

TERMS OF USE FOR THE INSTITUTIONAL ACCESS TO THE DIGITAL CONCERT HALL

1. Scope

- 1.1. These Terms of Use ("**ToU**") govern all contracts concluded between Berlin Phil Media GmbH, Leipziger Platz 1, 10117 Berlin, represented by their managing directors Olaf Maninger and Dr. Maximilian Merkle (hereinafter "**Berlin Phil Media**") and educational institutions, such as universities, conservatories, schools or libraries ("**Institutions**") on the use of Streaming Services (see definition in Section 2.2 of these ToU) offered by Berlin Phil Media at www.digitalconcerthall.com (hereinafter "**Website**") and via the mobile and TV apps "Digital Concert Hall" (hereinafter "**Apps**", Website and Apps hereinafter jointly "**Digital Concert Hall**", the use offered to Institutions hereinafter "**Institutional Access**").
- 1.2. The agreements made between Berlin Phil Media and the Institution result exclusively from the **Contract Form** within the meaning of Section 3.1 of these ToU and these ToU. Provisions of the Institution that deviate, contradict or supplement these ToU shall not apply, even if Berlin Phil Media does not expressly object to their inclusion. The contractual language is English.

2. Institutional Access, Streaming Services

- 2.1. The Institutional Access allows multiple access to the Digital Concert Hall through which Users of the Institution ("**Institutional Users**") can use the Streaming Services (see definition in Section 2.2 of these ToU). The use of the Institutional Access is free of charge for the Institutional Users.
- 2.2. Berlin Phil Media offers video recordings of subscription and special concerts of the Berliner Philharmoniker ("**Concert Recordings**"), live concerts of the Berliner Philharmoniker ("**Live Concerts**"), documentaries, portraits of musicians and other films (hereinafter jointly referred to as "**Films**") and interview recordings ("**Interviews**") via stream for use in the Digital Concert Hall ("**Streaming Services**"). Concert Recordings, Films and Interviews are offered in the archive as video-on-demand. Live Concerts are used by way of access to a live stream.
- 2.3. Berlin Phil Media decides independently which Streaming Services are offered in the Digital Concert Hall. The Institution has no claim to certain Streaming Services being made available, even if Berlin Phil Media has announced them in advance. Furthermore, Berlin Phil Media reserves the right to remove the offer of individual Streaming Services from the Digital Concert Hall for legal reasons and/or to exclude certain regions from use of the Digital Concert Hall for legal reasons (geo-blocking). Berlin Phil Media will indicate the restriction in the Digital Concert Hall.
- 2.4. The Streaming Services are available to the Institutional User in various picture qualities (SD, HD, 4K UHD, HDR) and audio qualities (standard audio, Hi-Res Audio, Immersive Audio via Dolby Atmos), depending on the available bandwidth and/or the

speed of the Institutional User's internet connection as well as their end devices and/or the third party devices (e.g. Smart-TV devices, Blu-Ray players, streaming devices), applications and/or services used by them. For interference-free reception, an internet connection with a minimum bandwidth of 10,000 kbit/s is required. For better picture quality of the Streaming Services, a bandwidth of at least 20,000 kbit/s is recommended. The Institutional User can receive the Streaming Services of Berlin Phil Media on several devices. However, simultaneous use of the Streaming Services is not possible. The App for iOS and Android devices offers an offline mode that allows the temporary storage of Concert Recordings, Films and Interviews on the device. In the offline mode, the Customer can use Concert Recordings, Films and Interviews even without an internet connection. Further information on the picture and audio quality, the functionality of the Digital Concert Hall and the streaming services as well as the device and system requirements necessary for using the streaming services can be found in the Digital Concert Hall.

3. Conclusion of Contract

- 3.1. Institutions may apply to Berlin Phil Media for Institutional Access. Based on the application, Berlin Phil Media can submit an individual offer to the Institution. This is done by providing a contract form ("**Contract Form**"). The Institution has no right to a contract offer.
- 3.2. The Contract on Institutional Access (hereinafter "**Contract**") comes into effect when the Institution and Berlin Phil Media have signed the Contract Form. Where the Contract Form is issued in duplicate, it is sufficient for the Institution and Berlin Phil Media to sign the copy intended for the respective other party. Transmission of the signed Contract Form by fax or e-mail (scanned in PDF format) is sufficient.
- 3.3. The Institution warrants that all data provided during application are correct and that they have not used any data of third parties. The Institution shall be obliged to immediately inform Berlin Phil Media of any changes to the data by e-mail.
- 3.4. The Institutional Access is not transferable.
- 3.5. Berlin Phil Media and the Institution communicate electronically with each other. For that communication, Berlin Phil Media uses the e-mail address provided by the Institution in the Contract Form. The e-mail address of Berlin Phil Media is institutions@digitalconcerthall.com.

4. Use of the Institutional Access

- 4.1. Berlin Phil Media activates Institutional Access after the conclusion of the Contract and receipt of the price in accordance with Section 6.1 of these ToU, but not before the agreed start of use of the Institutional Access ("**Start of Use**"). Berlin Phil Media shall inform the Institution by e-mail about the activation.

- 4.2. Institutional Users receive access to the Digital Concert Hall after prior registration in the Digital Concert Hall (see Section 4.2.2. of these ToU below) or (if available) via a direct access of the Institution (hereinafter “**Direct Access**”, see Section 4.2.3. of these ToU below).
- 4.2.1. Only members, users and/or staff of the Institution which have an individual user ID of the Institution and a password that allows them to access the Institution's network are admitted as Institutional Users. If the Institution is a university or conservatoire, they may provide Institutional Access only to students, faculty members and staff. If the Institution is a school, they shall ensure that only teachers use the Institutional Access. If the Institution is a library, only the following categories of users are permitted: Library users, librarians and staff. Any other category of users requires the explicit prior consent of Berlin Phil Media in text form (in writing, no signature required, e.g. e-mail, fax).
- 4.2.2. Institutional Users may only register in the Digital Concert Hall if they are located in the IP range of the Institution specified in the Contract Form. For this purpose, the Institutional User must log in to the user management system of the Institution by means of their user ID and password. Upon completion of the registration, Berlin Phil Media grants the Institutional User permission to use the Institutional Access (“**Permission**”). The Permission is valid for 90 days. During this period, the Institutional User may also use the Digital Concert Hall outside the IP range of the Institution. If the Permission has expired, the Institutional User must extend the validity of the Permission for a further 90 days by again logging in to the Institution's user management system using their institutional access data. If they fail to do so, the Institutional User will keep their customer account but loses the possibility to use the Streaming Services free of charge until they log in again via the user management system of the Institution.
- 4.2.3. Registration in the Digital Concert Hall is not required for use of the Institution's Direct Access (where available). The Institutional User may only use the Direct Access via the Website (see definition in Section 1.1. of these ToU). During the use they must be in the IP range of the Institution specified in the Contract Form, i.e. logged into the Institution's user management system with their user ID and password. In order to use Institutional Access also via the Apps (see definition in section 1.1. of these ToU) and/or outside the IP area the Institutional User can register in the Digital Concert Hall at any time in accordance with section 4.2.2. of these ToU.
- 4.3. Institutional Users are obliged to comply with the “Terms of Use for the Digital Concert Hall”, which are available at digitalconcerthall.com/terms (“**ToU For The Digital Concert Hall**”). Streaming Services may be embedded into selected third party devices (e.g. smart TV devices, Blu-Ray players, and streaming devices, collectively hereinafter “**Third Party Devices**”) and third party applications and services (collectively hereinafter “**Third Party Applications**”) which are used to access them or interact with them when accessed. The Institutional User's use of Third Party Devices and Third Party Applications may be subject to their own terms and conditions.

- 4.4. The number of Institutional Users who can use the Streaming Services simultaneously is limited by the number of parallel streams agreed in the Contract. Only those Institutional Users who use a paid Streaming Service in the Digital Concert Hall occupy a parallel stream. The use of free Streaming Services (e.g. trailers, interviews or free concerts) shall not be taken into account.
- 4.5. Berlin Phil Media is entitled to (temporarily) exclude Institutional Users from the use of Institutional Access in accordance with the ToU For The Digital Concert Hall. Berlin Phil Media shall inform the Institution by e-mail of any exclusion from use.
- 4.6. After the end of the Contract Term in accordance with Section 5.1 of these ToU or after termination of the Contract in accordance with Section 5.2 of these ToU, Berlin Phil Media shall deactivate Institutional Access. After deactivation, further use of the Institutional Access by Individual Institutional Users is not permitted.

5. **Contract Term, Termination**

- 5.1. The Contract has the term stated in the Contract Form ("**Contract Term**"). The Contract Term is measured in years. The Contract Term shall be automatically extended by 12 months at a time ("**Extended Contract Term**"), unless one of the Parties terminates the Contract properly in accordance with Section 5.2. of these ToU. Berlin Phil Media will inform the Institution of any automatic extension by e-mail.
- 5.2. Either party may terminate the Contract at the end of the Contract Term and each Extended Contract Term. The notice of termination must be received by the other party no later than 90 days before the end of the Contract Term or Extended Contract Term. If the Contract is not terminated by one of the parties within this period, the Contract Term shall be automatically extended in accordance with Section 5.1. of these ToU. The right to extraordinary termination in accordance with the statutory provisions remains unaffected. Notice of termination must be given in text form (in writing, no signature required, e.g. e-mail, fax).

6. **Prices, Payment**

- 6.1. The price of Institutional Access is set out in the Contract Form. It is a net price, plus the statutory value added tax applicable at the time of the conclusion of the Contract.
- 6.2. The price is to be paid in advance for each year of the Contract Term and the Extended Contract Term. The first annual price shall become due upon conclusion of the Contract in accordance with Section 3 of these ToU, the subsequent annual prices shall become due on the 15th of the first month of use of the following year or of the Extended Contract Term and shall be invoiced by Berlin Phil Media. Invoices shall be paid within 14 days of the invoice date.
- 6.3. The Institution may pay by credit card, bank transfer or PayPal.

- 6.4. If the Institution is in default of payment, Berlin Phil Media is entitled to claim default interest in the amount of 9 percentage points above the basic rate of interest. Berlin Phil Media reserves the right to prove higher damages.
- 6.5. If the Institution does not fulfil their payment obligation or amounts paid are reversed or charged back, Berlin Phil Media is entitled, subject to further claims, to block Institutional Access. If the blocking takes place because of open payment claims and these claims are settled, the Institutional Access will be unblocked again. The right of termination of Berlin Phil Media according to Section 5.2. of these ToU remains unaffected.

7. Obligations of the Institution

- 7.1. The Institution shall provide Institutional Access only to Institutional Users referred to in Section 4.2.1. of these ToU. The Institution shall ensure that only Institutional Users with valid access data for the Institution use Institutional Access.
- 7.2. The Institution shall be obliged to inform the Institutional Users that the use of the Digital Concert Hall is governed by the ToU For The Digital Concert Hall and obliges the Institutional Users to comply with the ToU For The Digital Concert Hall.
- 7.3. If Institutional Access is provided via Direct Access and the Institutional User breaches the prohibition of abuse under Sections 11. and 14.8. of the ToU For The Digital Concert Hall, the Institution shall, upon request, inform Berlin Phil Media of the Institutional User's name and address for the purpose of legal proceedings.
- 7.4. The Institution shall inform Berlin Phil Media immediately of any misuse or breach of security (cyber-attacks, stolen user IDs or/and passwords enabling third parties to access the Institution's network, etc.) of which it becomes aware or which it suspects.
- 7.5. If the Institution breaches its obligations under Sections 7.1. to 7.4. of these ToU, Berlin Phil Media is entitled to (temporarily) block Institutional Access. The right to terminate the Contract in accordance with Section 5.2. of these ToU remains unaffected.

8. Warranty

- 8.1. Berlin Phil Media does neither warrant nor represent the proper functioning of internet access and other third-party services (e.g. mobile telephony services) which are required for the use of the Digital Concert Hall, or for the end device used by the Institutional User.
- 8.2. Berlin Phil Media does not guarantee a continuous interoperability of the Streaming Services with Third Party Devices and Third Party Applications, which Berlin Phil Media has indicated as usable with the Streaming Services at the time of the conclusion of the Contract.
- 8.3. Berlin Phil Media expressly refers to the risks of the use of the Digital Concert Hall. This particularly pertains to risks caused by the theft of passwords as well as manipulation, hacking and other forms of unauthorised disclosure of users' data. Berlin Phil Media

will make reasonable efforts to minimise these risks. This does not constitute a guarantee. To this extent, the Institution uses the Digital Concert Hall at their own risk.

- 8.4. Maintenance work, retrofitting or upgrades, errors, or “bugs” as well as other causes or circumstances may lead to interruptions or defects in the operation of the Digital Concert Hall. Berlin Phil Media will remedy technical failure without delay within the scope of their technical possibilities.

9. Limitation of liability

- 9.1. Berlin Phil Media shall be liable for damages without limitation, as far as the cause of damage is based on an intentional or grossly negligent breach of duty by Berlin Phil Media, a legal representative or persons of whose services Berlin Phil Media avails themselves in order to perform their obligation. For slightly negligent behaviour Berlin Phil Media shall only be liable in the event of the breach of an obligation, whose fulfilment is essential for the achievement of the purpose of the Contract and whose compliance the contractual partner may regularly rely on (material contractual obligation), to the extent that Berlin Phil Media had to typically foresee the damage caused according to the circumstances known at the conclusion of the Contract. Otherwise the liability of Berlin Phil Media – including for persons of whose services they avail themselves in order to perform their obligation and vicarious agents – is excluded.
- 9.2. The exclusions and limitations of liability provided for in Section 9.1. shall not apply in the event of injury to life, health, and body, for a defect following the assumption of a guarantee for the quality of the product and for fraudulently concealed defects. Liability under the Product Liability Act remains unaffected.

10. Data protection

When processing personal data of the Institution and its Institutional Users, Berlin Phil Media observes the statutory provisions. Berlin Phil Media provides further information in the data protection provisions, which are available in their current version at digitalconcerthall.com/privacy.

11. Changes

Berlin Phil Media is entitled to make changes, adjustments, or additions to these ToU at any time, provided that the changes do not affect essential provisions of the contractual relationship (in particular main service obligations, term, termination) and this Section 11. This is particularly necessary if regulatory gaps have emerged after conclusion of the Contract (e.g. due to changes in the law, declaration of the invalidity of general terms and conditions by case law). The amended terms and conditions shall be notified to the Institution in text form (in writing, no signature required, e.g. e-mail, fax) at least six (6) weeks before they come into force. The amendments shall be deemed approved if the Institution does not object to them within six (6) weeks after receipt of the notification. If the Institution exercises the right of objection, the changes will not become part of the Contract and the Contract will be continued unchanged. Berlin Phil Media

shall separately draw attention to the right of objection and the compliance with the deadline. The right of termination of the parties remains unaffected by this.

12. Applicable law, Place of jurisdiction

- 12.1. The law of the Federal Republic of Germany applies to these ToU and the Contract existing between Berlin Phil Media and Institution. The application of the UN Convention on Contracts for the International Sale of Goods is excluded.
- 12.2. If the Institution is a merchant, a legal entity under public law or a public special fund with its registered office in the territory of the Federal Republic of Germany, the place of performance and exclusive place of jurisdiction for all disputes arising from or in connection with the Contract shall be Berlin. If the Institution has its registered office outside the territory of the Federal Republic of Germany, Berlin is the exclusive place of jurisdiction for all disputes arising from the Contract if the Contract or claims arising from the Contract can be attributed to the professional or commercial activity of the Institution.

13. Final provisions

- 13.1. The Contract does not establish a partnership under civil law (GbR). The statutory provisions of §§ 705 et seq. German Civil Code (Bürgerliches Gesetzbuch, BGB) shall not apply.
- 13.2. Should individual provisions of these ToU be invalid, this shall not affect the validity of the remaining ToU.

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