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July 2019 / FIZ Karlsruhe

## **Service Agreement Governing the Use of the Data Center RADAR**

between

FIZ Karlsruhe – Leibniz-Institut für Informationsinfrastruktur GmbH,  
Hermann-von-Helmholtz-Platz 1  
76344 Eggenstein-Leopoldshafen, Germany

legally represented by  
Sabine Brünger-Weilandt, President & CEO

(hereinafter Operator)

and

Institution  
Address

Legally represented by  
NAME, function

(hereinafter Customer)

## Preamble

RADAR (Research Data Repository) is a web-based service for archiving and publishing research data from finalized scientific studies and projects. RADAR's objective is to increase the availability of research data, to make research data publishable on their own, and to preserve research data in a sustainable manner. In this regard, the term research data shall encompass all digital data that are (depending on the scientific context) the object of, generated by, or the result of a research process.

## § 1 Definitions

The following terms are used in this contract and are defined as follows:

**Administrator:** The administrator is a person named by Customer who sets up workspaces in RADAR, assigns users the roles *curator* or *subcurator* for a workspace, manages quotas, and may access statistics.

**Users:** Users are natural persons who access RADAR, whether in the capacity of administrators, data providers, or data users.

**Operator:** FIZ Karlsruhe – Leibniz-Institut für Informationsinfrastruktur GmbH (hereinafter FIZ Karlsruhe) is the operator of RADAR.

**Data provider:** Data providers are third parties authorized by Customer (usually employees of the institution represented by Customer) who archive or publish their research data through RADAR and transfer data to RADAR for this purpose. RADAR differentiates between data providers with full rights ("curators") and data providers with limited rights ("subcurators"). Where 'data providers' are referred to, this refers to both curators and subcurators.

**Data users:** Data users are persons who search research data via RADAR and download datasets.

**Dataset:** A dataset is a compilation of research data and the corresponding metadata. Usually, a dataset consists of several files.

**Fixity Check:** Fixity Check means checking a file for bit errors by means of comparing it with a checksum calculated in advance.

**Research data:** Research data are digital data that are (depending on the scientific context) the object of, generated by, or the result of a research process.

**Customer:** The Customer concludes with the operator a service agreement for the use of the RADAR service and bears all costs incurred by its use. Usually, the Customer is a legal entity. RADAR target customers are universities and publicly funded non-academic research institutions.

**Curator:** The curator is a data provider with full rights who is entitled to transfer research data to RADAR, to enrich these research data with metadata, and to archive and publish research data. Curators can name other persons as subcurators.

**Metadata:** Metadata describe the content and the technical characteristics of research data.

**RADAR:** Research Data Repository (RADAR) is a discipline agnostic service for archiving and publishing research data from finalized scientific studies and projects.

**Subcurator:** A sub-curator is a data provider with limited rights who is only entitled to transfer research data to RADAR and to enrich these research data with metadata.

## § 2 Subject Matter

- (1) This agreement governs the use of RADAR by the Customer for the purpose of archiving and/or publishing research data. The service is mainly targeted at universities and publicly funded non-academic research institutions that would like to offer their researchers the possibility of archiving and publishing research data. Data stored in RADAR can be searched and downloaded by third parties, subject to the data provider's consent.
- (2) For this purpose, the Operator will provide a web-based service that allows data providers to compile research data, to describe them with metadata, and to permanently store them as datasets.
- (3) Curators may choose between two ways of permanently storing datasets:
  - a. **Archiving** ensures the unaltered storage of research data for a period defined by the data provider. It thus complies with a key prerequisite for good scientific practice in handling research data, as, for example, recommended by the DFG (German Research Foundation). Usually, neither data nor metadata are made available to the public. However, the curator, on their own initiative, can grant third parties access to data and metadata via the online system by assigning them the relevant rights.
  - b. For a dataset to be **published** it has to be validly described by means of descriptive metadata and a license has to be granted by the curator. In general, metadata and research data can be searched and accessed by anyone. A curator can define an embargo period for research data. Within this period, only metadata can be publicly accessed. After the expiration of the embargo period, the research data become automatically accessible to data users. RADAR assigns a DOI to each published dataset and registers it with DataCite. Through this DOI the published dataset can be persistently identified, cited, and linked to in a scientific publication.

## § 3 Services provided by the Operator

- (1) The Operator shall provide the Customer with storage space for the agreed storage period so that the Customer can store datasets permanently and in an unalterable manner. This service is available at a charge.

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- a. The curator defines the storage period for datasets. Usually, this is 10 years (although the curator may define different periods). If the agreement with RADAR is prematurely terminated (before the storage period set by the curator has expired), the storage period for the archived data will be shortened accordingly. In this case the data are deleted by the Operator; if need be, after they have been transferred to the Customer according to §11.
  - b. Irrespective of the duration of the agreement, the Operator grants a storage period of 25 years minimum for all published data.
- (2) Besides the permanent storage space for archived and/or published datasets, the Operator shall provide temporary storage space for compiling a dataset and for describing it with metadata. The temporary storage period is limited to 6 months per dataset. Afterwards, datasets have to be archived, published, or deleted. One month prior to the expiry of the temporary storage period, RADAR will start sending weekly e-mail reminders notifying the data provider of the upcoming expiry of the temporary storage period and will continue to do so until the temporary storage period has expired. If the data provider fails to delete, archive, or publish the dataset before the temporary storage period has expired, the Operator shall be entitled to delete the dataset and the related metadata.
  - (3) Once data have been archived or published, RADAR will not alter the stored datasets but only preserve them physically (“bitstream preservation“). Accordingly, RADAR cannot guarantee that the data contained in a dataset will be permanently usable, nor that they will be permanently interpretable, as this depends on the availability of the data formats chosen by the data provider and the programs used to interpret them.
  - (4) Data stored temporarily are stored on magnetic disks protected by redundancy measures against data loss due to the failure of individual disks. In addition, once a day, an incremental backup of the stored data is written on magnetic tape. The backup is made on file level and stored in two generations.
  - (5) Archived and published data are stored on magnetic tape. RADAR stores three copies of each dataset that is transferred into permanent storage with each copy stored at a different location. The data are stored by means of different software and hardware and with independent workflows at two organizationally separate data centers hosted by German universities.
  - (6) The Operator reserves the right to alter the technologies used in RADAR at any time without notice in order to keep up with the state of the art. In this case, the Operator undertakes to ensure that stored data are flawlessly transferred to the new technology.
  - (7) Before they are transferred into permanent storage, datasets are given a checksum that is checked after each copying process. This helps detect and eliminate errors which may occur during data transfer. When a dataset is accessed, a new checksum is calculated and compared to the stored value in order to identify data consistency errors. Should an error be detected, RADAR will access the second copy of the dataset stored at another location (see sub-clause 5 above). The storage media used will be replaced at the latest when the manufacturer's warranty

expires. The datasets affected will then be migrated to new storage media and checked for bit errors (“fixity checks”).

- (8) Once they have been archived or published, datasets can no longer be altered. Such datasets can only be withdrawn, in justified exceptional cases, by the administrator – the administrator is defined by the Customer according to §1. Justified exceptional cases include, for example, statutory violations or faulty data. If the dataset is withdrawn, access to the actual data is blocked, but not access to the metadata. The information that data were withdrawn is displayed on the corresponding landing page.
- (9) The Operator shall carry out all technical and organizational measures listed in this article with due diligence and in line with the state of the art. Due to the long storage periods and large data volumes it is unlikely, although still possible, that data loss may occur despite measures taken. The Operator will decide on the technical and organizational measures taking into account their costs and expected benefits. RADAR does not carry out regular (e.g., annual) fixity checks and no offline copies of the data are kept. This allows the service can be offered at reasonable costs.
- (10) RADAR is available 24/7. There may, however, be scheduled or unplanned downtime. Scheduled downtime (e.g., for maintenance work, implementation of new software versions, exchange of hardware) are announced in advance on the RADAR platform and/or by e-mail notification sent to registered users. In the event of unplanned downtime, there will be a response to a failure message within two hours on regular workdays between 8 a.m. and 5:30 p.m. Outside of this time frame the response will occur from 8:00 a.m. on the next workday.
- (11) RADAR stores the data on magnetic tape. This means that synchronous (immediate) access to the data is not possible due to technical reasons. Access may be delayed by between some minutes up to several hours. This asynchronous access to data is system-inherent and does not constitute a fault.
- (12) The Operator shall take the necessary organizational and technical measures, in line with the current state of the art, in order to protect data that are temporarily stored, published datasets under embargo and archived datasets in RADAR against unauthorized access.
- (13) Anyone can register online (create a user account) at the RADAR platform. By registering, the user does not acquire any extended rights. Extended rights in the form of roles (e.g., data provider) will only be granted subsequent to registration by an administrator named by the Customer.
- (14) The Operator will continuously develop RADAR and reserves the right to adapt the technical and organizational conditions accordingly or to replace the current service with another, provided that this does not affect the essential features of the promised services.

## **§ 4 Obligations of the Customer**

- (1) To use RADAR, the Customer must name at least one registered RADAR user who will act as administrator. Administrators set up workspaces on the RADAR platform, authorize other users to provide data for individual workspaces, and are allowed to set upper limits for the storage space to be used in each workspace as well as for the entire agreement.
- (2) For each workspace set up in RADAR, the administrator must name at least one registered RADAR user as responsible curator by assigning the corresponding role for this workspace to them. Curators can archive and/or publish datasets – i.e., carry out actions involving remuneration.
- (3) The administrator may name other registered RADAR users as subcurators by assigning the corresponding role for a RADAR workspace to them. Subcurators can transfer research data to their workspace, manage the data in this workspace and add metadata to them. They are, however, not allowed to carry out actions involving remuneration. In addition to the administrator, a curator designated by the administrator may name a registered RADAR user subcurator.
- (4) The administrator is obligated to provide a valid e-mail-address upon registration (creating a RADAR user account) and to read the e-mails sent by the Operator to this address at regular intervals.
- (5) The Customer is responsible for selecting suitable administrators.

## **§ 5 Rights and Licenses**

Rights and licenses required for operating RADAR are regulated subject to the “RADAR License and User Instructions for Data Providers” (see annex 1 to this agreement).

## **§ 6 Payment**

- (1) The Customer shall pay the Operator an annual remuneration for the agreed services. This remuneration will consist of a basic fee and a usage-based fee.
- (2) The usage-based fee depends on
  - a. the size of the temporary storage space provided (in gigabytes),
  - b. the volume of all data archived since the beginning of the contract term, minus those data that were deleted due to expired storage periods (in gigabytes),
  - c. the volume of data published in the current contract year (in gigabytes).
- (3) The storage capacities used for archiving and publication are calculated on the basis of the actual usage by opened gigabytes. For technical reasons, this may differ from the original data volume transferred by the data provider.

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- (4) To calculate the temporary storage space provided, the highest upper limit per month set by the administrator is used and the annual average is calculated across the twelve monthly values.
- (5) One gigabyte is calculated as 1,000 megabytes, one megabyte is calculated as 1,000,000 bytes.
- (6) The administrator can set an upper storage limit for temporary storage, archiving as well as for publication. Data providers can only transfer, archive or publish research data as long as the upper limit has not been reached before the action has started. The administrator can increase or decrease the upper limit at any time, provided that the new upper limit does not fall below the volume of data already stored in the respective area.
- (7) The fee for using RADAR is charged to the Customer at the end of the contract year and is calculated on the basis on the basic fee, the temporary storage space provided and the storage space that is actually used for archiving and publication purposes.
- (8) The prices on the Operator's price list are valid at the time the order was placed. The applicable statutory value added tax shall apply and will be added. The price list is available online (<https://www.radar-service.eu/en/pricing>).
- (9) Price changes are displayed online and will become part of this agreement if the Customer has taken note of these changes and continues using RADAR afterwards.
- (10) The Operator's invoices become due immediately upon receipt and are payable without any discount. The Customer is in default of payment if they fail to pay the invoice within 30 days of the due date.
- (11) If a default in payment arises, the Operator shall be entitled to charge the default interest at the statutory rate of 9% above the base rate.
- (12) The Operator shall not charge data providers or data users for using the service.

## **§ 7 Data Protection; Confidentiality**

- (1) The Operator shall use the data collected within the scope of this agreement for the purpose of performing this agreement according to Art. 6(1) (b) GDPR.
- (2) The Operator collects users' personal data in accordance with Arts. 6(1) (a) and (f) GDPR (consent; legitimate interests of the data controller, in particular to maintain the operability of the service.) The operator shall use these data exclusively to identify RADAR users and to contact them in relation to the provision of the service.
- (3) Prior to using RADAR, administrators or data providers must register (create a user account) on the RADAR platform. Registration is optional for data users. In the process of registration personal data are generated. The Operator will process these personal data in accordance with §7(2) of this agreement.

- (4) It is not mandatory to provide a real name upon registration – i.e., RADAR can be used with an alias. Any real name provided can be deleted at any time.
- (5) The Operator undertakes to use company secrets and other confidential information disclosed by the Customer within the scope of rendering services exclusively for the purposes of rendering these services. The Operator shall not disclose or make available any of these company secrets or confidential information to any third party.
- (6) The Operator shall treat archived research data as strictly confidential and shall neither disclose their content nor the related metadata to any third party, unless the curator has expressly indicated their desire to do so by granting the corresponding rights and licenses.
- (7) Published research data and their related metadata shall be deemed neither company secrets, nor confidential information.

## **§ 8 Liability of the Operator and Responsibility of the Customer**

- (1) Unless otherwise provided herein, the liability of the Operator is subject to statutory regulations. If damage is caused by slight negligence on the part of the Operator, the injured party's claims shall be limited to compensation for the foreseeable damage typical for this type of contract, provided that the injured party is not unreasonably disadvantaged thereby.
- (2) In case of data loss, the costs incurred as a result of any necessary recovery of the lost data shall be deemed as foreseeable damage typical for this type of contract. In calculating the costs associated with such foreseeable damage, the degree to which data loss disrupts or impedes operational procedures will be taken into account.
- (3) The limitations outlined in §8(1) do not apply in case of damage resulting from injury to life, body or health, or in case of liability according to product liability law.
- (4) The Customer shall indemnify the Operator against any third-party claims brought against the Operator as a result of infringements by the Customer. This will apply in particular, if third parties claim that their rights to the research data which are the subject matter of this agreement have been violated.

## **§ 9 Access to Datasets and Meta Data; Blocking**

- (1) The curator defines the access rights for archived datasets as well as embargoes for published datasets.
- (2) In the event that the Operator is made aware of statutory violations in connection with a dataset, it shall be entitled to block access to this dataset without consulting the Customer or the data provider first and maintain the measure until the matter is settled. In such cases, the Operator shall notify the data provider or the Customer of the issue within five working days.

The Operator reserves the right to block the data provider's access to RADAR if the data providers uses RADAR in a manner contrary to this agreement.

## **§ 10 Term and Termination**

- (1) This agreement shall enter into force upon signature by both parties. It shall remain in force for a minimum term of three years and, in the third year, shall end on the last day of the same month in which the agreement was concluded.
- (2) After expiry of the minimum term, the agreement shall automatically prolong for further one-year periods, unless terminated with due notice.
- (3) The Customer shall be entitled to terminate the agreement at three months' notice prior to the end of a contract year. This termination shall be permissible, however, no earlier than the date of the expiration of the minimum contract term mentioned above.
- (4) The Customer shall be entitled to terminate the agreement extraordinarily if the Operator commits a serious breach of its contractual obligations. This includes, without limitation, cases where
  - a. the service was unavailable on more than ten days in total per year;
  - b. data are lost or there is evidence that data were falsified in such a way that they cannot be corrected by the Operator anymore.
- (5) If the RADAR service is discontinued, the Operator shall be entitled to terminate the agreement at six months' notice prior to the end of a calendar year.
- (6) The Operator shall be entitled to terminate the agreement in extraordinary cases. This applies in particular, if the Customer
  - a. has been in default of payment for more than six months;
  - b. fails to take appropriate measures against a data provider who, by archiving and publishing data, has demonstrably violated a legal provision.

## **§ 11 Consequences of Termination**

- (1) If the agreement is terminated, the Operator shall, upon the Customer's request, transfer all Customer data through the internet to a server system provided by the Customer or to a third-party system chosen by the Customer that can be reached via customary internet transfer protocols (e.g., FTP). Both parties may agree on a different transfer procedure suitable for the purpose.

- (2) The Operator shall transfer the data in a format that contains both the research data and the related metadata. The Operator is free to choose the format. The chosen format must be documented and readable with freely available open source software.
- (3) Upon termination of the agreement, the Operator is no longer obligated to keep **archived data** available, even if the storage period chosen by the data provider has not expired at this point.
- (4) For **published** datasets, the Operator warrants that the data will remain available at least until the guaranteed storage period of 25 years has expired, even if the agreement has been terminated earlier.
- (5) If the Operator terminates the agreement according to §10(5), the shorter billing period shall be considered when billing the used storage space to the Customer.

## § 12 Transfer of Rights; Involvement of Third Parties

- (1) Any transfer of a party's rights and obligations from this agreement to a third party is subject to the prior written approval of the other party. The other party shall not unreasonably withhold its consent. The provisions in §12(2) and (3) below shall thereby remain unaffected.
- (2) The Operator shall be entitled to commission third parties with the provision of services.
- (3) In the event that the Operator creates a separate legal entity for RADAR, also involving other renowned infrastructure institutions, it shall, notwithstanding §12(1), be entitled to transfer running agreements to the new legal entity, provided that this new legal entity offers comparable contract terms.

## § 13 Arbitration

- (1) In case of any dispute arising from, or in connection with, the present agreement or supplements to the agreement that the parties cannot settle between themselves, the parties agree to consult the arbitration board of the *Deutsche Gesellschaft für Recht und Informatik e.V.* (DGRI e.V.). Parties may contact

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or contact the address of the arbitration board provided on the website of DGRI e.V. at <http://dgri.de/>. The dispute will then be settled completely, in part, temporarily or finally and in accordance with the DGRI's conciliation act in force at the time conciliation proceedings are instituted.

- (2) From the day the conciliation request is filed until the end of the conciliation proceedings, the period of limitation for all claims in connection with the subject matter of the conciliation proceedings shall be suspended. §203 of the German Civil Code (BGB) shall apply accordingly.
- (3) The parties clarify that lawsuits – regardless of whether these regard the main proceedings or interim relief – may be filed without prior institution of conciliation proceedings.

## **§ 14 Final Provisions**

- (1) This agreement and its annexes contain all provisions agreed between the parties with respect to the subject matter of the agreement. Specific provisions contained in the annexes shall supersede the general provisions of this agreement. Verbal side agreements do not exist. With the entry into force of the present agreement, any and all previous agreements made between the parties regarding the subject matter of this agreement shall become null and void.
- (2) The Customer's general terms and conditions are not part of, and will not become part of, this agreement.
- (3) Any amendment to, supplement to, or annulment of, this agreement needs to be made in writing in order to be effective. This shall also apply to any waiver of the written form requirement.
- (4) Should any of the provisions of this agreement be, or become, invalid or unenforceable, the validity of the remaining provisions shall not thereby be affected.

### Annexes

1. RADAR License and User Instructions for Data Providers
2. RADAR Terms for Data Users
3. Schlichtungsordnung der DGRI e.V.