

APPMACHINE Terms & Conditions

Version 1.8 – last revisited: January 29, 2021

NOTICE: We've updated our Terms & Conditions, as of 29 January 2021, to clarify each party's compliance obligations in Article 9 with respect to applicable laws including the European Union's General Data Protection Regulation (GDPR).

These Terms & Conditions (as defined below) will apply to any use of the Service (as defined below). If you click the button "Finish" upon your registration for the Service and/or if you make any use of the Service, you agree to be bound by these Terms & Conditions and to qualify as a "User" (as defined below). By accepting these Terms & Conditions, you agree upon a valid and binding agreement with AppMachine. Please read these Terms & Conditions carefully so that you know what your rights and obligations are when using the Service. These Terms & Conditions are available for download and print at <http://www.appmachine.com/EULA.pdf>.

Article 1 Definitions

1.1 In these Terms & Conditions the following terms, when capitalized, and whether used in the single or the plural, will have the following meaning:

- a. **Account**: the account, being an online section within the Service, made available to the User by AppMachine upon registration for the Service. The Account (a) can be used by the User to manage and configure (i) its settings for use of the Service, (ii) its Personal Data, and (b) is necessary to have access to and to make use of the Service;
- b. **Agreement**: the agreement between AppMachine and the User for access to and use of the Service;
- c. **App**: the application for the Provider Platform that the User develops with the Service, as further described on the Website and/or in the Service;
- d. **AppMachine**: the private company with limited liability in accordance with Dutch laws AppMachine B.V. having its registered office in (8911AE) Leeuwarden at the Sophialaan 32, registered at the Dutch Chamber of Commerce with no. 52064093, VAT no. NL 8502.85.173.B.01;
- e. **Content**: any content provided by the User by means of the Service, such as the content for inclusion in the App;
- f. **Credentials**: the User's username and password that are required to register for an Account and to have access to and make use of the Service;
- g. **Free Service**: the free part of the Service, being the development and, testing of the App by User itself;
- h. **Intellectual Property Rights**: any intellectual property rights and associated rights, including but not limited to copyrights, database rights, rights to domain names, model rights, neighbouring rights, patents, trademark rights, trade name rights, as well as rights to know-how;
- i. **Paid Service**: the paid parts of the Service for which Parties concluded an (subscription) agreement for the provision thereof, such as the transmission of the App to and for the purpose of publishing the App through the Provider Platform and keeping the App published in the Provider Platform, the analysing of the (downloads of) the App, assistance with designing the App by AppMachine, deleting any AppMachine brands from the App (no-branding service) and/or updating the App by AppMachine or by User itself;
- j. **Parties**: User and AppMachine;
- k. **Personal Data**: any data that directly or indirectly relates to a natural person;

- l. Privacy Notice: AppMachine's privacy notice, available at <https://www.endurance.com/privacy/privacy>;
- m. Provider Platform: the mobile platforms of mobile platform providers Apple Computer, Inc. (Apple) (iOS) with/and its Apple App Store and Google Inc. (Google) (Android) with/and its Google Play Store;
- n. Service: the Paid Service and/or Free Service, as agreed upon, provided by AppMachine to User, including but not limited to the access to and the use of the Website and the App Previewer by means of the Account, for the purpose of developing, testing, publishing, analysing and/or updating the App, as further described on the Website and/or in the Service;
- o. Terms & Conditions: these terms & conditions, available for download and print at <http://www.appmachine.com/EULA.pdf>, which form an integral part of the Agreement;
- p. User: you, as (a) a consumer or (b) a professional party being (i) a natural person or (ii) a legal entity – that concluded the Agreement with AppMachine;
- q. Website: the AppMachine websites, available at <http://www.appmachine.com>, underlying (sub-)domains and any underlying pages, owned by AppMachine.

Article 2 Scope

- 2.1. The Terms & Conditions apply to the Agreement, the use of and access to the Service by User, and any (other) (legal) acts between Parties.
- 2.2. AppMachine may amend these Terms & Conditions at any time. The User will be individually notified of any amendments upon logging in to the Service. The new version of the Terms & Conditions will be available for viewing and downloading at the Website and/or through the Service. If the User continues to use the Service after the Terms & Conditions have been amended or supplemented, the User thereby irrevocably accepts the amended or supplemented Terms & Conditions. If the User does not agree with the amended or supplemented Terms & Conditions, the User's exclusive remedy is to no longer use the Service and to terminate its Account.
- 2.3. If any provision in these Terms & Conditions shall be held to be (partly) void or unenforceable, the other provisions of these Terms & Conditions will remain in full force and effect. In such a case, AppMachine will replace the void or unenforceable provisions with new ones. In doing so, the purpose and meaning of the void or unenforceable provisions will be taken into account as far as possible.
- 2.4. AppMachine explicitly rejects the applicability of any general (purchase) conditions used by User.
- 2.5. Any variation to the Agreement or Terms & Conditions will be valid only if and to the extent that it has been expressly confirmed by AppMachine in writing.
- 2.6. If any provision of the Terms & Conditions contradicts one or more provisions of the Agreement, the provisions of these Terms & Conditions will prevail, unless explicitly agreed upon otherwise.
- 2.7. In the event that the User makes use of the Service for its own customers (and thus, acts as a "reseller" of the Service), the User warrants to have its own customers be bound to these Terms & Conditions. User, in that event, will be fully liable for the use of the Service by its own customers.
- 2.8. The Agreement will be concluded at the moment the User accepts the offer thereto by means of activation of its e-mail address within 7 (seven) days after receipt of the offer, and the conditions thereby stipulated have been fulfilled. AppMachine will immediately confirm the receipt of acceptance of the Agreement electronically, by means of the email address provided by User (see article 3). User can revoke the Agreement as long as this acceptance has not been confirmed by AppMachine.
- 2.9. Together with the confirmation mentioned in Article 2.8, AppMachine will provide the User the following information in such a way that user can store it on an accessible durable medium:

- 2.9.1. AppMachine's office address and business location where User can lodge complaints(see also article 13.1);
- 2.9.2. the conditions under which User can make use of its right to revoke the Agreement and the method of doing so;
- 2.9.3. Information regarding the warranty with regard to the Service;
- 2.9.4. the requirements for terminating the Agreement.

Article 3 Account

- 3.1. In order to be able to make use of and to have access to the Service, the User has to create an Account in the way as described on the Website. Upon creating its Account, the User will be obliged to provide its own Credentials in the way described on the Website. The User is responsible for keeping its Credentials confidential. The User is responsible and liable for all use made of and access to the Service by means of its Account. As soon as the User knows or has reason to assume that its Account and/or Credentials has/have come into the hands of unauthorized third party/parties, the User must inform AppMachine of this immediately, notwithstanding its own obligations to take immediate effective measures himself, such as changing the password to its Account.
- 3.2. In the event that the User qualifies as a natural person, the User must be at least sixteen (16) years old in order to make use of and to access the Service. If the User is not sixteen (16) years old yet, the User requires its parent's or guardian's permission to create an Account and to make use of and get access to the Service. By accepting these Terms & Conditions, the User warrants that it is at least sixteen (16) years old or has the permission from its parent or guardian to create an Account and to make use of and get access to the Service.
- 3.3. In the event the User qualifies as a legal entity, the User warrants that it is legally authorized to represent that legal entity.
- 3.4. The Services are subject to export control and economic sanctions laws and regulations administered or enforced by the United States Department of Commerce, Department of Treasury's Office of Foreign Assets Control ("OFAC"), Department of State, and other United States authorities (collectively, "U.S. Trade Laws"). You may not use the Services to export or reexport, or permit the export or reexport, of software or technical data in violation of U.S. Trade Laws. In addition, by using the Services, you represent and warrant that you are not (a) an individual, organization or entity organized or located in a country or territory that is the target of OFAC sanctions (including Cuba, Iran, Syria, North Korea, or the Crimea region of Ukraine); (b) designated as a Specially Designated National or Blocked Person by OFAC or otherwise owned, controlled, or acting on behalf of such a person; (c) otherwise a prohibited party under U.S. Trade Laws; or (d) engaged in nuclear, missile, chemical or biological weapons activities to which U.S. persons may not contribute without a U.S. Government license. Unless otherwise provided with explicit written permission, AppMachine also does not register, and prohibits the use of any of our Services in connection with, any Country-Code Top Level Domain Name ("ccTLD") for any country or territory that is the target of OFAC sanctions. The obligations under this section shall survive any termination or expiration of this Agreement or your use of the Services.
- 3.5. AppMachine accepts no liability for any damages resulting from unauthorized access to or use of the Service by the User or third parties, notwithstanding article 10.

Article 4 Service

- 4.1. AppMachine hereby grants the User a non-exclusive, non-transferable, limited right to access and use the Service, under the conditions of these Terms & Conditions and for the duration of the Agreement.
- 4.2. User may not publish the App and/or Web App by other means than through the use of the Service.
- 4.3. The use of the Service is at the User's own expense and risk. The User is responsible for meeting the technical and functional requirements and using the electronic communication

facilities that are necessary to be able to access and use the Service. The risk of loss, theft or damage to any of its data will at all times be borne by the User.

4.4. Any use of the App, including the transmission, distribution and making available thereof, and any other (legal) act relating to the App, by or on behalf of the User, Platform Providers and/or end-users is for the User's own risk and responsibility. AppMachine is not liable and/or responsible for the Content, the App, and/or any use made of the Service by Users, notwithstanding article 10.

4.5. Notwithstanding any other provisions of these Terms & Conditions, and any of the User's legal obligations, the use of the Service, the App and the Content may not, at AppMachine's sole discretion:

- a. include software such as viruses or Trojans that can damage or erase, make unavailable or make inaccessible any computers or data of AppMachine, (other) Users or third parties;
- b. bypass technical security measures of the computer systems of AppMachine, (other) Users or third parties;
- c. involve unreasonable or disproportionate use of the infrastructure of AppMachine's or third parties' computer systems, including but not limited to any use in violation of AppMachine's fair use policy as described on the Website and/or in the Service;
- d. impede the functionality or functionalities of the Service;
- e. involve manual or automated software, devices, or other processes to "crawl", "spider" or scrape any content of the Service;
- f. constitute unauthorized or unsolicited advertising, junk, spam, bulk e-mail, scam and/or phishing;
- g. infringe any of AppMachine's or third party's Intellectual Property Rights, privacy rights or any other rights;
- h. involve, host, distribute or link to child sexual abuse material (CSAM) or content that is harmful to minors, bestiality or other unlawful erotic content or acts relating thereto (CSAM will be suspended immediately without notice and reported to law enforcement or the National Center for Missing and Exploited Children);
- i. promote or provide instructions or information about how to engage in illegal conduct, commit illegal activities or promote physical harm or injury;
- j. involve any illegal activities or activities that are contrary to morality or public order;
- k. involve false or misleading information;
- l. involve otherwise inappropriate use;
- m. breach these Terms & Conditions or the Agreement; and/or
- n. be unlawful in any way whatsoever.

4.6. The User warrants to refrain from such acts.

4.7. The Service may contain information that is derived from and/or may refer to third parties' websites, products or services (for instance through hyperlinks, banners or buttons). AppMachine is not responsible, nor liable for the content of such information.

4.8. The User acknowledges and agrees that AppMachine does not pre-screen the Content, the App or use of the Service and that AppMachine had no influence over the Content, the (content of the) App or use made of the Service by User.

4.9. AppMachine will have the right (but not the obligation), at its sole discretion, to review, edit, limit, refuse or remove Content, Apps and/or to limit and/or refuse a User access to and/or use of the Service, more specifically in the event the Content, the (content of the) App, and/or use of and/or relating to the Service, according to AppMachine, violates these Terms & Conditions, and/or that it deems to be otherwise objectionable, and/or in the event AppMachine deems the technical functionality of the App malfunctioning.

- 4.10. AppMachine may disclose the User's Personal Data and/or Content, or other data relating to the use of the Service, to third parties where it believes, in good faith, that it is necessary to comply with a court order, ongoing judicial proceeding, criminal or civil subpoena, or other legal process or request by law enforcement authorities in the Netherlands, or to exercise its legal rights of defence against legal claims.

Article 5 Prices and payment

- 5.1. User may make use of the Free Service for free.
- 5.2. User is obliged to pay for the Paid Service upon activating the subscription and/or upon concluding a separate agreement for development and/or updating the App— of which these Terms & Conditions will form an integral part.
- 5.3. Prices and payment details (including subscription terms and payment terms) are specified on the Website and/or in the Service. Prices are shown in the currency mentioned on the Website and/or the Service, and are shown exclusive of VAT, import duties and other government imposed taxes, duties and levies.
- 5.4. Payment can be done by credit card (MasterCard, Visa or Amex), PayPal, and/or as further described on the Website and/or in the Service.
- 5.5. The User guarantees that the information submitted when using the Service, including without limitation, its payment details, shall be complete, correct, truthful and up to date.
- 5.6. The User has the obligation to inform AppMachine immediately about any inaccuracies in the offer provided or the payment details described, including the price. The User cannot hold AppMachine to any offer for the Service if the User should in all reasonableness have known that this offer and/or the price are/is an obvious mistake or obvious error in writing.
- 5.7. During the period of validity indicated in the offer for the Service, the prices of the Free Service and Paid Service will not be increased, except for price changes in VAT-tariffs. After such period, AppMachine is entitled to adjust its price for the Service, including but not limited to monthly subscription fees to (parts of) the Service, at all times. AppMachine shall notice the User fourteen (14) days in advance. Such notice may be provided at any time by posting the changes to the Website or via the Service itself.
- 5.8. All payments, including (paid update-)subscription fees, done to AppMachine are not refundable when the App is not submitted and/or denied and/or refused by the Provider Platform, or when the App has been removed from a Provider Platform, or refused due to violation of article 4.5.
- 5.9. Any payment required by third parties, including Provider Platforms or third party software or service providers, licenses (including IOS and Google Play licensees, equipment and other services) will fall outside the scope of the Agreement and will be charged to User separately by the concerning party or by AppMachine.
- 5.10. User will pay the amounts in accordance with the payment conditions stated by AppMachine.
- 5.11. If User, as a professional party, fails to meet its payment obligations, User shall owe legal interest as meant in Article 6:119a of the Dutch Civil Code on the outstanding amount, without any written demand or notice of default being necessary.
- 5.12. If User fails to meet its payment obligations, after a written demand or notice of default, AppMachine can pass on the claim for collection, in which case User will be charged with the associated costs, which will be calculated as follows:
- 15% on the first € 2,500 of the claim, with a minimum of 40 euros
 - 10% on the next € 2,500 of the claim
 - 5% on the next € 5,000 of the claim
 - 1% over the next 190,000 euros of the claim
 - 0.5% on the balance, with a maximum of 6775 euros.
- In the event User is a professional party, this does not affect AppMachine's right to claim any costs and (additional) damages actually incurred.
- 5.13. If User fails to meet its payment obligations or terminates its subscription to the Paid Service, AppMachine is (also) entitled to remove and/or suspend the App from the Publisher Platform without notice and without any liability to the User.

Article 6 Publishing

- 6.1. AppMachine will not be regarded as the publisher of the App with any Provider Platform.
- 6.2. User needs to have it's own developer license for each store.
- 6.3. Notwithstanding the foregoing, the User agrees to provide AppMachine with full access to the publishing account by providing AppMachine all necessary credentials (e.g. email address/password). The User warrants that it is allowed to do so. AppMachine will use all technically reasonable efforts to have the App approved by the applicable Provider Platforms but AppMachine does not and cannot guarantee, and is not responsible for, the acceptance and/or approval of the App by the Provider Platforms. Thus, the User shall be solely responsible for the acceptance of the App by the Provider Platforms. The acceptance is subject to the relevant rules, regulations and guidelines of Provider Platforms.
- 6.4. The User shall be solely responsible for securing and paying for all digital music licenses, any public performance licenses, synchronization licenses and any other licenses from musical composition copyright owners (or their agents) required in connection all content selected by the User for use in connection with the App.

Article 7 Intellectual Property Rights

- 7.1. AppMachine and/or its licensors reserve all rights not expressly granted to the User in these Terms & Conditions. The User acknowledges and agrees that – except as specifically set forth in these Terms & Conditions – AppMachine and its licensors retain all rights, title and interest, including the Intellectual Property Rights, in and to the Service and the Website as well as to any modifications, adaptations or translations thereof. The User acknowledges and agrees that it does not acquire any rights therein, express or implied, except for the rights expressly granted under these Terms & Conditions. The Service is licensed, not sold.
- 7.2. The User is not permitted to sell, rent out, transfer or grant restrictive rights to the Service, or make it available to third parties in any way or for any purpose not explicitly mentioned in these Terms & Conditions. The User will also refrain from granting third parties access – remotely or otherwise – to the Service or to provide the Service to a third party, not explicitly provided for in these Terms & Conditions.
- 7.3. The User is explicitly not allowed to download, copy, amend, make available, or provide otherwise (parts of) the Service, App, Website or other materials made available to the User by means of the Service, for direct or indirect commercial purposes or for any other purposes than the purposes mentioned in these Terms & Conditions, unless AppMachine has provided its prior written consent thereto, or if a mandatory or peremptory rule of law states otherwise.
- 7.4. The User is prohibited to reverse engineer (parts of) the Service, App, Website or other materials made available to the User by means of the Service, to the extent legally permissible. In the event of reverse engineering permitted by a mandatory or peremptory rule of law, such as for achieving compatibility with self-written software or enabling to get the ideas, concepts and principles behind the Service, App, Website or other materials made available to the User by means of the Service, the User is only allowed to execute this legal right, after first requesting AppMachine to provide the necessary information to achieve such interoperability and AppMachine fails to provide such information within reasonable time.
- 7.5. AppMachine will be permitted to install technical provisions for the purpose of protecting the Service and Website in relation to an agreed restriction on the content or the term of the right to use thereof. User is not allowed to remove or circumvent such technical provisions.
- 7.6. AppMachine's obligation to provide the Service, if any, and the User's right of use thereof will only extend to the object code of the Service. Under no circumstance will User obtain any right, and under no circumstance will AppMachine be obliged to provide (a data carrier with) the source code or any preliminary materials of the provided Service.
- 7.7. In the event AppMachine provides third party software or services, the (license) terms and conditions of that third party may be applicable to any use of such software or services, which may be the case in the event of the User providing its own code to the App, or in the

event the User wishes to publish the App through Platform Providers; User guarantees that it will accept and will comply with these third party's terms and conditions. AppMachine is no party to such an agreement.

- 7.8. The User will retain all the rights, title and interest, if any, including the Intellectual Property Rights, to the Content and the App when finished and/or published. However, all the rights to the programming code, content management system and Service will remain to AppMachine.
- 7.9. The User agrees and acknowledges that by providing any Content by means of the Service it automatically grants AppMachine a royalty-free, unencumbered, world-wide, non-exclusive right to use, reproduce, circulate and make public the Content in connection with the Service and to use the Content on the Website, App for enabling AppMachine to provide the Service to User and for AppMachine's own marketing and/or promotional purposes in connection with the Service. AppMachine will not invoke the right without the prior written consent of User, in the event User has concluded an Agreement with AppMachine for the "no-branding"-Paid Service.
- 7.10. Unless the User concluded an agreement for a Paid Service thereto (no-branding service), the User is not allowed to remove, make illegible, hide or change notifications with regard to Intellectual Property Rights.

Article 8 Content on Apps

- 8.1. AppMachine is not able to determine the actual owner of the content created and/or uploaded to the App. For any and all content created and/or uploaded to the App, User shall be deemed to be the owner of such content and/or have in its possession a license and/or permission to use the content. The User is explicitly not allowed to create and/or upload content to the App of which User is not the owner, and/or has no license and/or permission to use the content.
- 8.2. AppMachine enables the User to implement in the App content hosted on third party websites. The use of such third party content shall be governed by the terms of use of these third party websites and/or the end user license agreement of the third party providing the content. User is required to comply with the terms of any third party. AppMachine is not responsible or liable for the availability and accessibility of such third party content.
- 8.3. AppMachine may also provide through the Service content of which the owner is a third party. User understands and agrees that AppMachine is at all times, at its sole discretion, without prior written notice or explanation and without becoming liable to the User, entitled to remove such third party content from the Service and/or demand that User removes such third party content from the App.
- 8.4. Except as specifically provided and allowed by AppMachine and/or the third party owner, User is explicitly not allowed to reverse engineer, decompile or disassemble any third party content, and in addition, User shall not modify, duplicate, distribute, reproduce, sublicense, display, transfer, create derivative works from, assign, or otherwise use the third party content.
- 8.5. AppMachine is not responsible or liable with regard to any third party services used by User or provided through the Service. Use of these third party services shall be at User's own responsibility and liability.

Article 9 Privacy

- 9.1. During the use of the Service, the User provides Personal Data to AppMachine. These Personal Data will be saved and processed in accordance with the [Privacy Notice](#), and the European Directive 95/46/EC, the General Data Protection Regulation 2016/679) ("GDPR").
- 9.2. In the event that AppMachine deems this of importance for the execution of the Agreement, the User will inform AppMachine, on its first request and in writing, of the manner in which the User fulfils its obligations under the GDPR, and / or other applicable legislation on the protection of personal data.

- 9.3. AppMachine will not process Personal Data, other than for the provision of the Service, including the use of Permissions.
- 9.4. AppMachine will not share personal information from User with third parties unless AppMachine has obtained permission thereto or is required to do so by law.
- 9.5. The responsibility for processing Personal Data by using the Services lies solely with User. User warrants that the content, use and / or processing of the Personal Data is not unlawful and that it does not infringe any rights of third parties.
- 9.6. As far as AppMachine would be obliged to provide a form of security, then this protection will meet the written specifications expressly agreed between the Parties. AppMachine does not guarantee that the security is effective under all circumstances. If the Agreement contains no specifications regarding the security, or if the contract contains no express definition of security, it will meet a level that is not unreasonable, given the state of the art, the sensitivity of the data, and to security related costs. The responsibility for maintaining safeguards such as firewalls, antivirus and backup lies with the User.
- 9.7. User agrees to comply with all applicable laws, rules, and regulations, including without limitation all local rules where User resides or User's organization is located regarding User Content, User Websites, online activities, email and User's use of the Services. More specifically, but without limitation, User agrees to comply with all applicable laws regarding the transmission of technical data exported to or from the United States or the country in which User resides. The Services are controlled and operated by AppMachine from our offices within the Netherlands and the United States (although we may share data with third parties around the world to assist AppMachine in providing the Services as further described in our [Privacy Policy](#)) and AppMachine makes no representation that the Services are appropriate or available for use in other locations. Those who access the Services from other locations do so at their own initiative and risk, and are fully responsible for compliance with all applicable laws in those locations. AppMachine does not offer the Services where prohibited by law.

For the purposes of the GDPR and any applicable national implementing laws in User's jurisdiction, and with respect to User's subscribers' or customers' personal data, User acknowledges and agrees that User is the Controller (as that term is defined in the GDPR), and AppMachine is a Processor (as that term is defined in the GDPR) insofar as User may store personal data through User's use of the Services only as permitted and subject to the terms of this Agreement. User also acknowledges and agrees that User is responsible for complying with all obligations of a data controller under applicable law (including the GDPR).

To the extent the GDPR applies to User, User represents and warrants that in using the Services, User will clearly describe in writing how User plans to use any personal data collected and User will ensure that User has a legitimate legal basis to transfer such personal data to AppMachine and that User has the necessary permission to allow AppMachine to receive and process (e.g., store) such personal data on User's behalf. The additional data processing terms set forth [here](#) shall apply where User is a Controller subject to the GDPR.

Article 10 Warranties

- 10.1. AppMachine warrants that the Service fulfils the Agreement, the specifications stated in the offer, the reasonable requirements of reliability and/or serviceability and the statutory stipulations and/or governmental regulations that existed on the date that the Agreement was concluded. However, AppMachine does not warrant that the Service is suited for other than normal designation, as described in these Terms & Conditions. Moreover, AppMachine does not warrant that the Service will be error free, complete or up-to-date at all times. More specifically, in the event User has not concluded an Agreement with AppMachine for the Paid Service for updates of the App, it might be possible that the App will not be compatible with updated or upgraded software and/or services of third parties, including but not limited to new versions of Provider Platforms (iOS or Android updates or upgrades), API's (such as Facebook API) etc..

- 10.2. The User agrees that the Service fulfils the Agreement, the specifications stated in the offer, the reasonable requirements of reliability and/or serviceability and the statutory stipulations and/or governmental regulations that existed on the date that the Agreement was concluded, when it provides the functionality and other features as found in the Service at the time of use ("as is"). AppMachine does not guarantee that the Service or any part thereof will be accessible at all times and without any interruptions or failures. Failures in the Service can occur as a result of failures in the Internet or phone connection or as a result of viruses and/or faults/defects. AppMachine is not liable towards the User for any damage, loss or costs resulting or arising from the Service being (temporarily) unavailable, including but not limited to the loss of data or inability to access or use the Service, notwithstanding article 10.
- 10.3. AppMachine is entitled to change and/or update the Service and replace the design and layout of any of the functionalities of the Service without any prior notification and without being obliged to pay any compensation whatsoever to the Users.
- 10.4. AppMachine is entitled to put the Service (temporarily) out of service and/or to reduce the use of it without any prior notification and without being obliged to pay any compensation whatsoever to the User, if in the opinion of AppMachine this is necessary, for instance in connection with the reasonably required maintenance of the Service or due to force majeure. Force majeure includes – but is not limited to – site or building blockades, strikes, riots, civil disruption, war, terrorist acts, inclement weather, epidemic, specific work interruptions, delay in transportation, earthquake, fire, storm, flood, or water damage, delay in or cancellation of the delivery to AppMachine of parts, goods or services ordered from third parties, or governmental, legal or regulatory restrictions.
- 10.5. AppMachine does not warrant in any way whatsoever that any terms and conditions applicable to third party software or services – including but not limited to the terms and conditions Provider Platforms, or payment providers – allow the use of and/or interaction with the Service.
- 10.6. The User is responsible and liable for all use it makes of the Service, including but not limited to its use of its Account and the results of the Service, such as the App and/or Web App, notwithstanding article 10. The User indemnifies and holds AppMachine harmless against any and all claims by third parties in connection with or resulting from the use that the User makes of the Service, a violation by the User of these Terms & Conditions, and/or any unlawful activities. This includes, without limitation, any activities that constitute an infringement of Intellectual Property Rights or (other) rights of third parties.

Article 11 Limitation of liability

- 11.1. AppMachine's liability for damages resulting from or relating to attributably failing ("toerekenbare tekortkoming") to perform the Agreement, including these Terms & Conditions, for unlawful act ("onrechtmatige daad") or otherwise will be excluded in the event The User qualifies as a professional party and to the extent allowed by a mandatory or peremptory rule of law.
- 11.2. The User's only remedy in the event of an attributable failure, unlawful acts of AppMachine, or other cause of damages, is to discontinue the use of the Service and/or to delete its Account.
- 11.3. In the event that AppMachine is liable for damages under a mandatory or peremptory rule of law, the damage will be limited to compensating for direct damages for a maximum amount per event not exceeding the amounts paid by User during the month prior to the event causing the damages per event (a series of connected events being considered as one event). In no event will AppMachine's total, aggregate liability, exceed EUR 1,000.-.
- 11.4. AppMachine's liability for consequential damages arising out of, or in connection with the Agreement or these Terms & Conditions, such as, but not limited to, loss of profit, loss of business, loss of anticipated savings, or any other similar financial loss or loss of goodwill or reputation, or other incidental, indirect, punitive or exemplary damages of any kind, such as loss of data or errors in the App and/or Web App, independent of whether the User provides notice to AppMachine of such potential injury, damages or loss, is excluded. Moreover,

AppMachine's liability is excluded for any payments made or other costs or damages relating to or caused by a Provider Platform rejecting the App, for whatever reason, for publication through such a Provider Platform.

- 11.5. In any event, the User's right to claim under the Agreement, these Terms & Conditions, unlawful act or otherwise shall lapse one (1) year after the occurrence giving rise to the claim or action.
- 11.6. The limitations mentioned in the preceding paragraphs of this article shall not apply if and insofar as the damage or injury is the result of intentional acts or omissions or gross negligence by AppMachine or its managers.

Article 12 Term and termination

- 12.1. The User is entitled to terminate the Agreement for the Free Service at any time by discontinuing the use of the Free Service and/or by terminating the Account. The Agreement for the Paid Service can be terminated by the User at the end of the subscription period at any time.
- 12.2. In addition to the other remedies available to AppMachine, AppMachine is at all times, at its sole discretion, without prior written notice or explanation and without becoming liable to the User, entitled to:
 - a. temporarily or permanently terminate the User's Account and its use of the Service, including deletion or confiscation of all files, content, and/or domain name registrations, in the event that AppMachine, at its sole discretion, deems such termination necessary (including without limitation to comply with applicable law);
 - b. temporarily restrict or suspend the User's activities in connection with the Service or to ban a User from the Service or to restrict or suspend the availability of the App;
 - c. ban a User from using the Service and prevent banned Users from creating a new Account and/or delete Accounts created by banned Users; and/or
 - d. partly edit, delete or refuse any content or services within the Service.
- 12.3. All provisions which are meant to survive the termination of the Agreement, including the prohibition to publish the App through other means than the Service, shall survive such termination.
- 12.4. After termination, the User's right to access and use the Service, shall cease to exist immediately, without any right to compensation whatsoever. In the event of termination, AppMachine is also allowed to delete the User's Account and to remove and/or suspend its App from the Publisher Platform without notice and without any liability to the User. AppMachine will not have any obligation to assist the User in migrating its data, including its App, off of the Service. AppMachine does not keep a back-up of the Account, App.
- 12.5. The User – as a consumer - has the right to revoke the Agreement, without giving any reason thereto, before the App has been submitted for publication through a Provider Platform for a 30-day period. In any event, the right to revoke the Agreement will not apply from the moment that the trial period (if any) is over or from the moment the App has been submitted for publication through a Provider Platform – regardless of whether the Provider Platform accepts or rejects the App for publication – since AppMachine cannot recall the Service provided.

Article 13 Contact

- 13.1. AppMachine can be contacted at support@appmachine.com or +31 (0)58 700 9722 or its other contact details as mentioned in article 1.d and/or Website.
- 13.2. In the event that the User has a complaint with regard to the Service, the User can complain through the contact details mentioned in art. 13.1. Complaints about execution of the Agreement must be submitted to AppMachine without delay after the User has discovered any defects, which in the complaint should be complete and clearly defined. AppMachine will reply to such a complaint within fourteen calendar days calculated from the date of

receipt. If it is anticipated that a complaint will require a longer processing time, AppMachine will reply within fourteen calendar days, confirming the receipt and indicating when the User can expect a more elaborate reply.

Article 14 Applicable law and competent court

- 14.1. These Terms & Conditions, the Agreement and the use of and access to the Service are governed by the laws of the Netherlands, unless a mandatory or preemptory rule of (international) law prescribes another applicable law. The applicability of the Vienna Convention on the Sale of Goods is expressly excluded.
- 14.2. All controversies, disputes or claims arising out of or relating to these Terms & Conditions, the Agreement and/or the use of or access to the Service will be exclusively and finally settled by the competent court in the district of Amsterdam, unless a mandatory or preemptory rule of (international) law prescribes another competent court. ***

Article 15 Additional terms related to third party products or services

- 15.1. If you utilize YouTube's API services, you also agree to YouTube's Terms of Service (<https://www.youtube.com/t/terms>) and Google Privacy Policy (<http://www.google.com/policies/privacy>), which are incorporated herein and made a part of the Agreement by reference.