

Tool Terms of Service – TToS

Applicable as of 20.11.2020

A. Introduction

1. Definitions

1.1 App Radar: App Radar Software GmbH, a limited liability company incorporated under the laws of Austria, registered under Company Register Number FN 442781 z, with its place of business at Lastenstraße 13a, 8020 Graz, Austria.

1.2 App Store Marketing Services (ASMS): Standardized consulting services offered by App Radar.

1.3 Consulting Terms of Service (CToS): App Radar's App terms that apply for contracts for the provision of ASMS or Individual Contracts.

1.4 Contractual Partner: Any legal or natural person entering into any kind of legal relationship with App Radar.

1.5 Data Security Policy (DSP): App Radar's policy on data security and technical aspects of data procession, that applies for all contractual relationships with App Radar.

1.6 Individual Contracts (ICs): Agreements for the provision of goods and/or services by App Radar to a Contractual Partner that are not either Plans or ASMS.

1.7 Plans: Subscriptions for the usage of the Tool, either for free or for a fee.

1.8 Privacy Policy (PP): App Radar's privacy policy that applies for all contractual relationships with App Radar.

1.9 Tool: App Radar's App Store Optimization Tool, offered as a SaaS Tool.

1.10 Tool Terms of Service (TToS): App Radar's App terms that apply for the usage of the Tool.

1.11 Website: www.appradar.com and all its sub-websites.

2. Area of Application

2.1 These Tool Terms of Service (henceforth referred to as “TToS”) of App Radar apply for all and any transactions between App Radar and Contractual Partners that sign up to use App Radar’s Tool. App Radar only offers the Tool based on these TToS. By using App Radar’s Tool the Contractual Partner agrees to be bound by these TToS.

2.2 Contractual Partners’ Terms of Service (and/or Terms of Use / Terms and Conditions etc.) are expressly not part of the contract, even in case App Radar has not expressly objected to them.

2.3 These TToS may (only) be waived by written agreement between App Radar and the Contractual Partner. Verbal deviations are not binding on App Radar. Written agreements shall have priority over these TToS. Anything not governed by a written agreement, these TToS shall be governed by the applicable law, in that order.

3. Other Terms and Policies

3.1 If a Contractual Partner enters into a contract with App Radar for the provision of App Store Marketing Services (ASMS) or Individual Contracts (ICs), App Radars [Consulting Terms of Service \(CToS\)](#) shall apply.

3.2 In addition to these TToS and/or the CToS, App Radar’s [Privacy Policy \(PP\)](#) and [Data Security Policy \(DSP\)](#) applies.

4. Future Transactions and Changes to these Terms

4.1 These TToS also apply for future transactions and additional agreements between App Radar and a Contractual Partner, even if not expressly incorporated into future agreements. The TToS shall always be applied in their most current version.

4.2 Any new features that are added to the current Tool shall also be subject to these TToS.

4.3 The Contractual Partner can review the most current version of the TToS at any time on this Website. App Radar reserves the right to update, change or replace any part of these TToS by posting updates and/or changes to our website.

4.4 It is the Contractual Partner’s responsibility to check this Website periodically for changes. The Contractual Partner’s continued use of the Tool following the posting of any changes constitutes acceptance of those changes.

4.5 These provisions also apply to other terms and policies referenced above.

B. Tool Contracts

5. Contract Conclusion, Contract Period, Contract Termination and Changes to Contracts

5.1 A contract between the Contractual Partner and App Radar for the Tool is concluded and commences by creating an account by the contractual partner.

5.2 App Radar offers two different possibilities for contract period and termination for the usage of the Tool: (a) the contract is based on a monthly subscription; (b) the contract is based on a yearly subscription.

5.3 Monthly Subscription: If the contract is not terminated by the Contractual Partner, it is automatically renewed for one additional month. If the Contractual Partner wants to terminate the contract he can do that within his Account Settings.

5.4 Yearly Subscription: If the contract is not terminated by the Contractual Partner, it is automatically renewed for one additional year. If the Contractual Partner wants to terminate the contract he can do that within his Account Settings.

5.5 The notice of termination can be given at any time via the Account Settings. The termination becomes effective with the end of the last accounting period.

5.6 Free Plans: App Radar reserves the right to terminate Free Plans, reduce / change their scope, the usage thereof, or discontinue the offering of Free Plans entirely, at the sole discretion of App Radar at any time. App Radar assumes no liability for said termination, reduction/change or discontinuance towards the Contractual Partner or third parties. App Radar may at any time terminate, reduce, suspend, change the scope/content of, or discontinue Free Plans; especially (but not limited to) for the following reasons: (a) Providing false or incomplete information by the Contractual Partner to App Radar; (b) misuse of the Free Plan;(c) changes of App Radar's business model (e.g. discontinuation of free services or change of scope).

6. Tool Usage

6.1 With regard to the Tool, only a limited right of use is granted to the Contractual Partner, no ownership is granted, neither of the entire Tool nor parts thereof, nor of the source code.

6.2 App Radar provides the Tool only. The Contractual Partner is responsible for providing whatever resources are needed to access and use the Tool or are necessary for the fulfillment of App Radar's contractual duties. In case the Contractual Partner does not

fulfill or if they violate their duties under the contract, App Radar reserves the right to suspend any usage of the Tool or terminate the contract with immediate effect.

6.3 By connecting their apps to the Tool, Contractual Partners agree to App Radar's PP and DSP.

6.4 Plans may include basic or expanded support based on the Plan purchased. App Radar does its very best to make the Tool available except for: (a) planned downtime (of which the Contractual Partner will be notified in advance) (b) any unavailability caused by circumstances beyond App Radar's reasonable control, such as, but not limited to, war, acts of government, acts of terror or civil unrest, or technical failures beyond our control (force majeure). App Radar does not guarantee, represent or warrant that the Contractual Partner's use of the Tool will be uninterrupted, timely, secure or error-free. App Radar does not warrant that the results that may be obtained from the use of the Tool will be accurate or reliable.

6.5 Access data to the Tool is to be kept confidential. Access to the Tool is not to be given to third parties without prior written consent by App Radar. The Contractual Partner may not use the Tool for purposes which are illegal, breach the rights, including personal data or intellectual property rights or business secrets, of third parties, or that are contrary to good business practice or contra bonos mores.

6.7 App Radar is entitled to check the usage of the Tool by the Contractual Partner to ensure compliance with these TToS. The contractual partner is required to cooperate during such a check.

6.8 Information about App Radar's Tool not published by App Radar is not binding on App Radar.

7. Pricing, Payment, Due Dates, and Billing

7.1 App Radar currently offers a Free Plan of the Tool, thus free of charge. Other plans are offered for a fee.

7.1 To the extent the Tool or any portion thereof is made available for a fee within the scope of a plan, the Contractual Partner will be required to select a payment plan and provide App Radar information regarding the Contractual Partner's credit card or other payment instrument.

7.2 App Radar reserves the right to enter into contracts only after an advance payment has been made.

7.3 Provided that nothing else is agreed in writing, the prices are given in Euro and do not include value-added tax. Lump-sums are only applicable if App Radar confirms this in writing.

7.4 App Radar reserves the right to make appropriate price changes in case of excessive usage of the Tool. Excessive usage, which is usage significantly in excess of average usage patterns including but not limited to patterns that adversely affect the speed, stability, availability or functionality of the Tool for other users and/or system stability. Excessive usage is also if a Contract Partner uses the Tool for third party apps without obtaining App Radar's written consent in advance. App Radar furthermore reserves the right to limit, suspend, alter or cancel Tool usage to Contractual Partners who excessively use the Tool, without giving notice. App Radar will - if reasonably possible - notify the Contractual Partner of any excessive usage to provide the Contractual Partner with an opportunity to change their usage to a level acceptable to App Radar or provide an opportunity to upgrade the Contractual Partner's plan.

7.5 App Radar reserves the right to increase or add new fees and charges for its existing Services (both free services and chargeable services) the Contractual Partner shall be given at least 30 days' prior notice.

7.6 The Contractual Partner represents and warrants to App Radar that payment information given during the account creation is true and that the Contractual Partner is authorized to use the payment instrument. The Contractual Partner will promptly update the Contractual Partner's account information with any changes (for example, a change in the Contractual Partner's billing address or credit card expiration date) that may occur.

7.7 The Contractual Partner agrees to pay App Radar the amount that is specified in a payment plan in accordance with the terms of such plan and these TToS. The Contractual Partner hereby authorizes App Radar to bill the Contractual Partner's payment instrument in advance on a periodic basis in accordance with the terms of the applicable payment plan until the Contractual Partner terminates the Contractual Partner's account, and the Contractual Partner further agrees to pay any charges so incurred.

7.8 If the Contractual Partner chooses to upgrade the Contractual Partner's plan during the Contractual Partner's elected subscription period, any incremental cost will be prorated over the remaining term of the subscription period and charged to the Contractual Partner's account. Subsequently, the Contractual Partner will be charged the adjusted rate on the Contractual Partner's next billing cycle.

7.9 App Radar may offer alternative fee structures, discounts, coupons or incentives, at its sole discretion and for any reason, and is under no obligation to offer such alternatives to all users.

7.10 Payments are, unless otherwise agreed in writing, due on the date the invoice is received without any deduction in the agreed currency. A payment is regarded as performed on the day on which App Radar can dispose of them.

7.11 Manual invoicing for the Tool fee (i.e. not by using e.g. PayPal or credit card data and automatic billing) is only offered if the contractual partner has chosen a year-long plan.

7.12 App Radar is entitled to send the Contractual Partner invoices in electronic form and the Contractual Partner expressly agrees with this form of delivery.

7.13 Pay-per-Use: If billing is carried out on a pay-per-use basis (e.g. billing on App and / or Keyword basis), the amount due will be calculated for each month according to the agreed pricing scheme. The amount due will be calculated on the basis of that day of said month, on which the Contractual Partner's Usage of Services was the maximum. This is the day of the month on which the most apps and/or keywords were used. If both apps and keywords are billed, the maximum day of apps and the maximum day of keywords are billed separately.

7.14 The Contractual Partner is not entitled to withhold or offset payments on account of warranty claims or other counterclaims.

8. Money-Back Guarantee & Refund Policy

8.1 App Radar does not provide refunds or credits for any partial months of use of the Tool.

8.2 Exempt from this is if a Contractual Partner cancels their (billable) account within 24 hours after registration and requests the refund via email to support@appradar.com. In this case App Radar will transfer back payments of the Contractual Partner within 30 days.

9. Late Payment and other Contract Violations by the Contractual Partner

9.1 If the Contractual Partner defaults on a due payment App Radar can, without affecting its other rights postpone the fulfillment of its own obligation until completion of this payment.

9.2 App Radar may declare due all outstanding claims from the transaction in question or other transactions and charge default interest for these amounts from the respective due date in the amount of 9,2% above the base interest rate. Detriments suffered by App

Radar that exceed such compensation may be claimed additionally, including fees for payment reminders (a fee of EUR 40,- may be charged in addition to the default interest).

9.3 Furthermore, in case the Contractual Partner does not fulfill or if they violate their duties under the contract App Radar reserves the right to withhold the performance of its contractual duties and / or terminate the contract with immediate effect.

9.4 App Radar may terminate, reduce, suspend, change the scope/content of, or discontinue any of its goods or services or contracts at its sole discretion or for good cause. Good cause is deemed (especially but not limited to) a change of App Radar's business model (e.g. discontinuation / limitations of certain types of services, etc.)

C. General Provisions

10. General Provisions on Data Privacy and Security

10.1 App Radar's [Privacy Policy](#) explains how App Radar collects and uses personal data (i.e. data of natural persons such as e.g. names, email-addresses telephone numbers, etc.).

10.2 App Radar's [Data Security Policy](#) explains how App Radar collects and uses other data (i.e. data other than personal data such as login-information, aggregated data, app metadata, etc.).

10.3 App Radar shall maintain appropriate administrative, physical and technical safeguards to protect the security, confidentiality, and integrity of the Contractual Partner's general data (business data). These safeguards include encryption of the Contractual Partner's data in transmission (using SSL or similar technologies), except for certain external third-party integrations that do not support encryption, which the Contractual Partner may link to the Service at the Contractual Partner's choice. App Radar offers its best efforts in providing safe communication.

10.4 Personal data of end-users: App Radar generally does not process any personal data of end-users. App Radar only saves and processes Usernames/Nicknames of App Store and Google Play Store Users exclusively to make the process of answering to App Store reviews possible for the Contractual Partner. These usernames will not be linked to any natural person / further personal data by App Radar. No other personal data of end-users is processed or saved in any way.

10.5 By entering into a contractual relationship with App Radar, [App Radar's Data Processing Agreement](#) is automatically concluded between App Radar and the Contractual Partner. App Radar and the Contractual Partner may exchange a signed copy if required.

10.6 App Radar is entitled to process personal data of employees of the Contractual Partner (e.g. their work email address or phone numbers) entrusted to it within the scope of the purpose of the contractual relationship. The Contractual Partner guarantees App Radar that all necessary measures in this regard, in particular, those in the sense of the law on data protection (GDPR, Austrian Data Protection Law), such as declarations of consent, have been taken.

11. Maintenance and Support

11.1 App Radar conducts maintenance and support generally only from Monday to Friday between 9 am CET +1 and 5 pm CET +1.

12. Liability and Damages

12.1 The following provisions shall not apply vis-a-vis consumers as far as this is required by law.

12.2 Any liability of App Radar is excluded as far as permitted by law. App Radar does not give any warranties or guarantees unless otherwise agreed in writing.

12.3 App Radar shall only be liable to the Contractual Partner for damages – outside of the Product Liability Act – in the event of gross negligence or dolus directus. This shall also apply mutatis mutandis to damage caused by third parties called in by App Radar.

12.4 In any case, App Radar shall not be liable for a certain performance of its goods or services. Any liability is capped with the monies paid for goods/services by the Contractual Partner within the last 6 months before a claim arose.

12.5 In addition, App Radar shall only be liable for typical and foreseeable damage, i.e. for damage that could reasonably have been expected to occur at the time the contract was concluded in accordance with the circumstances known at that time. Claims arising from consequential damages and from damages for which the Contractual Partner can obtain insurance cover or which can be controlled by the Contractual Partner, other indirect damages and losses or loss of profit as well as general financial losses, in particular from defective, omitted or delayed performance, are expressly excluded. Thus, no event shall App Radar be liable to the Contractual Partner for any incidental, special, consequential or indirect damages of any kind (including without limitation damages for interruption of business, lost profits, lost data or the like). App Radar shall have no liability whatsoever to the Contractual Partner for the accuracy, timeliness or continued availability of its Tool.

12.6 Compensation for damages in accordance with the Product Liability Act shall be governed by the statutory statute of limitations. Liability recourse is excluded. Any liability

that the software delivered by App Radar meets the requirements of the Contractual Partner, that it functions with other programs of the Contractual Partner or that all software errors can be corrected is excluded in any case.

12.7 The legal assumption that any fault or defect in goods or services provided by App Radar to the Contractual Partner was present at the point the goods or services were handed over to the Contractual Partner is excluded.

12.8 Claims for compensation for damages by the Contractual Partner can only be made judicially within six months from knowledge of the damages and the tortfeasor, but at the latest within three years after the beginning of the event establishing the claim. Otherwise the claim is forfeited.

12.9 If App Radar performs its services or provides its goods with the assistance of third parties and warranty and/or liability claims arise against these third parties in this connection, App Radar shall assign these claims to the Contractual Partner. In this case, the Contractual Partner shall file their claims with those third parties.

12.10 App Radar assumes no liability for the economic success of any commissioned and / or implemented project. App Radar is exclusively the supplier of the goods / service ordered and does not assume any entrepreneurial risk. The Contractual Partner is solely responsible for profits or losses resulting from the implemented project.

13. Intellectual Property Rights and Copyright

13.1 The copyrights to those works created by App Radar and its employees and commissioned third parties (in particular: offers, cost estimates, reports, analyses, experts' reports, organization-plans, programs, performance descriptions, drafts, calculations, drawings, data carriers, presentations, etc.) remain with App Radar. They may be used by the Contractual Partner during and after the contract relationship exclusively for the purposes included in the contract. App Radar also retains all intellectual property rights relating to the Tool. The source code, all enhancements, corrections and modifications to the Tool, all copyrights, patents, trade secrets or trademarks or other intellectual property rights protecting or relating to any aspect of the Tool are the sole and exclusive property of App Radar. Reverse engineering, decoding, decompiling, disassembling, or otherwise translating the source code into a human-readable form or allowing anyone else to do so is prohibited.

13.2 The Contractual Partner is not entitled to copy and/or distribute the work (or works) without express consent from App Radar in writing. App Radar is in no way liable vis-à-vis third parties when the work is copied/distributed without authorization, especially not for the correctness of the work.

13.3 App Radar can demand the return of all documents listed above and these are in any case to be returned to App Radar immediately and without being asked if the contract does not come into force.

13.4 Breach of these provisions by the Contractual Partner entitle App Radar to immediately terminate the contractual relationship prematurely and to make other claims, in particular for omission and/or compensation for damages.

14. Consumers

14.1 As a rule, App Radar does not enter into contract with consumers. App Radar reserves the right to deny entering into a contract with consumers without giving further reason.

14.2 Potential Contractual Partners that are consumers according applicable law need to inform App Radar in writing of their status before entering into a contract.

14.3 In case no notification is given to App Radar in writing, App Radar may either immediately void the contract and claim damages incurred by the Contractual Partner by this incident or continue the contractual relationship with the required changes thereto due to the Contractual Partner's status as consumer.

15. Confidentiality

15.1 The Contractual Partner is obliged to keep all and any confidential information of App Radar secret, which comes to its knowledge during the duration of a contractual relationship (in whatever context) and to protect such information with the same care as it protects its own confidential information, but at least with the care of ordinary business people.

15.2 Confidential Information shall be deemed to be all information, in whatever form (physical or incorporeal), which is expressly designated as such or is to be understood as such in good faith.

15.3 For each and every breach of this confidentiality obligation (with or without default by the contractual partner), the contractual partner is obliged to pay to App Radar a contractual penalty of EUR 10.000,- with immediate effect. Additionally, App Radar may file a claim for injunctive relief. App Radar may claim any damages caused by a breach of confidentiality that exceed the contractual penalty.

15.4 At the end of the contractual relationship, the contractual partner is obliged to return all and any confidential information to App Radar and destroy any copies still in its possession.

15.5 The obligation of confidentiality also extends without limit beyond the end of this contractual relationship.

15.6 App Radar is not bound to maintain confidentiality regarding confidential information of the Contractual Partner vis-à-vis necessary assistants, advisors, members of its company group and representatives as long as the obligation of confidentiality is imposed on them in full.

16. Representations and Warranties

16.1 The Contractual Partner represents and warrants to App Radar that: (i) that the Contractual Partner has full power and authority to enter into a contract with App Radar; (ii) that the Contractual Partner is the owner of all of the Contractual Partner's content or has received all authorizations, releases, rights or licenses necessary for the Contractual Partner's activities (and which permit App Radar to perform its obligations) without any further releases or consents being required; (iii) that the Contractual Partner will not, now or in the future, infringe on or misappropriate any copyright, trademark, right of privacy or publicity, or any other personal or proprietary right of any third party; (iv) that the Contractual Partner's content is not defamatory, obscene, unlawful, threatening, abusive, harassing, offensive, abusive, tortious or illegal; and (v) that the Contractual Partner is eighteen years of age or older.

16.2 The Contractual Partner, with regard to copyright, guarantees that all text elements, graphics, photos, designs, copyrights or other artworks which are provided are the property of the Contractual Partner or that the Contractual Partner may lawfully use them.

17. Newsletters and References

17.1 App Radar uses double opt-in for newsletter sign-ups. It is possible to opt-out from the App Radar newsletter in every email the Contractual Partner receives.

17.2 App Radar will contact the Contractual Partner and ask for permission to use the Contractual Partner's name and/or company name as a reference for marketing or promotional purposes.

18. Final Provisions

18.1 App Radar's TToS, CToS, the PP, the DSP, and all and any contracts concluded between App Radar and a contractual partner shall be governed by and construed exclusively in

accordance with the laws of the Republic of Austria under the exclusion of CISG and the laws of international private law.

18.2 All and any litigation between App Radar and a contractual partner shall be held before the responsible court for 8010 Graz unless the Contractual Partner is a consumer (then the legal venues for consumers shall apply). App Radar is however also entitled to file any action with any court competent for the Contractual Partner.

18.3 If individual provisions of App Radar's TToS, CToS, the PP, the DSP, and all and any contracts concluded between App Radar and a contractual partner should be ineffective, unenforceable or otherwise invalid, the effectiveness, enforceability and validity of the remaining provisions shall not be affected. The ineffective, unenforceable or otherwise invalid provision is to be replaced with an effective, enforceable and valid provision which comes as close as possible to the sense aimed for and the economic purpose.

18.4 The Contractual Partner is obligated to inform App Radar immediately about changes in its contact address during ongoing contractual relations. If the Contractual Partner omits to provide this information, statements are also considered received if App Radar sent them to the last known address.

18.5 App Radar is entitled to transmit electronic data such as project reports, general terms and conditions etc. to the Contractual Partner in electronic form and the Contractual Partner expressly agrees to this type of transmission.

18.6 App Radar's TToS, CToS, the PP and the DSP, are only authoritative in the English language; translation into other languages constitute merely aids for convenience.

19. Contact

19.1 Questions about App Radar's TToS, CToS, the PP and the DSP can be addressed to:

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