

# HBS

## Terms & Conditions

January 2021

### Purpose and Applicability

1. These Terms & Conditions (the “**Terms**”) outline the terms and conditions that apply and govern the sale and/or use of the services, facilities and equipment (together the “**Services**”) as set out in the relevant HBS’ Catalogue of Services (thereafter “the Catalogue of Services”).
2. By signing and returning these Terms to Host Broadcast Services (HBS) AG (PO Box 4442, Grafenauweg 2, 6302 Zug, Switzerland, Fax +41 41 711 01 48 (“**HBS**”)), Company (as defined below) agrees and acknowledges that it has read, understood and accepted these Terms and that it is bound by them forthwith. These Terms shall also apply to the purchase and supply of Services from any HBS affiliated company (together with HBS, the “**HBS Group**”), where HBS has provided advance notice to Company of the relevant HBS Group company. In such cases the term “HBS” as used in these Terms shall be deemed to refer to that particular HBS Group company and shall apply accordingly.
3. Each and every order for Services completed and returned to HBS in the manner set out in paragraph 5 below (a “**Purchase Order**”) shall also be governed by these Terms and shall constitute a binding and irrevocable commitment regarding the provision of the requested Services subject to the rights and obligations contained herein.
4. The price of each of the available Services (the “**Fee**”) is set out in the Catalogue of Services and shall be in a currency determined appropriate by HBS. HBS reserves the right to revise the Fees at its sole discretion and without prior notice. An updated list of Fees shall be available from HBS upon request. For the avoidance of doubt, if any Fee is revised upwards, HBS shall not, subject to any amendments or cancellations made pursuant to paragraph 9, be entitled to revise the Fee charged to Company once a Purchase Order has been accepted by HBS.

### Ordering Process

5. Services may either be requested by completing and returning a Purchase Order—by email to HBS at [booking@hbs.tv](mailto:booking@hbs.tv) or directly within the HBS online booking interface. Only Purchase Orders (or amendments to Purchase Orders made in accordance with paragraph 9) received from Company’s nominated representatives (“**Authorised Representatives**”), or from any personnel in turn nominated and confirmed in writing by an Authorised Representative, will be accepted. The Authorised Representatives must be identified with all requested details on the appropriate section of the Purchase Order. Any changes to the list of Authorised Representatives must be communicated in writing to HBS.
6. HBS is entitled to rely on a Purchase Order as a final and binding commitment by Company to acquire the Services requested and Company will therefore be obliged to pay for those Services accordingly.
7. Upon receipt of a valid Purchase Order HBS shall, where it is able to provide the Services requested, issue Company with confirmation that its Purchase Order has been accepted and shall, at the same time or shortly thereafter, issue an invoice for such Services. Should HBS fail to confirm acceptance of a Purchase Order, then the issue of the related invoice shall be deemed to constitute acceptance. Each invoice shall indicate the time within which Company must make payment. If HBS is unable to provide the requested Services, it shall advise Company of this fact and provide it with the reasons for non-acceptance.
8. Company may request an amendment or cancellation of a Purchase Order at any time. However, where such request is made after an applicable ordering deadline has passed (as set out in the Catalogue of Services), any amendment will be subject to the continuing availability of the requested amended Services. In such cases, Company shall be liable to pay the higher of the Fee chargeable on the original Purchase Order and the Fee applicable to the amended Purchase Order. Any cancellation of the Services

after the ordering deadline has passed shall not absolve Company of its obligation to pay for the cancelled Service(s), the Fees for which shall remain payable in full.

9. In order to amend a Purchase Order, an Authorised Representative, or someone properly appointed by them, must notify HBS in writing and in the manner set out in paragraph 5 above, clearly identifying the Purchase Order that it wishes to amend, explaining the nature of the amendments and attaching an amended Purchase Order intended to replace the original. These Terms will apply fully and without variation to any such amended Purchase Order.

### **Payment**

10. All invoiced amounts falling due shall be paid to the account specified on the invoice either by electronic bank transfer or by any other payment means specified by HBS within the time indicated on the invoice or as may be indicated separately in writing by HBS.
11. If any amounts which are due to HBS are not received in full by HBS within the time limit indicated on the relevant invoice, Company shall be in automatic default with no need for prior reminder and HBS may, in addition to all other remedies available to it at law: (i) immediately suspend or terminate the provision of Services to it, (ii) cancel any outstanding Purchase Orders that are yet to be filled by HBS, and/or (iii) reject any Purchase Orders submitted by it at a later date, even if such Purchase Orders are made in respect of any other events or competitions at which HBS provides similar broadcasting services. HBS reserves the right to claim for all further losses and costs suffered by it as a result of non-payment or late payment by Company.
12. Company shall remain liable for full payment (plus interest) for Services cancelled as a result of non-payment. Any amounts not received by the due date stipulated in the invoice will bear interest at a rate of 5% per month from such date until paid in full. The interest calculation will be based on the singular interest method.
13. All amounts payable by Company shall be paid free and clear of, and without deduction or withholding for, any taxes, currency control restrictions, or other withholdings and Company shall be solely responsible for any such payments. To the extent that the Company is required by law to make any deductions or withholdings, the Company will gross up the relevant amount so as to ensure that HBS receives an amount that it would have received without such deductions or withholdings.

### **Sub-licensing and Third Parties**

14. If Company has, where permitted by the terms of a relevant broadcast licence agreement (a "**Media Rights Agreement**") and in accordance with such terms, sub-licensed to a third party certain of its broadcast rights, it shall be entitled to book and pay for Services on behalf of such third party sub-licensee, provided that it gives HBS written notice of its intentions as well as the identity of the third party. Company shall, in such circumstances, remain liable to HBS for full payment for Services received by the third party and shall indemnify HBS, as well as any other relevant authority such as a local organising committee, against any loss or damage caused by the use of the Services by such third party (including non-payment for the Services).
15. Company agrees to respect the general rules and conditions which may be imposed from time to time by HBS or by the organisers of the relevant event with regard to use of premises and venues (together the "**Venues**") during that event, the official accreditation system or any other areas similarly under those parties' control.
16. Company accepts liability for ensuring that its employees, agents, sub-contractors and related third parties comply with these Terms. Notwithstanding this, Company shall remain solely liable to HBS for the performance of the Company's obligations.
17. Company shall ensure that its employees, agents, sub-contractors and related third parties comply with any security, health and safety or other policies and directions in force at the Venues from time to time. Notwithstanding this, Company agrees that its employees, agents, sub-contractors and related third parties move in and around the Venues at their own risk.

## **The Services**

18. Company acknowledges and agrees that from time to time faults are inevitable, especially where caused by unfavourable atmospheric and transmission conditions or by interference, or where caused by third party fault(s) which prevent access to or use of the Services. HBS undertakes to use its reasonable efforts to minimise faults or disruptions to the Services but in such cases the obligations and liabilities of HBS shall be limited to those set out in paragraph 26.
19. Company agrees to comply with all technical guidelines issued by HBS from time to time, and all applicable professional guidelines and standards. Company shall be responsible for, and indemnify HBS and the organiser of the relevant event, against any and all claims, liabilities, damages, losses and costs arising from its failure to comply with, or adopt, such guidelines or standards.
20. Company shall obtain and maintain all necessary licences and consents and comply with all relevant laws in relation to the use of the Services. In particular, and without limitation, it shall not use the Services for sending any message or communication that is offensive, contrary to public policy, abusive, indecent, obscene or menacing. Company warrants that the video and audio material to be transmitted using the Services will comply with applicable rules and regulations in any country in which such material is transmitted or received. If, in HBS' reasonable opinion, HBS is likely to be subject to civil or criminal proceedings or action by any competent regulatory authority as a result of Company's use of the Services, HBS may, at its discretion, suspend the Services. In addition, Company shall not use the Services in any manner inconsistent with the terms of its Media Rights Agreement.
21. Company is prohibited from reselling, redistributing or retransmitting any of the Services to any third party whether for consideration or otherwise, or from performing any such similar acts in respect of the Services.
22. In the event that certain broadcast signals are technically accessible to third parties, Company agrees that it shall not broadcast such signals without having legitimately acquired the right to broadcast them from a party that has a legitimate right to make such a signal available.
23. Company shall indemnify, defend and hold harmless HBS and the event organiser from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, fines and expenses (including reasonable legal expenses) of whatever kind or nature arising out of or relating to a breach of these Terms or misuse of the Services by or attributable to Company.
24. Company shall effect and maintain in force for the duration of the Services adequate insurance in respect of its personnel and its equipment at the Venues, as well as in respect of any damage or loss it may cause to any equipment or facilities that are provided to it by HBS or the event organiser during this time.
25. Subject to these Terms, in particular paragraphs 18 and 26, HBS represents and warrants that the Services will be provided in accordance with the specifications contained in the Catalogue of Services.
26. In the event that a Service provided by HBS is defective, HBS shall, at its sole discretion, either remedy the defect with a suitable replacement Service or provide a pro-rata refund of Fees to Company reflecting the extent of Services that have been paid for but not provided.
27. Paragraph 26 above sets out the entire liability of HBS (including any liability for the acts and omissions of its employees, agents, consultants and sub-contractors) in respect of a breach of these Terms and any use by Company of the Services. HBS shall not be liable (whether in contract, tort, pre-contract or otherwise) for any indirect, special or consequential losses, loss of profit, goodwill, business or any pure economic loss suffered by Company whether or not such losses were in the contemplation of the parties at the date on which the Services were ordered.
28. All warranties, conditions and other terms not expressly contained within these Terms are, to the fullest extent permitted by law, excluded. However, nothing in these Terms excludes the liability of the parties for gross negligence or wilful intent.

29. HBS reserves the right, at its sole discretion, to withdraw, without notice, any Service listed in the Catalogue of Services, to amend the Catalogue of Services at any time and to cancel the provision of Services or change any of the provisions of these Terms upon reasonable written notice. In the event that HBS withdraws any Services, which are the subject of a Purchase Order, Company will be entitled to a pro-rata refund of any payment made to HBS in respect of such cancelled Services reflecting the extent to which the Services have not been supplied.
30. In the event that Company orders any free Service from HBS which it does not subsequently plan to utilize, it shall notify HBS immediately it becomes aware that it does not require such Service and HBS shall be entitled to re-allocate such Service to other parties. If Company does not notify HBS that it no longer require such Service and it subsequently fails to exploit such Service, HBS may withhold from it the future use of any such free Service for a period deemed reasonable by HBS in the circumstances.

#### **Termination**

31. Without prejudice to its rights and remedies set out elsewhere in these terms, HBS shall have the right to terminate (or suspend) any Purchase Order in the event of: (i) a material breach of these Terms by Company, (ii) HBS being notified of a suspension or termination of Company's Media Rights Agreement, (iii) Company's insolvency, bankruptcy, or liquidation, or (iv) the occurrence of any event which gives rise to a reasonable belief that Company will not be able to pay the relevant Fees.

#### **Risk and Transfer of Title**

32. Risk in any equipment delivered to Company as part of the Services shall pass to Company upon delivery, until such time as the equipment is returned. No transfer of title in any equipment supplied under these Terms shall occur. Similarly, there shall be no transfer or assignment to Company of any intellectual property rights in or connected with the Services.
33. Company shall indemnify HBS for any loss or damage to equipment or facilities provided to it as part of the Services by HBS, except for ordinary wear and tear and except where loss or damage is reported to HBS at the time of delivery.

#### **Delivery and Installation**

34. Company must state the delivery address and preferred delivery dates for any equipment forming part of the Services. HBS shall use reasonable efforts to deliver the equipment on such dates but reserves the right to make changes where necessary. Such changes will be kept as minimal as possible and communicated to Company as soon as practicable. Company must ensure that it makes adequate arrangements to accept delivery. The cost of deliveries to and from any locations other than the Venues shall be borne by Company and will be included on the relevant invoice.
35. Installation and testing of the equipment shall be Company's responsibility and HBS shall have no obligation in respect of the compatibility of Company's own systems or equipment when used in conjunction with the Services.
36. On the date agreed between the parties, Company will return the equipment to HBS at the pick-up point specified by HBS.

#### **Force Majeure/Cancellation/Rescheduling**

37. If the relevant event, or part thereof, is cancelled or the performance of any Service by HBS is made impossible by reason of a Force Majeure Event, then HBS shall have no liability to Company and shall not be considered to be in default under these Terms. In such circumstances HBS may refund a portion of the Fee in respect of each affected Purchase Order, such refund to be determined by reference to the prevailing circumstances and to be subject to the deduction of all unrecoverable costs. Any such refund shall constitute the sole and exclusive remedy to which Company is entitled.

38. If the relevant event, or part thereof, is rescheduled or relocated on the instructions of the event organiser or by reason of a Force Majeure Event, HBS shall use reasonable efforts to arrange for Services which correspond with the subject of a Purchase Order to be provided at the rescheduled or relocated event, but will have no obligation to do so. HBS reserves the right to make alterations to the times, dates and locations in connection with the delivery of the Services as a result of such a Force Majeure Event.
39. "Force Majeure Event" means an act, event, omission or accident beyond HBS' reasonable control, including (without limitation) strikes, lock-outs or other industrial disputes (whether involving the workforce of HBS or any other party), failure of a utility service or transport network, act of God, war, act of terrorism, riot, civil commotion, malicious damage, changes in governmental laws, orders, rules, regulations or directions, breakdown of plant or machinery, fire, flood, storm, any natural disaster or default of HBS' suppliers or subcontractors. It is expressly stated that pandemics, such as COVID-19, may enter into the definition of a Force Majeure Event. Although the cause of the pandemic is known, measures taken individually by governments are not foreseeable by the Parties and should not alter the possibility for a party to use the principle of a Force Majeure Event to be excused from relevant performance. In case of postponement or cancelation of the Event, the Parties will discuss in good faith the possibility of a partial or total refund or reassignment of the Services, to be agreed on a case by case basis.

#### **Miscellaneous**

40. Nothing in these Terms gives Company a right to use any trademark, logo, symbol or otherwise related to the relevant event, the use of which shall remain governed by the event organiser separately.
41. Company shall obtain at its own expense any import and export licences required for the purchase of Services from HBS.
42. Company warrants that it has full right and authority to enter into these Terms and to perform its obligations hereunder and in doing so it will not violate or breach any agreement, rule or regulation by which it is bound. Company further warrants that the below signatory is fully authorised to represent Company and has the power to execute these Terms without restriction.
43. The Parties represent that they shall comply and shall cause their personnel to comply with all applicable laws, including anti-bribery and anti-corruption laws in connection with this Terms.
44. The invalidity of any paragraph contained in these Terms shall not imply the invalidity of any other paragraph of these Terms, which paragraph(s) shall remain in effect as if such void, ineffective or unenforceable paragraph had not been included in these Terms.
45. Unless specifically stated otherwise in this Agreement or agreed elsewhere between the parties, any notice required or permitted to be given under these Terms shall be given in writing, in English, and may be served by fax or prepaid first class mail to the registered office or such other address as either party may have been notified in writing by the other from time to time. Any notice properly given shall be deemed to have been received seven working days after the date of posting if sent by first class mail, on the same day it was faxed (subject to the sender obtaining a receipt of such fax) or on the date of receipt if delivered by courier.
46. These Terms shall be governed by and construed in all respects in accordance with the laws of Switzerland. The parties hereby submit to the exclusive jurisdiction of the courts of Zurich.

#### **Personal Data**

47. As part of its service, HBS (the processor) will be required to process personal data on behalf of Client (the controller), and only on its documented instructions that must be writing.
48. As part of its service, HBS may be required to collect and process the following personal data: names and surnames of Authorised Representatives, their positions in the Company, and their professional e-mail address.
49. The data collected for the Services orders have the following purposes:
  - to respect contractual commitments;

- to send Services;
- if it's necessary, initiate legal proceedings;
- verify the identity of the data subject;
- send informations and contact the data subject;
- to enforce this Terms & Conditions.

These purposes are determined by Client as part of its service delivery request.

50. The personal data collected by HBS for the Services orders are based on a contractual relationship.
51. The personal data collected can only be consulted by Client and HBS within the limits strictly necessary for its Services orders. These data, whether in individual or aggregated form, are never made freely available to another third party.
52. The personal data collected for the Services orders will be retained during the performance of its service, and during the period during which HBS may be responsible. After these retention periods, HBS agrees to return all data to Client without retaining a copy, and to permanently delete the data of the data subject.
53. Personal data are retained under secure conditions, according to the current state of the technology, and in compliance with the General Data Protection Regulation and the national legislation.
54. HBS agrees to assist Client, the data controller, to respect its obligations for the exercise of the rights of data subjects, in particular from the GDPR. HBS agrees to give to Client all information necessary to demonstrate compliance with its obligations regarding the protection of personal data.
55. HBS may also collect and process any data voluntarily transmitted by Company for the Services orders. HBS orients Company to send personal data strictly necessary for the performance of the service. HBS undertakes to retain and process only the data strictly necessary for its professional activities and the performance of its services, and to delete any unnecessary received data as soon as possible.
56. HBS uses authorized providers to facilitate the processing of data for the performance of its services. These providers may be located outside the European Union. HBS has previously ensured the implementation by its providers of adequate guarantees and compliance with strict conditions regarding confidentiality, use and protection of data, for example via the US Privacy Shield, European Standard Contractual Clauses according to Article 46 GDPR. As part of its service provision activity and as a processor of personal data processing, Client has agreed that HBS will use the following processors:

Processor	Country	Processing realized	Guarantees
Kosmogo	France	System administration	Contract

HBS will not enter into any agreement with a new processor without the express agreement of Client.

Registered name of the Company: \_\_\_\_\_

Registered number of the Company: \_\_\_\_\_

By its registered representative: \_\_\_\_\_

Name: \_\_\_\_\_

Position: \_\_\_\_\_