

“Earth Speakr”

Allgemeine App Nutzungsbedingungen

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These General Terms and Conditions of Use (the “Terms”) form the basis of the user contract being formed between You (“You”) and Us, (AKQA Denmark A/S, Staunings Plads 3, 1st floor, 1607 Copenhagen V., Denmark) (hereinafter referred to as “Us” or “We”). The subject matter of this contract is the use, free of charge of the services We offer under the name Earth Speakr, via our application (the “App”). The App is part of the art project “Earth Speakr”. The project enables kids to express their concerns about the health of the planet in a way that resonates with the decision makers of Europe. You may express your concerns via this App by creating text and video messages (the “Creation” or the “Creations”). These Creations may be uploaded and shared on Our public website www.earthspeakr.art (the “Website”) where decision makers and others can view and also share all individual messages. Selected Creations will potentially also be shown as part of an art installation at high profile venues in Europe.

Please take a few moments to read these Terms before using the App. By downloading, installing, accessing or using the App, You acknowledge that You have read, understood and agree to be bound by these Terms. If You do not agree to these Terms, You should uninstall and/or cease to access and use this App immediately.

1. Our Rules

- 1.1. While the App is targeted at minors aged between 7 and 17 years (“Minor”), You may also use the App if You are older than age 17.
- 1.2. Before You can use the App, You will need to register for an account (“Account”). In order to create an Account, You must:
 - possess legal parental or guardian consent *or*
 - be at least 18 years old *and*
 - be fully able and competent to enter into the terms, conditions, obligations, affirmations, representations, and warranties set forth in these Terms, and to abide by and comply with these Terms *and*
 - be legally permitted to use the App by the laws of Your home country.
- 1.3. If you are a Minor, as part of the registration process, for legal reasons, We will ask You to obtain your parent’s or guardian’s consent by entering the email address of Your parent or guardian. We will send Your parent or guardian an email message in which We ask them to verify Your registration [by clicking on the link. Once your parent or guardian has [clicked on this link, We will finally confirm Your registration. Only then the registration process will be complete.
- 1.4. If You create an Account, You authorize Us to access, display and use certain personally identifiable information about You. For more information about what information We use and how We use it, please check out our [Privacy Policy](#).
- 1.5. You can delete Your Account and terminate Your contract with us at any time by sending an email to info@earthspeakr.art including the email you used to sign up. Your Account will be deleted immediately but it may take a little while for Your Creations to be completely removed from the App. We will save Your profile information for a period of 30 days in case You decide to restore Your Account. Please note that even if you decide to delete Your Account and remove Your Creation from the App, the license granted under Section 2.2.5 remains unaffected. This means that We are still entitled to use Your Creation in accordance with the license.
- 1.6. We reserve the right at our sole discretion to terminate or suspend any Account, or make use of any operational, technological, legal or other means available to enforce the Terms (including without limitation blocking specific IP addresses), at any time without liability and without the need to give You prior notice.

2. Content and Creations

2.1. There is certain content We will not allow on the App or on the Website. We want Our users to be able express themselves as much as possible, but We have to impose restrictions on certain content which:

- 2.1.1. contains language which could be deemed offensive or is likely to harass, upset, embarrass, alarm or annoy any other person;
- 2.1.2. contains personally identifiable information of others, unless the relevant data subject has consented;
- 2.1.3. is offensive, obscene, insensitive, upsetting, intended to disgust;
- 2.1.4. is defamatory, discriminatory, or mean-spirited content, including references or commentary about religion, race, sexual orientation, gender, national/ethnic origin, or other targeted groups;
- 2.1.5. encourages any illegal activity including, without limitation, terrorism, inciting racial hatred or the submission of which in itself constitutes committing a criminal offence;
- 2.1.6. contains overtly sexual or pornographic material;
- 2.1.7. contains false information and features, including inaccurate device data or trick/joke functionality;
- 2.1.8. relates to commercial activities (including, without limitation, sales, competitions and advertising, links to other websites or premium line telephone numbers);
- 2.1.9. involves the transmission of "junk" mail or "spam";
- 2.1.10. contains any spyware, adware, viruses, corrupt files, worm programs or other malicious code designed to interrupt, damage or limit the functionality of or disrupt any software, hardware, telecommunications, networks, servers or other equipment, Trojan horse or any other material designed to damage, interfere with, wrongly intercept or expropriate any data or personal information;
- 2.1.11. itself, or the posting of which, infringes any third party's rights (including, without limitation, intellectual property rights and privacy rights);
- 2.1.12. shows another person which was created or distributed without that person's consent.

We operate a zero-tolerance policy for this kind of content and We have the right to take it down as soon as we have become aware of it.

2.2. Your Creations

2.2.1. Your Creations will be made through our interactive application using facial recognition and other native technology, meaning your face will be augmented with visual graphic elements to alter the real facial expression. This means your real face will at no point be visible, only your avatar Creation including a recording of your message to the world. You may use the App and create messages on the App without sharing Your Creations. If you decide to share Your Creations, You may either upload Your Creations to the App to make them visible for other App users, or upload Your Creations to Our Website to share them with the general public. Please be aware that if you choose to share Your Creations with third parties such as via your social media profiles, Your Content will become subject to the Terms of Use of such third parties, We recommend reading the Terms of Use of such third parties before you upload Your Creations there.

- 2.2.2. As Your Creations are unique, we are not liable for Your Creations. You are solely responsible and liable for Your Creations and You will indemnify, defend, release, and hold Us harmless from any claims made in connection with Your Creations.
- 2.2.3. If You do choose to reveal any (personal) information about Yourself, to us and to third parties, it is at Your own risk. We encourage You to use the same caution in disclosing details about Yourself to third parties online as You would under any other circumstances.
- 2.2.4. Please be aware that if you choose to upload your Creations on the App/Website and/or share it with third parties, Your Content may be visible to other users of the App and any visitor of the internet all around the world instantly - so make sure You are comfortable sharing Your Content before You post. As such, You agree that Your Content may be viewed by other users and any person visiting, participating in or who is sent a link to the Creations, App or Website.
- 2.2.5. You agree and acknowledge that Your Creations were genuinely created by You. You are not allowed to submit third party music. In the event You may submit third party content excluding music. However, in this case You warrant that You have the right to do so and that You disclose the original creator and give such creator credits for his/her creation.
- 2.2.6. By uploading Your Creation to the App and/or Website, You represent and warrant to Us that You have all necessary rights and licenses to do so, and automatically grant Us a perpetual, exclusive, royalty-free, sub-licensable, worldwide license to use Your Creation in any way, in any exploitation form and in any media and medium currently known or developed in the future (including, without limitation, editing, copying, modifying, adapting, translating, reformatting, creative derivative works from, incorporating into other works, advertising, distributing and otherwise making available to the general public, whether in whole or in part).
- 2.2.7. We have the right to remove, edit, limit or block access to any of Your Creation at any time, and We have no obligation to display or review Your Creation.

2.3. Our Content

- 2.3.1. Any other text, content, graphics, user interfaces, trademarks, logos, sounds, artwork, and other intellectual property appearing on the App are owned, controlled or licensed by Us and are protected by copyright, trademark and other intellectual property law rights. All right, title and interest in and to Our content remains with Us at all times.
- 2.3.2. We grant You a non-exclusive, limited, personal, non-transferable, revocable, license to access and use Our content, without the right to sublicense, under the following conditions:
 - 2.3.2.1. You shall not use, sell, modify, or distribute Our content except as permitted by the functionality of the App;
 - 2.3.2.2. You shall not create derivative works from Our content or commercially exploit Our content, in whole or in part, in any way; and
 - 2.3.2.3. You shall use Our content for lawful purposes only.
- 2.3.3. We reserve all other rights.

3. Restrictions on the App

3.1. You hereby undertake to:

- 3.1.1. comply with all applicable laws, including without limitation, privacy laws, intellectual property laws, anti-spam laws and regulatory requirements;

3.1.2. use the services in a manner that respects others and meets a high standard of behavior.

3.2. You undertake that You will not:

3.2.1. act in an unlawful or unprofessional manner including being dishonest, abusive or discriminatory;

3.2.2. misrepresent Your identity or affiliations with a person or entity;

3.2.3. disclose information that You do not have the consent to disclose;

3.3. Scraping or replicating any part of the App without our prior consent is expressly prohibited. This includes by any means (automated or otherwise) other than through our currently available, published interfaces - unless You have been specifically allowed to do so in a separate agreement with Us.

4. Data Protection and Privacy

For information about how We collect, use and share Your personal data, please check out our [Privacy Policy](#).

5. Push Notifications

5.1. We may provide You with emails, push notifications, alerts and other messages related to the App and/or the services, such as enhancements, events, and other promotions.

5.2. After downloading the App, You will be asked to accept or deny push notifications/alerts. If You deny, You will not receive any push notifications/alerts. If You accept, push notifications/alerts will be automatically sent to You. If You no longer wish to receive push notifications/alerts from the App, You may opt out by changing Your notification settings on Your mobile device.

5.3. With respect to other types of messaging or communications, such as emails, text messages, etc., You can unsubscribe or opt out by either following the specific instructions included in such communications, or by emailing Us with Your request at privacy@earthspeaker.art.

5.4. The app can allow you to access certain content based on your location. In order to provide you with this content, the app determines your location using one or more reference points such as GPS, Bluetooth and / or software on your mobile device. If you have set your mobile device so that GPS, Bluetooth or other location-determining software is deactivated, or the app is not authorized to access your location data, you cannot access such location-specific content.

6. Limitation of Liability

6.1. Liability for services provided free of charge: For services provided free of charge, We will be liable, regardless of the legal basis, exclusively for damage due to willful conduct or gross negligence or the absence of a guaranteed feature. Our liability is not limited for willful misconduct. In the event of gross negligence or the absence of a guaranteed feature our liability is limited to reasonable, foreseeable damage. Otherwise, our liability is excluded.

6.2. We do not exclude or limit our liability to you in any way where it would be unlawful to do so,

6.3. Liability of our employees: To the extent that our liability is excluded or limited, this exclusion or limitation also applies to our employees, agents or subcontractors.

6.4. Product liability: Claims under the German Product Liability Act or Your local product liability laws remain unaffected by the above-mentioned liability exclusions or limitations.

7. Removal of Infringing Content

7.1. Under §§ 8-10 German Telemedia Act (TMG) We are neither obliged to monitor Creations nor to investigate circumstances which suggest illegal activity. For this reason, We are unable to assume any guarantee for external contents.

7.2. If You believe any content infringes upon Your intellectual property rights, You may request removal of that material by submitting a written notification alleging such infringement ("Takedown Notice") including the following:

7.2.1. Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works;

7.2.2. Identification of the material claimed to be infringing or to be the subject of infringing activity and that is to be removed or access disabled and information reasonably sufficient to permit the service provider to locate the material;

7.2.3. Information reasonably sufficient to permit the service provider to contact You, such as an address, telephone number, and, if available, an electronic mail;

7.2.4. A statement that You have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and

7.2.5. A statement that the information in the notification is accurate and You are authorized to act on behalf of the owner of the exclusive right that is allegedly infringed.

7.3. Any Takedown Notices should be sent to: info@earthspeaker.art

8. Links to third-party Websites or Resources

8.1. The App may contain links to third-party websites or resources. In such cases, You acknowledge and agree that We are not responsible or liable for:

8.1.1. the availability or accuracy of such websites or resources; or

8.1.2. the content, products, or services on or available from such websites or resources.

8.2. Links to such websites or resources do not imply any endorsement. You acknowledge sole responsibility for and assume all risk arising from Your use of any such websites or resources. Framing, in-line linking or other methods of association with the App are expressly prohibited without first obtaining our prior written approval.

9. Third-Party App Store

9.1. The following additional terms and conditions apply to You if You download the App from a Third Party Store. To the extent that the other terms and conditions of these Terms are less restrictive than, or otherwise conflict with, the terms and conditions of this Section, the more restrictive or conflicting terms and conditions in this Section will apply, but solely with respect to the App and the Third Party Store. You acknowledge and agree that:

9.2. These Terms are concluded solely between You and Us and not with the providers of the Third Party Store, and We (and not the Third Party Store providers) are solely responsible for the App and the content thereof.

9.3. To the extent that these Terms provide for usage rules for the App which are less restrictive or in conflict with the applicable terms of service of the Third Party Store from which You obtain the App, the more restrictive or conflicting term of the Third Party Store will take precedence and will apply.

- 9.4. The Third Party Store provider has no obligation whatsoever to provide any maintenance and support services with respect to the App. We are solely responsible for any product warranties, whether express or implied by law, to the extent not effectively disclaimed.
- 9.5. The Third Party Store provider will have no warranty obligation whatsoever with respect to the App, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be Our sole responsibility.
- 9.6. We, not the Third Party Store provider, are responsible for addressing any claims You or any third party may have relating to the App or Your possession and/or use of the App, including, but not limited to: (i) product liability claims; (ii) any claim that the App fails to conform to any applicable legal or regulatory requirement; (iii) claims arising under consumer protection or similar legislation; and/or (iv) intellectual property infringement claims.
- 9.7. The Third Party Store provider and its subsidiaries are third party beneficiaries of this Agreement, and, upon Your acceptance of these Terms, the Third Party Store provider from whom You obtained the App will have the right (and will be deemed to have accepted the right) to enforce these Terms against You as a third party beneficiary thereof.

10. Miscellaneous

- 10.1. These Terms constitute the whole agreement and understanding between You and Us and supersede any previous arrangement, understanding or agreement between You and Us relating to the subject matter of these Terms.
- 10.2. We reserve the right to change or modify these Terms with future effect. We will advise You of the changes no later than two (2) weeks before the new version of these Terms is scheduled to enter into force. If You do not object to the validity of the new version of these Terms within such period and continue to use the App, then the new version of these Terms will be deemed to have been accepted. In the event that You do object, We expressly reserve our rights to terminate the contract between You and Us for convenience. We will also advise You again separately of Your right to object, the deadline to do so and the legal consequences of Your objection or failure to object.
- 10.3. These Terms, and any rights and licenses granted hereunder, may not be transferred or assigned by You, but may be assigned by Us without restriction. We will always tell you in writing if this happens and we will ensure that the transfer will not affect your rights under the contract.
- 10.4. These Terms and all rights and obligations thereunder shall be exclusively governed and exclusively construed in accordance with the laws of the Federal Republic of Germany but without prejudice to the consumer protections afforded by Your local laws. You can bring legal proceedings in respect of these Terms and all rights and obligations thereunder only in the German courts, or instead in the courts in the jurisdiction where you live.
- 10.5. If any provision of these Terms should be or become wholly or partially void, ineffective or unenforceable, the validity, effectiveness and enforceability of the other provisions of these Terms shall not be affected thereby. Any such invalid, ineffective or unenforceable provision shall be deemed replaced by such valid, effective and enforceable provision as comes closest to the economic intent and purpose of the invalid, ineffective or unenforceable provision as regards subject-matter, extent, time, place and scope. The aforesaid shall apply *mutatis mutandis* to any gap in these Terms.
- 10.6. Even if we delay in enforcing this contract, we can still enforce it later. If we do not insist immediately that you do anything you are required to do under these terms, or if we delay in

taking steps against you in respect of your breaking this contract, that will not mean that you do not have to do those things and it will not prevent us taking steps against you at a later date.

- 10.7. Nobody else has any rights under this contract (except someone you pass your guarantee on to). This contract is between you and us. No other person shall have any rights to enforce any of its terms, neither of us will need to get the agreement of any other person in order to end the contract or make any changes to these terms.

11. Information about the Service Provider

AKQA Denmark A/S
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1607 Copenhagen V.
Registered in Denmark

Legally represented by Managing Director, Steffen Blauenfeldt Otkjær
VAT number: 29203776