

Special Terms of Use for optivo® Mobile PUSH

1. Purpose of the agreement and provisioning

- (1) The purpose of these Terms of Use is the dispatch of PUSH messages by optivo® broadmail (additional function). optivo® broadmail allows customers using this additional function to send advertising or other information to app users on their mobile devices. The service is therefore aimed at customers who already operate an app (customer app) and who offer it via Google Play or the Apple App Store (platforms or platform operators). More information on basic performance parameters, usage and data processing can be found in the Specifications. Such document is available on request. The individual specifications of the order also apply.
- (2) These Terms of Use supplement the General Terms and Conditions of optivo® broadmail (available at <http://www.optivo.de/agb>). In the event of contradictions, these Terms of Use prevail.
- (3) The service is provided by Google Cloud Messaging, a service of Google Inc., 1600 Amphitheatre Parkway, Mountain View, CA 94043, USA (GCM or Google). For more information, click here: <https://developers.google.com/cloud-messaging/>?. The customer signs a separate agreement with Google for the dispatch of PUSH messages (Google Service Agreement). optivo assists in making use of this agreement by allowing technical integration into optivo® broadmail.
- (4) Therefore optivo is only bound to correctly operate broadmail and transfer PUSH messages to Google.

2. Implementation

- (1) Implementation of the additional function into optivo® broadmail takes place after the order has been placed. To this end, technical support contacts the customer asking for the information required for implementing and rendering the service. Reference is made to Sec. 8 GTC of optivo®.
- (2) Furthermore, the customer also needs to perform additional implementation measures:
 - the customer creates and operates a customer app on its own responsibility,
 - the customer receives a software development kit from optivo, which it then incorporates into the customer app on its own responsibility (this allows for the recipient-specific token to be imported and updated so that optivo can address the PUSH message),
 - the customer enters into a licence agreement with Google on its own responsibility and gets registered,
 - the customer fulfils the user agreement with Google on its own responsibility,
 - the customer hands over the GCM key obtained from Google to optivo so that optivo can dispatch the PUSH message on behalf of the customer.
- (3) It is the customer's responsibility to check the Google Service Agreement. This must be done prior to conclusion of the agreement with optivo.

(4) If participation is required by the customer, the implementation phase can be completed within three months.

3. Customer obligations

(1) The customer operates a customer app for the Android or iOS platforms on its own responsibility. The customer therefore has to ensure that

- the customer app is offered on the platforms in a manner that complies with the applicable laws and regulations,
- the users of the app are adequately informed,
- the provisions of the Google Service Agreement are complied with.

(2) The customer provides optivo with information on dispatching a PUSH message via GCM. The scope, procedure and manner of processing data are to be derived from the description under Sec. 1 (1).

(3) It is the customer's sole responsibility to check whether and to what extent this service—also with regard to the Google Service Agreement—is permitted by law in a particular case (e.g. pursuant to competition, consumer protection, telecommunications and data protection law). The customer also has to ensure that the collection, transmission, processing and other use of the data takes place in a permissible manner. To this end, the customer has to obtain the express consent of the persons involved, or take other measures to ensure that the additional function is used in a manner that complies with the applicable laws and regulations. optivo points out that the service acc. to Sec. 1 will require the prior, express and informed consent of the end-user involved (opt in). It is therefore incumbent on the customer to fully inform the end user of the processing performed by optivo, to implement the procedure in a lawful manner and to carry out and obtain the legally valid consent of the end user, and, in particular, to inform the end user about their existing rights and the procedures for unsubscribing (opt out). optivo performs an opt-out using exclusively the following procedure:

- The app user opts out of receiving PUSH messages in the platform operator's settings on the mobile device,
- the customer sends a PUSH message to the app user,
- following an unsuccessful delivery attempt, the platform operator informs optivo that the app user has opted out of receiving PUSH messages,
- optivo deletes all customer data from the system, insofar as the data relate to the receipt of PUSH messages,

The customer can re-register to receive PUSH messages by reversing the opt out option in the platform operator's settings. In this case, automatic re-registration of the customer is carried out. It is the customer's responsibility to transfer back to optivo any existing data relating to the app user.

optivo points out that dispatching data via GCM does not exclude actual transmission of the data to the USA.

- (4) Prior to using the additional functions pursuant to this Agreement for the first time, hence after making changes to the system settings, a test message is to be sent by the customer in order to avoid incorrect messages being dispatched in future. To this end, the customer should send a test message to an internal app user and check it for accuracy and completeness. This also applies if there are doubts about the scope and display of the PUSH message. The preview function integrated into optivo[®] broadmail cannot fully represent all parameters (e.g. app user settings, software versions, widgets, producer-specific user interfaces). Alternatively, the customer can call on optivo Support for assistance.
- (5) The customer remains responsible for data processing and the Google Services Agreement. optivo only provides support in that a software application is provided as a SaaS service for data processing in order to be able to process customer communications centrally in optivo[®] broadmail.
- (6) The customer ensures that the texts provided and other contents are up to date, accurate and complete, and that the customer has all the necessary rights at its disposal to use them in the additional function. The customer grants optivo a non-exclusive worldwide license free of charge and limited to the term of the Agreement to copy the data collected and provided, and to disseminate, edit, play in public, display and make it accessible.
- (7) Reference is also made to the provisions of the GTC of optivo[®] broadmail (Sec. 9).
- (8) Since optivo has no influence on the standards for messaging, changes may occur that need to be coordinated and jointly implemented with the customer. Modifications may be required to effectively provide services or to implement the standards of GCM.

4. Remuneration

- (1) The fees to be paid by the customer are subject to the respective order. The terms of payment are subject to the provisions of the GTC of optivo[®] broadmail (Sec. 12).
- (2) The monthly service fee is calculated based on the maximum number of active users reached in a calendar month. Following successful implementation, this includes all users who have installed the customer app on any device. A user is only managed by optivo as a non-active user, if said user has been deleted from the optivo system pursuant to Sec. 3 Para. 3. The number of messages sent and the number of recipients addressed in this way have no impact on the calculation of the monthly service fee.

5. Liability and warranty

The provisions of the GTC of optivo[®] broadmail shall apply (Sec. 13).

6. Usage rights

- (1) Reference is made Sec. 7 of the GTC of optivo[®] broadmail with regard to using the additional function in broadmail.

- (2) Usage rights concerning the software development kit in accordance with Sec 2 (2) are based on the terms of license for software integration (available at: https://www.optivo.com/_Resources/Persistent/e90eedc4cb711002cfaf5fca57c9dedc9c2e9350/Lizenzbedingungen-Software-Integrations.pdf). The terms of license for software integration apply only on condition that the customer is granted all the necessary rights pursuant to the Agreement in order to integrate the software development kit into the customer app and distribute this to app users on the platforms.

7. Termination and blocking

- (1) The amendment to the Agreement comes into force on receipt of the notice of acceptance and is concluded for an indefinite period of time.
- (2) The additional function can be terminated by either party with a period of notice of one month at the end of any month. The one-off set-up fee, and other agreements (optivo[®] broadband), remain unaffected by this.
- (3) This does not affect the right of both parties to terminate the Agreement for good cause without notice. Reference is made to the GTC of optivo[®] broadband (Sec. 15, Para. 2) with respect to termination for good cause. This right of termination also exists if and insofar as Google unilaterally terminates the Google Service Agreement, provided that termination is not due to the wrongful and culpable behaviour of customers under the Google Service Agreement. optivo points out the fact that the services to be provided under the Google Service Agreement by Google concerning GCM are basically free and Google reserves comprehensive cancellation rights. A right of termination also exists insofar as GCM unilaterally modifies the service to the extent that the parties cannot reasonably be expected to adhere to this Agreement.
- (4) optivo can restrict or block the delivery of PUSH messages, GTC of optivo[®] broadband (Sec. 10).
- (5) The one-off set-up fee and other agreements (optivo[®] broadband) remain unaffected by any termination and blocking.
- (6) There are postcontractual obligations for the customer to fulfil, even after cancellation of the additional function.
The Agreement shall continue to be in force insofar as the customer is obliged,
- to remove the software development kit received according to Sec 2 (2) immediately and completely from its customer app,
 - to immediately offer an update of the client app on all platforms,
 - to inform optivo immediately of its fulfilment of the above obligations.

As of September 2015