



FRIENDS OF LIVE EARTH KIT TERMS OF USE AND END USER LICENSE AGREEMENT

This Friends of Live Earth Kit Terms of Use and End User License Agreement (“**Agreement**”), including the Live Earth Privacy Policy (“**Privacy Policy**”) <http://liveearth.org/privacy.html> which is incorporated by reference herein, constitutes a legally binding agreement made between you, whether personally or on behalf of an entity (“**you**”) and Live Earth, LLC (“**Live Earth**”), concerning your access to and use of the Friends of Live Earth Kit (as defined below) and the Live Earth website located at <http://liveearth.org> and <http://friendsofliveearth.org> (“**Website**”).

1. **General.** Live Earth’s purpose is to raise public awareness of the dangers posed to the environment and to create massive global movements to effect behavioral changes among consumers, companies and political leaders and parties to improve the environment (the “**Purpose**”). To achieve this Purpose, Live Earth is organizing a global event that will feature “live” concerts at various locations throughout the world. You can actively participate in the movement and help achieve the Purpose by creating a local event in your community. Live Earth will make available kits that at present contain a Live Earth General Fact Sheet, Live Earth Support Messaging with Call to Action, Live Earth Program Backgrounder, Live Earth Green Event Guidelines, Friends of Live Earth Logos and Rules for Usage and Friends of Live Earth Event Thought-Starters (collectively, the “Friends of Live Earth Kit”) that will help you to plan your event (“Your Event”). And, after you host Your Event, you can let the world know about Your Event by uploading materials including but not limited to photos and a description of Your Event (collectively, “Upload”) to the Website.
2. **Eligibility.** Live Earth will only knowingly provide the Friends of Live Earth Kit to parties who are legally permitted to enter into binding contracts in the jurisdiction in which they reside. By using the Friends of Live Earth Kits, you represent and warrant that: (a) all registration information you submit is truthful and accurate; (b) you will maintain the accuracy of such information; (c) you are legally permitted to enter into binding contracts in the jurisdiction in which you reside; and (d) your use of the Friends of Live Earth Kits does not violate any applicable law or regulation. Without limiting any other termination rights under this Agreement, Live Earth may terminate this Agreement and your use of the Friends of Live Earth Kit without prior notice if Live Earth in its sole discretion believes that you are not legally permitted to enter into a binding contracts in the jurisdiction in which you reside.
3. **License Grant.** Subject to the terms of this Agreement, Live Earth grants you a non-exclusive, non-sublicensable, revocable as specified below, and non-transferable license to use, reproduce, distribute, publicly perform and publicly display the Friends of Live Earth Kit solely for the purpose of hosting Your Event as described in Section 1. Except as expressly set forth herein, this Agreement grants you no rights in the intellectual property of Live Earth or any other party. If you violate the terms of this Agreement, Live Earth may terminate this Agreement, including without limitation your right to access and use or continue to use the Friends of Live Earth Kit.
4. **License Restrictions.** Except as explicitly permitted by this Agreement, you represent and warrant that you shall not, and that you shall not permit or assist others to: (a) modify or create derivative works based upon the Friends of Live Earth Kit; (b) rent, lease, loan, sublicense, resell or otherwise transfer rights to or make any commercial use of the Friends of Live Earth Kit; (c) remove any proprietary notices on the Friends of Live Earth Kit; or (d) use the Friends of Live Earth Kit in any manner that violates any applicable law or regulation, including without limitation any third party copyright or other intellectual property or proprietary right. You agree to immediately notify Live Earth of any activities, by you or others, in violation of this or any other provision of this Agreement.
5. **User Representations and Warranties.**
 - 5.1 **General.** You represent and warrant that you will conduct Your Event in a safe manner and in accordance with all applicable laws. You acknowledge and agree that you are solely responsible for claims of any person attending Your Event and for any persons or entities retained by you in connection with Your Event.
 - 5.2 **Uploads.** If you elect to make an Upload to the Website, you are entirely responsible for the content of, and any harm resulting from such an Upload. When you create or make available an Upload, you thereby represent and warrant that:
 - (a) the creation, distribution, transmission, public display and performance, accessing, downloading and copying of the Upload does not and will not infringe the proprietary rights, including but not limited to the copyright, patent, trademark or trade secret rights of any third party;
 - (b) the posting of the Upload on or through the Website does not violate the privacy rights, publicity rights, contract rights or any other rights of any person;



- (c) the Upload does not contain any viruses or other harmful or destructive content;
- (d) you have fully complied with any third-party licenses relating to the Upload, agree to pay for all royalties, fees and any other monies owing any person by reason of any Upload posted by you to or through the Website;
- (e) the Upload is not obscene, lewd, lascivious, filthy, excessively violent, harassing or otherwise objectionable, libelous or slanderous, does not advocate the violent overthrow of the government of the United States, does not incite, encourage or threaten immediate physical harm against another, does not violate any applicable law, regulation, or rule, and does not violate the privacy or publicity rights of any third party;
- (f) the Upload does not contain material that solicits personal information from anyone under 18 or exploit people under the age of 18 in a sexual or violent manner, and does not violate any federal or state law concerning child pornography or otherwise intended to protect the health or wellbeing of minors;
- (g) if your employer has rights to intellectual property you create, you have either (i) received permission from your employer to make available the Upload, or (ii) secured from your employer a waiver as to all rights in or to the Upload;
- (h) the Upload does not violate any state, federal or other law, statute or regulation designed to regulate electronic advertising;
- (i) the Upload does not otherwise violate, or link to material that violates, any provision of this Agreement or any applicable law or regulation;
- (j) the Upload does not contain pictures, data, audio or visual files, or any other content that is excessive in size, as determined by Live Earth in its sole discretion;
- (k) the Upload does not contain content that endorses or promotes racism, sexism, anti-homophobic behavior, bigotry, hatred or physical harm of any kind against another group or individual; and
- (l) the Upload does not contain content that discriminates, incites harassment or advocates harassment of any group or individual.

6. Prohibited Activities. You may not use the Friends of Live Earth Kit for any other purpose other than expressly permitted in this Agreement. Certain activities, even if legal, may violate the common rules of etiquette governing Uploads, as determined by Live Earth in Live Earth's sole discretion. Live Earth reserves the right, in its sole discretion to investigate and take appropriate legal action against anyone who, in Live Earth's sole discretion, violates this provision. Prohibited activity includes, but is not limited to:

- (a) criminal or tortuous activity, including child pornography, fraud, trafficking in obscene material, drug dealing, gambling, harassment, stalking, spamming, copyright infringement, patent infringement, or theft of trade secrets;
- (b) advertising to, or solicitation of, any user to buy or sell any products or services;
- (c) using any information obtained from the Website in order to contact, advertise to, solicit, or sell to any user without their prior explicit consent;
- (d) interfering with, disrupting, or creating an undue burden on the Website or the networks or services connected to the Website;
- (e) using any information obtained from the Website in order to harass, abuse, or harm another person;



- (f) displaying an advertisement, or accepting payment or anything of value from a third person in exchange for your performing any commercial activity on or through the Website on behalf of that person, such as posting blogs or bulletins with a commercial purpose; and
- (g) using the Website in a manner inconsistent with any and all applicable laws and regulations.

7. Intellectual Property Rights. The content of the Friends of Live Earth Kit, including without limitation the text, graphics, photos, sounds, films and the like (“**Materials**”) and the trademarks, service marks and logos contained therein (“**Marks**”), are owned by or licensed to Live Earth and are subject to copyright and other intellectual property rights under United States and foreign laws and international conventions. Materials in the Friends of Live Earth Kit are provided to you AS IS for your information and personal use only and may not be used, copied, reproduced, distributed, transmitted, broadcast, displayed, sold, licensed or otherwise exploited for any other purposes whatsoever without the prior written consent of the respective owners. Live Earth reserves all rights not expressly granted in and to the Friends of Live Earth Kit. You agree to not engage in the use, copying, or distribution of any of the Materials other than expressly permitted by Live Earth, including any use, copying, or distribution of third parties’ materials obtained through the Friends of Live Earth Kit for any commercial purposes. If you download or print a copy of the Materials for personal use, you must retain all copyright and other proprietary notices contained therein.

8. Grant of License to Live Earth. You will retain ownership of your Upload. By making an Upload to the Website, you hereby grant to Live Earth a perpetual, non-exclusive, fully-paid, royalty-free, sublicensable worldwide license to use, modify, create derivative works of, publicly perform, publicly display, reproduce, rent, resell and distribute such Upload through the Website, in all media now known or hereafter created and in any other manner in Live Earth’s sole discretion, subject to the condition that Live Earth will provide you with worldwide attribution.

9. Live Earth’s Right to Manage the Website and Terminate Users.

9.1 Live Earth Website Management. Live Earth reserves the right but does not have the obligation to: (a) monitor the Website for violations of this Agreement; (b) take appropriate legal action against anyone who, in Live Earth’s sole discretion, violates this Agreement, including without limitation reporting you to law enforcement authorities; (c) refuse, restrict access to or the availability of, or disable (to the extent technologically feasible) any user’s Upload or any portion thereof that may violate this Agreement or any Live Earth policy; (d) remove from the Website or otherwise disable all files and content that are excessive in size or are in any way burdensome to Live Earth’s systems; (e) prohibit repeat infringers from using the Website; (f) otherwise manage the Website in a manner designed to protect the rights and property of Live Earth and others and to facilitate the proper functioning of the Website; and (g) restrict access or the availability of material that Live Earth, in its sole discretion, considers to be in violation of Section 5, Section 6 or any other provisions of this Agreement.

9.2 Live Earth’s Right to Terminate Users. WITHOUT LIMITING ANY OTHER PROVISION OF THIS AGREEMENT, LIVE EARTH RESERVES THE RIGHT TO, IN LIVE EARTH’S SOLE DISCRETION AND WITHOUT PRIOR NOTICE OR LIABILITY DENY ACCESS TO AND USE OF THE FRIENDS OF LIVE EARTH KIT AND THE WEBSITE TO, ANY PERSON FOR ANY REASON OR FOR NO REASON AT ALL, INCLUDING WITHOUT LIMITATION FOR BREACH OF ANY REPRESENTATION, WARRANTY OR COVENANT CONTAINED IN THIS AGREEMENT, OR OF ANY APPLICABLE LAW OR REGULATION.

9.3 Website Errors. The Website may contain inaccuracies or typographical errors. Live Earth makes no representations about the accuracy, reliability, completeness, or timeliness of Website or any content thereon. The use of the Website is at your own risk. Changes are periodically made to Website and may be made at any time.

9.5 No Guarantee. Live Earth cannot guarantee and does not promise any specific results from use of Website. No advice or information, whether oral or written, obtained by you from Live Earth or the Website shall create any warranty not expressly stated herein.

10. Term and Termination. This Agreement shall remain in full force and effect while you use the Friends of Live Earth Kits. You may terminate your use or participation at any time. Live Earth may terminate your use or participation at any time, without prior notice. Even after your use and participation is terminated whether by you or by Live Earth, this Agreement will remain in effect, including: Section 1 (“*General*”), Section 2 (“*Eligibility*”), Section 4 (“*License*”).



Restrictions"); Section 5 ("*User Representations and Warranties*"), Section 6 ("*Prohibited Activities*"), Section 7 ("*Intellectual Property Rights*"), Section 8 ("*Grant of License to Live Earth*"), Section 9 ("*Live Earth's Right to Manage the Website and Terminate Users*"), Section 10 ("*Term and Termination*"), Section 11 ("*Non-commercial Use by Users*"), Section 12 ("*Copyright Policy*"), Section 13 ("*Disputes with Live Earth*"), Section 14 ("*No Warranty*"), Section 15 ("*Limitation of Liability*"), Section 16 ("*Indemnity*"), Section 17 ("*Modifications*") and Section 18 ("*Other*").

11. **Non-commercial Use by Users.** The Friends of Live Earth Kits are for your personal use only and may not be used in connection with any commercial endeavors.
12. **Copyright Policy.** You may not post, modify, distribute or reproduce in any way any copyrighted materials, trademarks or other proprietary information belonging to others without obtaining the prior written consent of the owner of such proprietary rights. Live Earth will terminate the access rights of any repeat infringer. If you are a copyright owner or the legal agent of a copyright owner, and you believe that any Upload or content on the Website infringes upon your copyrights, you may submit a notification pursuant to the Live Earth Digital Millennium Copyright Act ("**DMCA**") Notice <http://liveearth.org/copyright.php>.
13. **Disputes with Live Earth.** All disputes arising out of or relating to this Agreement (including its formation, performance, or alleged breach) or your access to or use of the Friends of Live Earth Kit, Uploads and Website, including without limitation your or others' downloading or consumption of the Friends of Live Earth Kit and other materials available by means of the Website or third party websites, your uploading Uploads to the Website, or your purchasing of goods or services from third parties, will be exclusively resolved under confidential binding arbitration held in Los Angeles, California before and in accordance with the rules of JAMS. Notwithstanding the foregoing, Live Earth will have the right to seek injunctive relief to enforce this Agreement or to stop or prevent an infringement of proprietary or other third party rights. In the event of litigation or to compel arbitration or to enforce an arbitration award under this Section, or to obtain an injunction under this Section, the parties hereby irrevocably consent and submit to the personal jurisdiction and venue of the state and federal courts located in Los Angeles County, California. This Agreement will be interpreted exclusively by California law.

IF YOU ARE A CALIFORNIA RESIDENT, AND IF YOU DO NOT WISH TO ACCEPT THE BINDING ARBITRATION PROVISIONS CONTAINED IN THIS SECTION YOU MUST NOTIFY US IN WRITING WITHIN 30 DAYS AFTER REGISTERING WITH THE WEBSITE BY SENDING US AN EMAIL AT DMCA@LIVEEARTH.ORG IF YOU NOTIFY US BY THAT TIME THAT YOU DO NOT ACCEPT THE BINDING ARBITRATION PROVISIONS CONTAINED IN THIS SECTION, YOU MAY CONTINUE TO VIEW THE WEBSITE; HOWEVER, YOU WILL NOT BE ABLE TO DOWNLOAD OR USE THE FRIENDS OF LIVE EARTH KIT OR CONTRIBUTE UPLOADS TO THE WEBSITE.

14. **No Warranty.** Live Earth cannot control the nature of the content available on the Website. By operating the Website, Live Earth does not represent or imply that Live Earth endorses any Uploads or other content available on or linked to by the Website, including without limitation content hosted on third party websites, or that Live Earth believes Uploads or other content to be accurate, useful or non-harmful. YOU AGREE THAT YOUR ACCESS TO AND USE OF THE WEBSITE AND THE FRIENDS OF LIVE EARTH KIT WILL BE AT YOUR SOLE RISK. THE FRIENDS OF LIVE EARTH KIT AND THE WEBSITE ARE PROVIDED "AS IS" AND "AS AVAILABLE, AND, TO THE FULLEST EXTENT PERMITTED BY LAW, LIVE EARTH, ITS OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS, LICENSORS AND AGENTS DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, IN CONNECTION WITH THE WEBSITE AND FRIENDS OF LIVE EARTH KIT AND YOUR USE THEREOF. LIVE EARTH MAKES NO WARRANTIES OR REPRESENTATIONS ABOUT THE ACCURACY OR COMPLETENESS OF THE WEBSITE'S CONTENT, THE CONTENT OF ANY WEBSITES LINKED TO THIS WEBSITE OR THE FRIENDS OF LIVE EARTH KIT AND ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY (A) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT AND MATERIALS, (B) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO AND USE OF OUR WEBSITE OR FRIENDS OF LIVE EARTH KIT, (C) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION STORED THEREIN, (D) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE WEBSITE, (E) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE WHICH MAY BE TRANSMITTED TO OR THROUGH THE WEBSITE BY ANY THIRD PARTY, AND/OR (F) ANY ERRORS OR OMISSIONS IN ANY CONTENT AND MATERIALS OR FOR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE VIA THE WEBSITE. LIVE EARTH DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PRODUCT OR SERVICE ADVERTISED OR OFFERED BY A THIRD PARTY THROUGH THE WEBSITE OR ANY HYPERLINKED WEBSITE OR FEATURED IN ANY BANNER OR OTHER ADVERTISING, AND LIVE EARTH WILL NOT BE A PARTY TO OR IN ANY WAY BE RESPONSIBLE FOR MONITORING ANY TRANSACTION



BETWEEN YOU AND THIRD-PARTY PROVIDERS OF PRODUCTS OR SERVICES. AS WITH THE PURCHASE OF A PRODUCT OR SERVICE THROUGH ANY MEDIUM OR IN ANY ENVIRONMENT, YOU SHOULD USE YOUR BEST JUDGMENT AND EXERCISE CAUTION WHERE APPROPRIATE.

- 15. Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, LIVE EARTH AND ITS CONTRACTORS OR LICENSORS, WILL NOT BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, REGARDLESS OF THE BASIS OR NATURE OF THE CLAIM, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY ACCESS TO OR USE OF THE WEBSITE, UPLOADS AND FRIENDS OF LIVE EARTH KIT, INCLUDING WITHOUT LIMITATION ANY LOST PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA OR CONFIDENTIAL OR OTHER INFORMATION, LOSS OF PRIVACY, NEGLIGENCE OR OTHERWISE, EVEN IF SUCH PARTIES WERE AWARE OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, LIVE EARTH'S LIABILITY TO YOU FOR ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION, WILL AT ALL TIMES BE LIMITED TO THE AMOUNT PAID, IF ANY, BY YOU TO LIVE EARTH FOR THE FRIENDS OF LIVE EARTH KITS DURING THE TERM OF YOUR USE OF THE WEBSITE. THE PARTIES AGREE THAT THIS LIMITATION OF LIABILITY REPRESENTS A REASONABLE ALLOCATION OF RISK. SOME JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OF CERTAIN IMPLIED WARRANTIES OR THE LIMITATION OF CERTAIN DAMAGES, SO SOME OF THE ABOVE DISCLAIMERS, WAIVERS AND LIMITATIONS OF LIABILITY MAY NOT APPLY TO YOU.
- 16. Indemnity.** You agree to defend, indemnify and hold harmless Live Earth and its directors, officers, employees, agents, representatives, affiliates, parents, subsidiaries, licensors, suppliers, service providers and other contractors (collectively, "**Live Earth Indemnified Parties**") from and against any and all claims, actions, demands, causes of action and other proceedings ("**Claims**") arising out of or relating to: (a) your breach of this Agreement, including without limitation any representation or warranty contained in this Agreement; (b) your access to or use of the Website and Friends of Live Earth Kit, including without limitation your or others' access of content or other materials available by means of the Website or Third-Party Websites, or your purchasing of goods or services from third parties; (c) any person attending Your Event or any persons or entities retained by you in connection with Your Event; or (d) your provision to Live Earth of information or other data. The Live Earth Indemnified Parties will have the right, but not the obligation, to participate through counsel of their choice in any defense by you of any Claim as to which you are required to defend, indemnify or hold harmless the Live Earth Indemnified Parties ("**Indemnified Claim**"). You shall not settle any such Indemnified Claim without the Live Earth Indemnified Parties' written consent, unless such settlement (i) grants the Live Earth Indemnified Parties a full, complete and permanent release of all liability with respect to such Indemnified Claim, and (ii) does not (A) impose any obligation on the Live Earth Indemnified Parties, (B) impair the rights of the Live Earth Indemnified Parties, or (C) constitute or involve any admission of guilt, wrongdoing or culpability by or on behalf of the Live Earth Indemnified Parties. Any settlement of any such Indemnified Claim by the Live Earth Indemnified Parties shall be subject to your written consent. However, if you do not approve a settlement that any of the Live Earth Indemnified Parties desires to enter into, you shall be deemed to have consented to such settlement if you does not, within ten (10) business days after being notified of the terms of such settlement, post a bond, reasonably satisfactory to the Live Earth Indemnified Parties, to assure the applicable Live Earth Indemnified Parties of payment for all damages, liabilities, costs and expenses (including attorneys' and accountants' fees reasonably incurred) that Live Earth Indemnified Parties estimates, in its reasonable business judgment, it may incur or be subjected to as a result of such Indemnified Claim.
- 17. Modifications.** Live Earth may modify this Agreement from time to time. If Live Earth wishes to amend this Agreement, it may, at its option, send you an email requesting your acceptance of the modified Agreement. If you do not click to accept the modified Agreement, Live Earth will terminate this Agreement.
- 18. Other.** This Agreement constitutes the entire agreement between you and Live Earth regarding the use of the Live Earth Website and Friends of Live Earth Kit, and may only be modified by a written amendment signed by an authorized executive of Live Earth. Any right conferred on the parties by this Agreement (including any right of termination) shall be in addition to and without prejudice to all other rights and remedies available to them and their exercise or failure to exercise or delay in exercising any right or remedy shall not constitute a waiver by any of them of that or any available right or remedy. The failure of Live Earth to exercise or enforce any right or provision of this Agreement shall not operate as a waiver of such right or provision. The section titles in this Agreement are for convenience only and have no legal or contractual effect. This Agreement operates to the fullest extent permissible by law. If any provision or part of a provision of this Agreement is unlawful, void or unenforceable, that provision or part of the provision is deemed severable from this Agreement and does not affect the validity and enforceability of any remaining provisions. You may not assign your rights under this Agreement to any third party; Live Earth may assign its rights under this Agreement without condition.