

## + Standard Terms & Conditions for Content Users +

The following Standard Terms & Conditions contain many important provisions that affect your rights and obligations if you register for our service to further interact with us. We suggest you download the Standard Terms & Conditions to your computer or print a copy of these Standard Terms & Conditions for your records.

earthTV network GmbH of 10119 Berlin, Schönhauser Allee 6/7 (hereinafter: „**earthTV**“), operates the internet platform and application “Live Cloud” (hereinafter: „**LC**“) that offers publishers and other users of live streams (hereinafter: “**Streams**“) an opportunity to commercially license streams from third parties that are registered with LC as contributors of live streams (hereinafter “**Content Contributors**“). These publishers and users of Streams who are registered with LC and have accepted these Standard Terms & Conditions (hereinafter: „**Content User**“) can license via LC Streams (including data and information offered by earthTV in the course of the licensing of the Stream) in accordance with these Standard Terms & Conditions including all regulations referred to herein.

Streams that have been made available to earthTV on LC by Content Contributors in accordance with these Terms & Conditions and which have been approved and accepted for distribution by earthTV will be offered to Content Users for licensing via LC in accordance with these Standard Terms & Conditions and with individual provisions that may have been selected by the respective Content Contributor in the course of making the Stream available via LC (hereinafter: „**Offered Streams**“).

These Standard Terms & Conditions apply to the contractual relationship between the Content User and earthTV that is constituted by the Content User’s registration with LC (hereinafter: **Content User Agreement**), in particular to all aspects of the actual licensing of an Offered Stream and to the distribution and other probable usage of Streams by Content Users or on their behalf.

### 1. Applicable terms

- 1.1 earthTV offers and allocates its services exclusively based on and in accordance with these Terms & Conditions together with the current terms and specifications for the use of earthTV’s services by Content Contributors and Content Users on LC as published and advertised on LC, the LC App and / or - depending on which of earthTV’s services are affected - the earthTV website at any time.
- 1.2 earthTV reserves the right to amend and to change the Standard Terms & Conditions at any time with the according changes to take effect in the future. The effective version of the Standard Terms & Conditions is available on LC, the LC App and the earthTV website at all times. The Content User will be informed by earthTV about any update of the Standard Terms & Conditions in text form (§ 126b BGB, German Civil Code), such notice to include the date on which the according revised version of the Standard Terms & Conditions shall become effective (hereinafter: “**Change Date**“). The Content User may declare his dissent with the incorporation of the amended Standard Terms & Conditions, such declaration of dissent to reach earthTV within 2 weeks from earthTV’s according notice but no later than on the Change Date. If no such notice of the Content User’s dissent is delivered to earthTV in time, all according changes are validly incorporated into the Agreement with prospective effect on the Change Date. In case of a timely delivery of the Content User’s dissent, earthTV shall be entitled to terminate the Agreement, such termination to take effect on the Change Date.

1.3 Any provisions that differ from these Standard Terms & Conditions have to be agreed between earthTV and the Content User in writing to become valid and part of the Agreement between the Contributor and earthTV. Any standard terms and conditions of the Content User that differ from or contradict these Standard Terms & Conditions shall only be incorporated into the Agreement between the Content User and earthTV once they are explicitly confirmed by earthTV in writing. Such inclusion of the Content User's standard terms and conditions shall not affect the continued applicability of these Standard Terms & Conditions. Whenever any such Content User's standard terms and conditions was validly incorporated into the Agreement but contradicts any part of the Standard Terms & Conditions, the according stipulation in the Standard Terms & Conditions shall prevail.

Apart from that any and all User's standard terms and conditions shall be non-binding and without any obligation to earthTV even if their inclusion was not expressly contradicted and/or disputed by earthTV or in case the Content User expresses that he will only perform the Agreement upon inclusion of his own general terms and conditions.

## 2. Registration, Term

2.1 In the absence of direct communication between the parties that constitutes an Agreement, the Content User submits to earthTV his offer to enter into an Agreement either by submitting his registration on LC or by confirming a registration prepared for him by earth TV, such registration to include the Content User's registration for the instant messaging service of LC to receive notifications, in particular about the status of Offered Streams. earthTV shall be under no obligation to accept the Content User's offer to conclude an Agreement and shall be free to accept or to reject such offer and the Content User shall have no claim against earthTV to conclude an Agreement, no matter if he has accurately and completely provided all data and information requested by earthTV in the course of the registration on LC. earthTV's acceptance of the Content User's according offer to contract shall be the activation of the Content User's user profile on LC (hereinafter: "**Content User Account**") which constitutes the conclusion of the Agreement between the Content User and earthTV.

2.2 With his registration, the Content User is required to submit the information and data requested by earthTV as published on LC, the LC App and the earthTV website and / or asked for in the course of the registration process (hereinafter: **Account Information**). The required Account Information includes information about all the Content User's publication channels (such as channel type, channel genre and yearly accumulated audience reach) as well as accounting and payment information. The Content User shall update and confirm the reach and audience information filed with the Account Information on a regular basis and will do so upon earthTV's request within a maximum of seven (7) business days.

In addition to the obligatory information that earthTV requests from the Content User, he will receive the opportunity to provide on LC information about his publication resp. distribution channels and business model to help and encourage Content Contributors to optimize their Streams with respect to the needs of the Content User.

2.3 Content User Accounts cannot be transferred or assigned to any third party. Content User Accounts set up and registered for individuals may only be used by the according individual Content User, or in case of a Content User Account set up and registered for a Content User who is a company, by employees of that company.

2.4 The term of the Agreement commences with the activation of the Content User Account and will continue until terminated without cause by either party providing two (2) weeks written notice (email shall suffice) to the end of any calendar month.

The right of either party to terminate the Agreement immediately for cause remains unaffected. In particular, any misrepresentations and / or false information by the Content User about his identity or the usage of a Stream as well as any usage (especially including, but not limited to, any forms, ways and means of distribution) of a Stream by the Content User or on his behalf that he is not entitled to due to a respective license shall constitute such cause for an immediate termination of the Agreement by earthTV.

### 3. Offering, Requesting and Licensing of Streams

3.1 In order to be offered for licensing via LC, Streams have to comply with specified standards for technical specifications and for the nature and content of the Stream (hereinafter: "**Standards**"). Full specifications and updates of the Standards are published on LC, the LC App or the earthTV website. Technical specifications available for a certain Stream are published with the offering of the respective Stream.

Streams will be offered to Content Users sorted by appropriate thematic categories. Content Contributors may choose categories in which their Streams shall be offered on LC but earthTV is free at all times to change the categories or to select additional categories in which a Stream shall be offered, with no obligation to inform the Content User of the respective changes.

Furthermore, specific levels of verification may be attributed to Offered Streams by earthTV at its own equitable discretion to reflect earthTV's rating of the Stream's content, the significance and value of accompanying information provided by the Content Contributor and the individual Content Contributors standing on LC as established by the Content Contributor's previous submissions and their according evaluations by earthTV.

3.2 earthTV offers the Streams to Content Users for Licensing through a number of different license models under which the Streams will be available for them to be licensed directly from earthTV. Which license models are available for a Stream depends on the Content Contributor's choice he made in this respect in the course of his submission of a Stream, such choice to reflect the information about the nature, characteristics and features of the Stream as provided by the Content Contributor during the submission.

3.3 In the course of a request for Licensing a Stream the Content User may be requested to choose one of a number of available license models under which an Offered Stream can be licensed (hereinafter: "**License Models**") including different options for the delivery of the license to the Content User such as one-to-one one (directly from earthTV servers for use in broadcasting systems or Content Delivery Networks ("CDN")) or one-to-many (via the earthTV CDN).

3.4 earthTV shall be under no obligation whatsoever to license any Stream to a Content User even if the Content User has truthfully supplied all information requested from him in the course of requesting the Stream. Although earthTV will use commercially reasonable efforts to instantly accept or reject a Content User request for Licensing a Stream, earthTV shall be under no obligation whatsoever to accept or reject a request for Licensing a Stream within any specific time.

The Content User will be informed by earthTV via LC, the LC App or the earthTV website or in other digital form (such as email) once his request for Licensing a Stream got accepted and, by this, the requested License to the respective Stream has been granted to the Content User according to the applicable License Model (the respective Stream hereinafter "**Licensed Stream**"). Instead of sending an according notification, earth TV may also inform the Content User about the grant of the license just by making the Licensed Stream available to the Content User according to these Standard Terms & Conditions (see following section 4).

#### **4. Making available of Licensed Streams to Content User**

- 4.1 Upon Licensing of a Stream earthTV makes the Licensed Stream available to the respective Content User by providing him with a streaming URL on LC, the LC App or the earthTV website, such URL being personalized to the Content User's Content User Account with an individual Licensing token and configured according to the applicable License Model, in particular either for one-to-one delivery (such as to TV Channels and public displays) or for one-to-many delivery (such as to websites and apps). Where appropriate, the Content User will be provided with an option to license additional metadata with the Licensed Stream.
- 4.2 earthTV bears the costs to make Licensed Streams available to the respective Content Users for their use in accordance with the applicable License Model. All downlink and other technical reception costs shall be borne by the Content User. earthTV reserves the right to change the schedule and / or method of making available at its own discretion. In this case, earthTV shall inform the Content User one (1) week prior to such change.

#### **5. Grant of Rights**

- 5.1 Upon the Licensing of a Stream the Content User will be granted the rights to the Licensed Stream to the extent and with the content as set out in the applicable License Model (that is the License Model under which the Licensed Stream has been offered respectively, where appropriate, which the Content User has chosen in course of his licensing request).

The Content User will only be granted rights to a Licensed Stream as expressly included in the applicable License Model and only to the extent expressly defined therein. Any and all rights not expressly granted by the applicable License Model are reserved and withheld by earthTV. Unless the applicable License Model expressly includes such usages, the Content User is not entitled to store, edit or sublicense a Licensed Stream or any part thereof, to transfer a granted license in whole or partly to third parties, to distribute the Licensed Stream in other forms, by other means or in other ways than expressly included in the License (in particular the Content User shall have no right to distribute a Stream that he licensed within a License Model provided for a one-to-one delivery as part of a product or service that involves more than one stream call from the LC/earthTV servers) or to use a Licensed Stream or any part thereof for commercial (vs. editorial) purposes, in particular for advertising.

- 5.2 Any rights to a Stream that are required for the usage of a Stream by a Content User and that are managed by a collecting society (such as music rights) are not subject to a License granted by earthTV and therefore have to be licensed separately by the Content User from the respective collecting society. Any fees payable to third parties, in particular to Collecting Societies, for the usage of a Stream by the Content User, such as for the broadcasting of a Stream and / or making a Stream available to the public, shall be borne by the Content User.
- 5.3 Unless expressly defined otherwise in the applicable License Model, all rights licensed to the Content User to use a Licensed Stream are limited in time to the duration for which the respective Stream is offered on LC and to the term of the Agreement, whichever of both may end first.
- 5.4 Any grant of rights is subject to full and final payment of earthTV's according remuneration by the Content User.

5.5 For each unauthorized use of a Stream by the Content Provider, earthTV shall be entitled to demand a contractual penalty in the amount of 200 % of the License Fee applicable to the relevant usage. Any statutory claims to which earthTV is entitled in such shall remain unaffected.

## **6. Credits, references and reporting**

6.1 Wherever feasible and within the scope of what would be regarded as standard practice in the individual situation, the Content User shall include into the usage of a Licensed Stream the source information "source: earthTV".

6.2 In case the Offered Stream is branded or is marked by earthTV and/or the Content Contributor with the obligation to name the Content Contributor by adding a credit text, logo or other branding, the Content User shall only be free to reject such Streams before any usage of that Offered Stream. Any change, alteration or deletion of such branding or credit text is forbidden and constitutes a substantial breach of the Agreement.

6.3 Any press release and corporate presentation of the Content User that includes a Licensed Stream as a relevant part must include the Content User's reference to earthTV and LC as "source earthTV" or "source earthTV Live Cloud" and - where feasible and appropriate - shall include a link to LC's or earthTV's website.

earthTV shall be entitled to cite the Content User's name and logo on LC, the LC App and the earthTV website and / or earthTV's and LC's newsletters and other corporate communication media for earth TV's and LC's own promotional purposes.

## **7. Responsibility, Reporting, Warranties, Indemnification and Liability**

7.1 Upon earthTV's according request the Content User shall provide earth TV with all relevant information about sponsors and advertisers of a Licensed Stream and update such information without undue delay.

7.2 earthTV will undertake commercially and technically reasonable efforts to identify Offered Streams and Licensed Streams containing content of an obviously and objectively illegal nature and will abort and remove any such Offered or Licensed Streams. Nonetheless it is the sole responsibility of the Content User to ensure that all usages of a Stream by himself or on his behalf will not infringe any interest or right of any third party and/or of earth TV and that all such usages comply with the standards and principles of all laws applicable to the usage of the Stream and are not unlawful for any reason.

7.3 The Content User warrants and guarantees to earthTV, regardless of culpability, that the information and data that he provides to earthTV in the course of his registration, the Licensing and, in general, the performance of the Agreement is complete and correct.

7.4 The Content User shall indemnify and hold harmless earthTV, its affiliates, distributors, licensees, officers, directors, employees and agents from and against any and all actual or alleged third party claims and accompanying liabilities, losses, damages, costs and expenses, including reasonable lawyer's fees arising out of or in connection with any actual or alleged breach of any duty, representation or warranty contained herein or any actual or alleged act or material omission of the Content User or its employees or agents.

- 7.5 The Content User shall be fully and solely liable for any claims by any collecting societies arising from any use of a Stream by the Content User or on his behalf. If earthTV is charged with any such fees, the Content User must hold earthTV free and harmless from any and all such claims.
- 7.6 The Content User's liability and obligation to indemnify in accordance with the preceding clauses shall remain unaffected by the termination of the Agreement.
- 7.7 In the event that the rights granted to Content User under this Agreement are violated by third parties, Content User shall be entitled to take appropriate action itself to oppose such infringements. earthTV shall support Content User in the defense of Content User's rights.
- 7.8 earthTV only owes to the Content User to make available a Stream that the Content User has licensed in the form and to the extent agreed upon, in particular as set out in the applicable License Model, and to correctly and completely publish any information and data transmitted by the respective Content Contributor in the course of the delivery of a Stream. Although earthTV undertakes commercially and technically reasonable efforts to verify such information and data, earthTV shall not be liable for such information and data transmitted by the Content Contributors, in particular for the accuracy and completeness of such information and data. earthTV cannot be held responsible if a Content Contributor aborts an Offered or Licensed Stream or if the transmission of an Offered or Licensed Stream is aborted due to technical issues in the course of the Content Contributor's delivery of the according Stream to LC by the that are not attributed to earthTV's responsibility.
- 7.9 earth TV shall be liable in contract and tort
- a. for any damage arising from gross negligence and intent, and for any damage arising from injury to life, limb or health;
  - b. for any damage arising from breach of contractual duties the performance of which make the proper performance of the Agreement possible in the first place and upon compliance with which the Content User regularly relies and may rely (so-called "fundamental contractual duties"); in this respect, however, the liability is limited in terms of amount to the amount of the foreseeable damage which typically has to be expected.

In this respect, the foreseeable typical damage will generally be regarded as the amount of the respective License fee. In so far and to such extent, any further-reaching liability claims shall be excluded: in particular, earthTV shall not be liable above and beyond the foregoing for any loss of profit, loss of savings or other direct or indirect consequential damage.

The foregoing limitations of liability also apply in favor of the employees, organs and vicarious agents of earthTV.

earthTV shall not be liable for the conduct of its vicarious agent if this vicarious agent is the Content User itself or a person deployed by the Content User with this function.

Mandatory statutory provisions governing liability remain unaffected by the foregoing provisions.

## **8. License Fees, Accounting and Payment**

- 8.1 The fees payable by the Content User for the Licensing of a Stream are defined by the License Model applicable to the respective License at the time of the Licensing (hereinafter "**License Fee**").

The License Fee can be adjusted by the Content Contributor or earthTV at any time, such adjusted License Fees to apply to all licensing of an Offered Stream after publication of the adjusted License Fee in connection with the offering of the respective Stream.

8.2 License Fees are either calculated by a minute price or gigabyte (GB) price, depending on the delivery option and net of any applicable taxes, duty, levy or impost of any nature required to be withheld or deducted (e.g. VAT, withholding tax etc.). The minute or gigabyte price will be determined on basis of the Content User's information on his channel's / product's / service's reach, to be verified by earthTV by comparing them with the according data as supplied by international rating agencies. With regards to the different ways of delivery of the Streams (one-to-one and one-to-many-delivery) the usage will be determined as follows:

- in case of a one-to-one delivery (such as to TV Channels and public displays), the usage will be determined by the number of minutes used from LC;
- in cases of one-to-many distribution (such as via websites and apps) the usage will be determined by the referring data documented by the earthTV content delivery network ("CDN").

8.3 The Content User may be given the opportunity to subscribe for specific usage amounts of a Stream to secure the availability a specific License Fee and access to a specific Stream over longer periods of time (e.g. for long-term integration of a specific Webcam to a website) or to take advantage of advance-sale discounts earthTV may offer for such pre-booking of Offered Streams from time to time. If available this option will show up in the course of offering of a Stream.

8.4 In principal the License Fee is payable upon expiration of the respective License and receipt of the according license statement and invoice issued by earthTV (digital transmission of which shall suffice). Pre-bookings of a Stream require payment of the License Fee before the start of the License period.

8.5 All payments shall be made by bitcoin, PayPal, pre-authorized credit card or - in the case of advance payments - also by wire transfer (SWIFT) without any deductions to earthTV's bank account.

8.6 In case of a delay of payment or insufficient credit, earthTV reserves the right to suspend the making available of Streams to the respective Content User, in which case any payment under this Agreement shall remain due and the Content User shall have no claims in connection with such suspension and shall indemnify and hold earthTV harmless from all claims and indemnities due to the suspension of the Streams.

## **9. Collection, storage and usage of data**

9.1 The Content User consents to the storage and evaluation of the data actively transmitted by him to earthTV in the course of his registration and Licensing. earthTV may store the Content User's data to the extent necessary for the administration of any past, current and future Licensing on LC.

9.2 The Content User's personal data will only be transferred to third parties to the extent either authorized by the Content User or as legally necessary to enforce rights and claims. Beyond being entitled to store and process the Content User's personal data to the extent necessary for performing this Agreement and earthTV's duties constituted by the Agreement and/or by law, earthTV shall have the right to store Content User's personal data in connection with previous Licensing by the Content User.

- 9.3 earthTV may commission third party service providers with the agreed processing of the Content User's personal data on earthTV's behalf. The data to be processed by such service providers (hereinafter "SPs") will be transferred to and processed at the SPs' data processing facilities for this purpose. The SPs may be located in non-EU states respectively in states outside the European Economic Area (EEA). earthTV will only commission the processing of personal data to SPs who are either located in states that provide for an appropriate level of data protection according to European legal standards or undertake to comply with European legal standards for data protection (e.g. by undertaking to comply with the "EU-U.S. Privacy Shield Framework").
- 9.4 Full details regarding which data will be collected and processed to which extent by whom and for which purpose and all relevant information regarding the Content User's rights in this respect can be found in earthTV's privacy policy that is provided on LC or earthTV's website.

## **10. Final provisions**

- 10.1 The place of performance for the obligations arising from the business relationship between earthTV and the Content User is the place of the registered headquarter of earthTV.
- 10.2 Insofar as the Content User acts in the capacity of an entrepreneur in relation to earthTV, i.e. by way of performing his commercial or self-employed professional activity, or if the Content User does not have a general place of jurisdiction in Germany, the court having jurisdiction at the place of earthTV's registered office shall be responsible for all disputes resulting from and in conjunction with the contractual relationship between earthTV and the Content User.
- 10.3 The contractual relationship between earthTV and the Content User and also any disputes arising in connection with the same shall be governed exclusively by the laws of the Federal Republic of Germany.
- 10.4 Should individual provisions of these Standard Terms & Conditions be legally ineffective, either in whole or in part, or subsequently lose their legal effectiveness, the validity of the remainder of these Standard Terms & Conditions shall not be affected thereby.

Last update: September 2017

- END OF THE GENERAL TERMS AND CONDITIONS -