate applicable laws, including data protection legislation, intellectual property rights, confidentiality obligations, or any other rights or restrictions in relation to third parties; or

g) upload or otherwise make available any data to the Service that may damage the Service or which otherwise contains any malware, viruses, Trojans, other harmful software or code, or similar.

5.6. The Customer shall ensure that the Service and each App is properly tested prior to any Use, as necessary to ensure safe and correct Use of the Service or any App, as applicable. The Customer assumes sole responsibility for all Customer Data, and any other data and results obtained from its use of the Service, and for conclusions or courses-of-action drawn from such use, and for maintaining validation, error correction, back up and reconstruction of its own data input to, or output by, the Service.