

# TERMS OF USE – CHOICE PLATFORM

*Version: June 2021*

Disclaimer: Please read these terms of use carefully before using the Choice Platform. By clicking the "I agree" button, (i) you agree that your use of the Choice Platform shall be governed by the present terms of use, (ii) you explicitly confirm all acknowledgments, agreements, representations and warranties as set out in the Terms of Use.

These terms of use (the "**Terms of Use**") describe the terms and conditions under which users (the "**User**" or "**You**") can use the Platform (as defined hereinafter).

The Platform is operated and managed by Choice NV, a limited liability company incorporated under the laws of Belgium, registered at the Crossroads Bank for Enterprises under the number 0748.659.757 and with its registered office at Jachthoorn 5, 3210 Lubbeek, Belgium or by any of its affiliates (jointly "**Choice**", "**we**" or "**us**").

If you have any questions about the Platform or these Terms of Use, please contact us at [info@choice.be](mailto:info@choice.be).

## 1. THE PLATFORM AND TYPES OF USERS

1.1 The Choice platform is an online social media platform for television and video content to be accessed from the webpage "watch.choice.be" (the "**Platform**").

1.2 The following categories of Users (collectively, the "**Users**") shall have access to the Platform:

1.2.1 "**Basic Users**" – natural persons having accepted the present Terms of Use and related privacy and cookie policy, but not having created a User Account (as defined hereinafter) shall be entitled to discover and watch playlists;

1.2.2 "**Registered Users**" – natural persons having accepted the Terms of Use and related privacy and cookie policy and having created a unique user account with a unique username and password (a "**User Account**") shall be entitled to (i) discover and watch playlists with links to video content from television and other platforms or sources on the Platform and (ii) create channels or playlists with their favourite television, video or other visual media content posted or made available on the Internet in accordance with the procedures and guidelines set out on the Platform (each, a "**Channel**") whereby such channel or playlist contains hyperlinks to the source of such content or the website on which such content is hosted and is accessible (jointly, "**Visual Media Content**"). A Registered User can also select and upload its own information, data, pictures, video, texts, pages, materials, tools and other content to his channels or playlists. Registered Users have additional possibilities such as but not limited to following Channels, liking Channels, sharing or promoting Channels;

1.2.3 "**Registered Users Plus**" – natural persons having accepted the Terms of Use and related privacy and cookie policy and having created a User Account with additional required credentials such as for example the residence of the User and shall be entitled to (i) discover and watch playlists with video content from

television and other platforms or source on the Platform, (ii) create Channels with links to their favourite Visual Media Content and to select and upload his own Content in his Channels, and (iii) access certain Content that is only accessible to Registered Users Plus. The extra required credentials for a Plus User may vary from time to time and are determined at the sole discretion of Choice.

1.2.4 **"Commercial Users"** – natural persons or legal entities having accepted the Terms of Use and related privacy and cookie policy, having created minimally a Registered User Account and having entered into a commercial partnership agreement with Choice in a form to be determined by Choice at its sole discretion (the **"Commercial User Agreement"**). Commercial Users shall have the use and access rights to the Platform as set out in their Commercial User Agreement.

1.3 In case you need technical support, you can contact us on the following e-mail address support@choice.be.

## 2. **APPLICABILITY**

2.1 You acknowledge and agree that your use of the Platform is exclusively governed by these Terms of Use, even when they are conflicting your or your company's general or special terms and conditions. The fact that Choice did not explicitly reject the terms and conditions of the User shall not be interpreted by the User as an acceptance by Choice of such terms and conditions. If you do not agree to any provision of these Terms of Use, you shall stop using the Platform immediately, even if you already are a Registered User, Registered User Plus or a Commercial User.

2.2 We reserve the right at any time, and from time to time, with or without cause to:

- (a) change the Platform, including eliminating or discontinuing, temporarily or permanently, any service or other feature of the Platform without any liability towards the User or any third parties;
- (b) amend or change these Terms of Use and/or the privacy and cookie policy; or
- (c) deny or terminate, in part, temporarily or permanently, your use of and/or access to the Platform as set forth herein.

Any such amendments or changes made will be effective immediately upon us making such changes available in the Platform or otherwise providing notice thereof. You agree that your continued use of the Platform after such changes constitutes your acceptance of such changes.

## 3. **USE OF THE PLATFORM**

3.1 You may only use the Platform if you are 18 years old or older. To the extent authorised by the applicable laws, if you are aged between 13 and 18 years old, you may use the Platform *provided that* you and your parent or guardian have carefully read and agreed with these Terms of Use. If we believe that you are underaged, we reserve the right to delete your User Account and withhold your access to the Platform.

- 3.2 To use the Platform, your device requires a WIFI or mobile internet connection. The access to such WIFI or mobile internet connection is your sole responsibility. Choice shall not be liable for any loss or damage in connection with your failure to comply with the above requirements.
- 3.3 You will be required to create a password when registering to become a Registered User (Plus) or Commercial User. You shall be solely responsible for maintaining the confidentiality and security of your account login information such as your password. You shall be fully responsible for all activities that arise under your account. You shall immediately notify any unauthorised use, or suspected unauthorised use of your account or any other breach of security with respect to your account on the Platform which come to your knowledge. Choice shall not be liable for any loss or damage arising from your failure to comply with the above-mentioned requirements.
- 3.4 Choice has the right, but not the obligation, at its sole discretion, to provide you with certain updates of the Platform.

#### 4. **THIRD-PARTY CONTENT AND THIRD-PARTY SERVICES**

- 4.1 In order to (i) fully utilise certain elements available on or via the Platform or (ii) access the Platform through any domain via which the Platform is accessible, the Platform may include gateways, links, references to downloadable software or other functionalities or the User may be allowed or required to download software or access third-party services (the "**Third-Party Services**") and/or third-party Content (the "**Third-Party Content**"). If a User uses Third-Party Services or Third-Party Content through or via the Platform, such User shall be obliged to agree with and comply with the terms of service, terms of use, license agreements, end-user agreements, general terms and conditions, privacy and cookie policies, and/or security policy of the provider of such Third-Party Services or Third-Party Content (the "**Third-Party ToU**").
- 4.2 By accessing Third-party Services or Third-party Content, the User agrees to comply with the applicable Third-Party ToU and acknowledges to be the sole party to such Third-Party ToU. Choice shall not be held liable in any way in connection to the content of Third-Party ToU, or with respect to the compliance therewith by such third-party.
- 4.3 If the Platform allows Third-Party Services or Third-Party Content, Choice does not supply and is not responsible for any Third-Party Services or Third-Party Content.
- 4.4 The User shall defend, fully indemnify and hold Choice and its personnel, officers, directors, successors and assigns harmless from and against any and all direct and indirect damages incurred by it in relation to the User breaching or otherwise not complying with Third-Party ToU.

#### 5. **LICENCE GRANTED TO THE USER**

- 5.1 During the Term and subject to your compliance with the Terms of Use, Choice grants you a non-exclusive, personal, restricted, non-sublicensable and non-transferable licence to use the Platform in sole compliance with (i) these Terms of Use, (ii) any additional instructions or policies issued by Choice, including, but not limited to, those posted within the Platform and (iii) any applicable legislation, rules or regulations (the "**License**").

5.2 You agree to use the Platform only for its intended use as set forth in these Terms of Use and the additional instructions or policies issued by Choice, including, but not limited to, those posted within the Platform. Within the limits of the applicable legislation, rules and regulations, you are not permitted to:

- (a) alter, translate, adapt or modify in any manner the Platform;
- (b) sublicense, lease, rent, loan, distribute, make available or otherwise transfer the Platform to any third party;
- (c) make the Platform available or to sell or rent the Platform to any third-party;
- (d) decompile, reverse engineer, disassemble, decode, circumvent, re-identify, de-anonymise, unscramble, unencrypt or otherwise derive or determine or attempt to derive or determine the source code (or the underlying ideas, algorithms, structure or organisation) of the Platform;
- (e) use or copy the Platform except as expressly allowed under this Clause 5;
- (f) gain unauthorised access to accounts of other Users;
- (g) use the Platform to conduct or promote any illegal activities;
- (h) use the Platform to circulate unsolicited e-mail advertisements or spam;
- (i) impersonate any person or entity, or otherwise misrepresent your affiliation with a person or entity;
- (j) use any high volume automatic, electronic or manual processes to access, search or harvest information from the Platform (including without limitation algorithms, robots, spiders or scripts);
- (k) alter, remove, or obscure any copyright notice, digital watermarks, proprietary legends or other notice included in the Platform;
- (l) remove or in any manner circumvent any technical or other protective measures in the Platform; or
- (m) intentionally distribute any worms, Trojan horses, corrupted files, or other items of a destructive or deceptive nature or use the Platform for any unlawful, invasive, infringing, defamatory or fraudulent purpose.
- (n) upload or link Visual Media Content on the Platform which could be considered as Illegal Content or inappropriate Content (as defined hereinafter).

5.3 Except as expressly set forth herein, no express or implied licence or right of any kind is granted to you regarding the Platform thereof, including but not limited to any right to obtain possession of any source code, data or other technical material relating to the Platform.

- 5.4 The License is for the personal use of Users only, unless specified otherwise in a User's Commercial User Agreement. Goods and services available on or via the Platform (including, but not limited to, Third-Party Services and Third-Party Content) and/or other domain or subdomain on which the Platform is available, may not be used in connection with any commercial activities except those which are endorsed and agreed by Choice. Any and all unauthorised commercial advertisements, affiliate links and other forms of solicitations will be removed from the Platform.

## 6. LICENCE GRANTED TO CHOICE

- 6.1 You grant Choice a non-exclusive, perpetual, royalty-free, worldwide, sublicensable, transferable, license to use, copy, store, modify, transmit and display the links you provide in the Platform and the information, data, or content you upload, create or otherwise provide through the Platform (including in each case your Visual Media Content and Channels) (the "**User Content**") and all Intellectual Property Rights (as defined hereinafter) included therein. Choice reserves the right, but is not obliged, at its sole discretion, to review and remove any User Content (including in each case your Visual Media Content, links and Channels) that Choice deems to be in violation with the provisions of these Terms of Use, any rights of third-parties, any applicable legislation or regulation, or that is otherwise deemed inappropriate.

## 7. FEES

Choice does not currently charge for use of the Platform. However, Choice reserves the right to, at its sole discretion, do so in the future. If Choice decides to charge the User for the use of the Platform, such charge will be disclosed to you prior to taking effect and if you do not wish to pay such charges, your sole and exclusive remedy will be to terminate your use of the Platform, at which point each party's obligations under these Terms of Use will automatically terminate, except as otherwise stated in these Terms of Use.

## 8. DATA PROTECTION

When performing its obligations under these Terms of Use, Choice will process some of your personal data. In this case, Choice's privacy policy <http://www.choice.be/privacy-policy> will apply.

## 9. INTELLECTUAL PROPERTY RIGHTS

- 9.1 For purposes of these Terms of Use, "**Intellectual Property Rights**" shall mean any and all now known or hereafter existing (a) rights associated with works of authorship, including copyrights, mask work rights, and moral rights; (b) trademark or service mark rights; (c) trade secret rights, know-how; (d) patents, patent rights, and industrial property rights; (e) layout design rights, design rights, (f) trade and business names, domain names, database rights, rental rights and any other industrial or intellectual proprietary rights or similar right (whether registered or unregistered); (g) all registrations, applications for registration, renewals, extensions, divisions, improvements or reissues relating to any of these rights and the right to apply for, maintain and enforce any of the preceding items, in each case in any jurisdiction throughout the world.

9.2 Except for the limited licence expressly granted in Clause 5 by Choice to the User, Choice will exclusively retain all rights, titles and interests, including any Intellectual Property Rights, in and to the Platform (or any part thereof), *it being understood that* nothing in these Terms of Use shall constitute or be construed as a transfer of ownership in any proprietary right or title, including in any Intellectual Property Rights of Choice to the User.

9.3 Except for the limited licence expressly granted in Clause 6 by the User to Choice, the User will retain all rights, titles and interests, including any Intellectual Property Rights, in and to the User Content, *it being understood that* nothing in these Terms of Use shall constitute or be construed as a transfer of ownership in any proprietary right or title, including in any Intellectual Property Rights of the User to Choice.

## 10. **SUSPENSION FOR BREACH**

Choice shall be entitled, at its sole discretion, to suspend or limit your access to the Platform if it becomes aware or suspects, at its sole discretion, that you violated any provision of these Terms of Use or any other instructions, guidelines or policies issued by Choice. The duration of any suspension by Choice shall be until you have cured the breach which caused such suspension or limitation.

## 11. **LIABILITY**

11.1 To the maximum extent permitted under applicable law, Choice shall only be liable for damages resulting from (i) its gross negligence or fraud, or (ii) its wilful misconduct.

11.2 To the extent legally permitted under applicable law, Choice shall not be liable to the User or any third-party, for any special, indirect, exemplary, punitive, incidental or consequential damages of any nature including, but not limited to damages or costs due to loss of profits, data, revenue, goodwill, production of use, procurement of substitute services, or property damage arising out of or in connection with the Platform under these Terms of Use, including but not limited to any miscalculations, or the use, misuse, or inability to use the Platform, regardless of the cause of action or the theory of liability, whether in tort, contract, or otherwise, even if Choice have been notified of the likelihood of such damages.

11.3 You agree that Choice can only be held liable as per the terms of this Clause 11 to the extent damages suffered by you are directly attributable to Choice. *For the avoidance of doubt*, Choice shall not be liable for any claims resulting from or in connection with:

- (a) the accuracy, completeness, correctness or adequateness for its intended use of the User Content (including in each case your Visual Media Content and Channels), the Third-Party Services and Third-Party Content;
- (b) your unauthorised use of the Platform;
- (c) your or any third-party's modification of (any parts of) the Platform;
- (d) your failure to use the most recent version of the Platform made available to you or your failure to integrate or install any corrections to the Platform issued by Choice; or

- (e) your use of the Platform in combination with any non-Company products or services.

11.4 The exclusions and limitations of liability under this Clause shall operate to the benefit of any of Company's affiliates and subcontractors under these Terms of Use to the same extent such provisions operate to the benefit of Choice.

## 12. WARRANTIES

### 12.1 By the User

12.1.1 You represent and warrant to Choice that you are 18 years old or above or, if you are aged between 13 and 18 years, that you and your parent or guardian have read, reviewed and accepted these Terms of Use.

12.1.2 You represent and warrant to Choice that any User Content provided by you (including in each case your Visual Media Content, Channels and the hyperlinks or references uploaded on the Platform referring to your Visual Media Content) is accurate, complete, truthful and adequate for its intended use through the Platform, and shall not at any point in time:

- (a) infringe any Intellectual Property Rights of third parties;
- (b) constitute a violation of a person's right to privacy or data protection;
- (c) misappropriate any trade secret;
- (d) be threatening, vulgar, deceptive, defamatory, obscene, pornographic or otherwise objectionable;
- (e) contain any unwanted commercial content, such as spam, unsolicited messages, whose purpose is to drive Users to third-party websites [in breach of the Terms and Conditions];
- (f) contain any Virus;
- (g) be considered illegal; or
- (h) otherwise violate the rights of a third-party.

For the purposes of these Terms of Use, "**Virus**" means a virus, cancelbot, worm, time-bombs, logic bomb, keystroke loggers, spyware, Trojan horse, adware or other harmful program, component of software/data or similar computer code that adversely affects the operation of any computer software, hardware, system or data.

12.1.3 The User acknowledges and agrees that Choice is not obligated to endorse any User Content. You agree that any use of the Platform contrary to or in violation of these representations and warranties shall constitute unauthorised and improper use of the Platform for which Choice cannot be held liable.

### 12.2 By Choice

12.2.1 Except as expressly provided in this Clause 12.2 and to the maximum extent permitted by applicable law:

- (a) the Platform is provided "as is"; and
- (b) Choice makes no (and hereby disclaims all) other warranties, guarantees, covenants or representations, or conditions, whether written, oral, express or implied including, without limitation, any implied warranties of satisfactory quality, course of dealing, trade usage or practice, merchantability, accuracy, suitability, availability, title, non-infringement, or fitness for a particular use or purpose, with respect to (i) the use, misuse, or inability to use the Platform or any other products or services provided to the User by Choice or accessible through the Platform and (ii) the Third-Party Services and Third-Party Content.

Choice does not warrant that the Platform or its content will meet your requirements, is error-free, secure, reliable or will operate without interruption.

12.2.2 The User acknowledges and agrees that there are risks inherent to transmitting information over and storing information on the internet and that Choice is not responsible and cannot be held liable for any losses of your data, including but not limited to the User Content.

### 13. INDEMNIFICATION

#### 13.1 By the User

13.1.1 You hereby agree to indemnify and hold Choice and its current and future affiliates, officers, directors, employees, agents and representatives harmless from each and every demand, claim, loss, liability, or damage of any kind whatsoever (including reasonable attorney's fees) whether in tort or in contract, that it or any of them may incur by reason of, arising out of or in connection with any claim which is made by any third party with respect to:

- (a) any breach or violation by you of any provisions of these Terms of Use (including, but not limited to, a breach of the representations and warranties as set out in Clause 12.1) or any other instructions or policies issued by Choice;
- (b) any User Content violating any Intellectual Property Rights of a third party; or
- (c) fraud, wilful misconduct, or gross negligence committed by you.

13.1.2 If you are aged between 13 and 18 years old, your parent or guardian shall be jointly and severally responsible for indemnifying Choice under this Clause 13.1.

#### 13.2 By Choice

13.2.1 Choice shall defend and indemnify you as specified herein against any founded and well-substantiated claim (excluding indirect or consequential damages)



brought by third-parties to the extent such claim is based on an infringement of the Intellectual Property Rights of such third-party by the Platform and excluding any claims resulting from or in connection with:

- (a) the accuracy, completeness, correctness or adequateness for its intended use of the User Content (including in each case your Visual Media Content and Channels), Third-Party Services and/or Third-Party Content;
- (b) your unauthorised use of the Platform;
- (c) your or any third-party's modification of (any parts of) the Platform;
- (d) your failure to use the most recent version of the Platform made available to you or your failure to integrate or install any corrections to the Platform issued by Choice; or
- (e) your use of the Platform in combination with any non-Company products or services.

13.2.2 The indemnity obligation set out in Clause 13.2.1 shall be conditional upon the following:

- (a) Choice is given prompt written notice of any such claim;
- (b) Choice is granted sole control of the defence and settlement of such a claim;
- (c) upon Choice's request, the User fully cooperates with Choice in the defence and settlement of such a claim, at Choice's expense; and
- (d) the User makes no admission as to Choice's liability in respect of such a claim, nor does the User agree to any settlement in respect of such a claim without Choice's prior written consent.

13.2.3 *Provided that* the conditions set out in these Terms of Use are met, Choice shall indemnify the User for all damages and costs incurred by the User as a result of such a claim set out in Clause 13.2.1, up to an amount equal to the fees (if any) paid by the User to Choice during the preceding month.

13.2.4 In the event the Platform, in Choice's reasonable opinion, is likely to or becomes the subject of a third-party infringement claim (as per this Clause 13.2.1), Choice shall have the right, at its sole discretion and expense, to:

- (a) modify the (allegedly) infringing part of the Platform so that it becomes non-infringing while preserving materially equivalent functionalities;
- (b) obtain for the User a licence to continue using the Platform in accordance with these Terms of Use; or

- (c) terminate the Terms of Use and/or any other agreement entered into between the User and Choice and refund up to an amount equal to the fees (if any) paid by the User to Choice during the preceding month.

13.2.5 The foregoing states the entire liability and obligation of Choice and the sole remedy of the User with respect to any infringement or alleged infringement of any Intellectual Property Rights caused by the Platform or any part thereof.

#### 14. **TERM**

14.1 These Terms of Use shall remain in full force as long as you are using the Platform and the License, unless these Terms of Use are terminated prior in accordance with Clause 15 (the "**Term**").

14.2 At the end of the Term, any rights on the Platform that were granted to you under these Terms of Use shall automatically expire.

#### 15. **TERMINATION**

15.1 Choice may terminate with immediate effect these Terms of Use and your right to access and use of the Platform if Choice believes or has reasonable grounds to suspect that you are violating these Terms of Use (including but not limited to any violation of the Intellectual Property Rights of Choice), or any other guidelines or policies issued by Choice.

15.2 Upon the termination of these Terms of Use for any reason whatsoever in accordance with the provisions of these Terms of Use, at the moment of effective termination:

- (a) you will no longer be authorised to access or use the Platform;
- (b) if you are a Registered User, Registered User Plus or Commercial User, your account on the Platform will be deleted; and
- (c) all rights and obligations of Choice or the User under these Terms of Use shall terminate, except those rights and obligations under those Clause specifically designated in Clause 16.5.

#### 16. **MISCELLANEOUS**

##### 16.1 Force Majeure

Choice shall not be liable for any failure or delay in the performance of its obligations with regard to the Platform if such delay or failure is due to causes beyond our control including by not limited to war, strikes or labour disputes, embargoes, government orders, telecommunications, network, computer, server or internet downtime, unauthorised access to Company's information technology systems by third parties or any other cause beyond the reasonable control of Choice (the "**Force Majeure Event**"). We shall notify you of the nature of such Force Majeure Event and the effect on our ability to perform our obligations under these Terms of Use, and how we plan to mitigate the effect of such Force Majeure Event.

##### 16.2 Severability

In the event that any provision of these Terms of Use are, for any reason, held to be invalid, void or unenforceable, the other provisions of these Terms of Use will remain enforceable and the invalid, void or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.

### 16.3 Waiver

Any failure to enforce any provision of the Terms of Use shall not constitute a waiver thereof or of any other provision.

### 16.4 Assignment

16.4.1 You may not assign or transfer these Terms of Use, or any other rights or obligations to any third party.

16.4.2 Choice shall be free to:

- (a) transfer or assign (part of) its obligations or rights under the Terms of Use to one of its affiliates; and
- (b) to subcontract performance or the support of the performance of these Terms of Use, to its affiliates, to individual contractors and to third party service providers without prior notification to the User.

### 16.5 Survival

Clauses 9, 11, 12 and 13 shall survive any termination or expiration of these Terms of Use.

### 16.6 Governing law and jurisdiction

These Terms of Use shall be exclusively governed by and construed in accordance with the laws of Belgium, without giving effect to any of its conflict of law principles or rules. The courts and tribunals of Leuven shall have sole jurisdiction should any dispute arise relating to these Terms of Use.