

FILMPAC STOCK MEDIA LICENSE AGREEMENT

This FILMPAC™ STOCK MEDIA LICENSE AGREEMENT (“Agreement”) sets forth the terms and conditions pursuant to which FILMPAC LLC, an Oregon limited liability company (“FILMPAC”) will grant LICENSEE (as defined below) commercial access to FILMPAC’s proprietary stock media.

Capitalized terms are either defined in the body of this Agreement or in the “Definitions” section at the end of this Agreement.

**SECTION 1. COMMERCIAL LICENSE GRANT; SUBLICENSING; PURCHASER**

- 1.1 Commercial License Grant. Subject to the terms and conditions of this Agreement, FILMPAC hereby grants to LICENSEE the nonexclusive, worldwide, perpetual right and license to Use all or any part of the Licensed Media in connection with the development of End Products for use by LICENSEE or by LICENSEE’s Direct End Clients in any and all media and formats now known or hereafter devised but solely within the Permitted Scope of Use. Ongoing usage rights are subject to LICENSEE’s compliance with all terms and conditions set forth in this Agreement.
- 1.2 Sublicensing. LICENSEE may only sublicense the rights granted to it hereunder where LICENSEE is subcontracting out an aspect of production, editing or distribution of End Product to an affiliate or a third party individual, organization or entity and only so long as such Affiliate, individual, organization or entity is under a legally enforceable agreement with LICENSEE that is at least as protective of the Licensed Media as this Agreement (each a “Sublicensee”). LICENSEE shall be liable for the actions of all such Sublicensees, including without limitation, their failure to comply with Section 2 (Restrictions on Use) or any other term or condition of this Agreement.
- 1.3 Purchaser Different From LICENSEE. Where Purchaser is licensing rights to Use the Licensed Media on behalf of a LICENSEE, Purchaser hereby represents and warrants that: (i) Purchaser is authorized to act as an agent on behalf of LICENSEE and has full power and authority to bind LICENSEE to this Agreement; and (ii) if LICENSEE subsequently disputes such power or authority, Purchaser shall be liable for any failure of LICENSEE to comply with the terms of this Agreement. Nothing in this Section 1.3 shall excuse Purchaser's obligation to make payment to FILMPAC of the License Fee.

**SECTION 2. PERMITTED SCOPE OF USE; RESTRICTIONS ON USE**

- 2.1 Permitted Scope of Use.
  - (a) For Filmpac standard commercial licenses, the following permitted scope of work applies:

PERMITTED SCOPE OF USE (STANDARD)	<ul style="list-style-type: none"> <li>● Digital/Internet Streaming (Websites, Social Media, YouTube, Podcasts)</li> <li>● Internal/Industrial Direct Display (Presentations, Conferences, Trade shows)</li> <li>● Local Broadcast Only (Television, Hulu, Radio)</li> <li>● Small Budget Film Only (Documentaries, Movies)</li> </ul>
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	<ul style="list-style-type: none"> <li>● Restrictions: <ul style="list-style-type: none"> <li>○ Single Editor</li> <li>○ No Restricted Uses</li> <li>○ No redistribution rights (except as included in End Product)</li> </ul> </li> </ul>
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- (b) For Filmpac extended commercial licenses, the following additional permitted scope of work applies:

PERMITTED SCOPE OF USE (EXTENDED)	<ul style="list-style-type: none"> <li>● Large Budget Film (Documentaries, Movies)</li> <li>● Large Broadcast (Television, Hulu, Radio)</li> <li>● Video Games (XBOX, PlayStation, Nintendo)</li> <li>● Theatrical/Out-of-Home (Theaters, Stadiums, Public Displays)</li> <li>● Restrictions: <ul style="list-style-type: none"> <li>○ Single Direct End Client</li> <li>○ No Restricted Uses</li> <li>○ No redistribution rights (except as included in End Product)</li> </ul> </li> </ul>
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2.2 Restricted Uses: Code of Conduct.

- (a) LICENSEE may not use the Licensed Media in a pornographic, defamatory or other unlawful manner, or in violation of any applicable regulations.
- (b) LICENSEE may not use the Licensed Media in a way that could be considered hateful or derogatory of any race, nationality, ethnic identity, gender, gender identity or sexual orientation, or political or religious belief without obtaining prior approval from FILMPAC.
- (c) LICENSEE shall not use the Licensed Media in any way that might be considered libelous, obscene, drug or alcohol abuse, tobacco use, excessively violent, content deemed appropriate for mature audiences only, immoral or illegal. LICENSEE also shall not use the Licensed Media in any manner that creates a false inference or places the Licensed Media, or any model or property featured therein, in a context that is likely to result in bringing FILMPAC or any such model or property owner into public disrespect, scandal, ridicule, or which would otherwise detract from the public image of FILMPAC.

2.3 Restricted Uses: Restrictions on License Scope.

- (a) If LICENSEE and Purchaser are not the same individual/entity, Purchaser is prohibited from Using the Licensed Media in any way, unless Purchaser is a permitted Sublicensee.
- (b) If you have purchased a standard commercial license, LICENSEE may not use the Licensed Media to develop End Product for Large Broadcast or Large Budget Film.
- (c) If you have purchased a standard commercial license, LICENSEE must maintain the Licensed Media in a manner that ensures only the single Editor has access to the Licensed Media and any End Product in its native format.

- (d) If you have purchased an extended commercial license, LICENSEE may only Use the Licensed Media to develop End Product for a single Direct End Client.
- (e) Neither the Licensed Media nor any Reproductions may be redistributed in part or whole (such as on filmpac.com) or displayed in part or whole (such as on filmpac.com) for on-demand selection by end clients.
- (f) The Licensed Media is intended to be Used in the creation of unique End Products for specified Direct End Clients (*i.e.* use of any Licensed Media in a stand-alone format is strictly prohibited). Without limiting the generality of the foregoing restriction, LICENSEE is prohibited from producing, developing or otherwise creating an End Product, or a grouping of substantially similar End Products, for redistribution to multiple Direct End Clients. Examples of prohibited activity include: (a) a 60 second yoga promo video that is offered by LICENSEE to multiple Direct End Clients with only the yoga studio name and logo changed; (b) single video or Music track placed on a membership group site for access by all members of the group (restriction would apply to the membership group both as a LICENSEE and as a Direct End Client), (c) the inclusion or sampling of any Music (whether as full tracks or stems) in the creation of a new audio work or music track with the intent to redistribute the new work/track other than as incorporated into an End Product, and (d) video templates or ready-made videos that are intended for distribution to multiple Direct End Clients. Where a LICENSEE desires to develop End Product for such uses, additional licensing is required and fees may apply.
- (g) LICENSEE may not use the Licensed Media in any way that allows others to download, extract, or redistribute content as a standalone file (meaning just the content file itself, separate from the project or end use) or print an image upon merchandise, such as mugs, t-shirts, business cards (*e.g.* zazzle.com or cafepress.com).
- (h) LICENSEE may not incorporate Licensed Media into a logo, corporate ID, trademark or service mark.
- (i) Direct End Clients may not modify, alter or edit in any way End Product, such rights are limited to the LICENSEE and permitted Sublicensees only.
- (j) If the End Product is hosted on a website, or other digital imagery accessible from the internet, LICENSEE will use commercially reasonable efforts to protect the Licensed Media from illegal copying and downloading.

### **SECTION 3. LICENSE FEE; PAYMENT TERMS**

- 3.1 License Fee. The License Fee is a one-time non-refundable fee and is due at the time of purchase. Once FILMPAC has received the License Fee, the license shall be fully paid up.
- 3.2 Payment. All sums payable hereunder shall be payable in U.S. dollars, unless other currency is indicated by FILMPAC. In calculating the amount owed, if currency conversion is necessary, the exchange rate to be used shall be as published in the Wall Street Journal for the New York market closing rate on the last day of the applicable Reporting Period, or another rate

mutually agreed to by the parties in advance of payment. All sums not paid by the due date shall bear interest from the due date until paid at the rate of 1.5% per month or the highest rate permitted by law, whichever is lower.

- 3.3** Taxes; Withholding. Fees payable hereunder are exclusive of taxes. LICENSEE shall be responsible for all sales, use, excise, and value added taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental authority on any amounts payable by LICENSEE hereunder. LICENSEE shall pay all such sums free and clear of all deductions and withholdings whatsoever, unless the deduction or withholding is required by law. If any deduction or withholding is required by law, LICENSEE shall pay to FILMPAC such sum as will, after the deduction or withholding has been made, leave FILMPAC with the same amount as it would have been entitled to receive without any such requirement to make a deduction or withholding. LICENSEE will notify FILMPAC of any required withholding and provide any related documentation to FILMPAC promptly.

**SECTION 4. INTELLECTUAL PROPERTY RIGHTS; CLEARANCE OBLIGATIONS; PROS; CIDS; CREDITS**

- 4.1** Reservation of Rights. Licensed Media is, and will continue to be, owned by FILMPAC and its contributors. No ownership or copyright in any content included in the Licensed Media shall pass to LICENSEE by the issuance of the license contained in this Agreement. Except as expressly stated in this Agreement, FILMPAC grants LICENSEE no right or license, express or implied, to the Licensed Media or any derivative works of the Licensed Media.
- 4.2** Clearance Obligations. Licensed Media [that is film footage] may contain third party materials that require permission or fair use analysis prior to LICENSEE's Use of such Licensed Media. LICENSEE is responsible for taking appropriate measures to blur, obscure, or remove any materials it determines require additional permissions, or alternatively, for obtaining such permissions. More specifically, but without limiting the general obligations above, LICENSEE is responsible for performing clearance analysis on any business names, logos, trade dress, or other words/designs protectable under trademark law that are depicted within the Licensed Media; and LICENSEE is also responsible for identifying copyright protected materials, including without limitation, works of art and architectural works, depicted within the Licensed Media and for performing clearance analysis on such materials.
- 4.3** PROs. Music only includes public performance rights if at the time of download from filmpac.com, LICENSEE selects "public performance placement". In order to properly report music used in TV and radio productions, cue sheets must be filed with the networks, stations and appropriate PROs. FILMPAC will provide you at the time of download with the necessary information to fill out your own cue sheet for a specific Music track. As between LICENSEE and FILMPAC, LICENSEE is solely responsible for preparing, submitting and managing cue sheets for Music that LICENSEE has downloaded. FILMPAC is not responsible for reporting or payment of royalties.
- 4.4** CIDs. FILMPAC and its contributors retain ownership of all Music. LICENSEE may not claim, or otherwise suggest, ownership of the Music where End Product is displayed on any platform that has a content detection or registration system (e.g. YouTube's Content ID program), even if synchronized with/incorporated into an End Product. LICENSEE will follow

FILMPAC's procedure to pre-clear content prior to uploading any End Product to any such platform. FILMPAC's procedure details will be provided to LICENSEE at the time of download from filmpac.com.

- 4.5 Credits. LICENSEE is not obligated to credit the Licensed Media to FILMPAC in the End Product or otherwise. If LICENSEE includes credit in the End Product, it shall be done using the following credit line: "Imagery/Licensed Media supplied by FILMPAC LLC" or something similar. If LICENSEE is interested in including the FILMPAC logo or other trademark ("Marks") in a credit, LICENSEE must first obtain FILMPAC's consent and all such use must be pursuant to FILMPAC's trademark usage guidelines, a copy of which will be provided to LICENSEE upon request. LICENSEE acknowledges and agrees that (i) such Marks are and shall remain the sole property of FILMPAC; (ii) except as expressly required in order to satisfy the credit obligations under this Agreement, nothing shall confer upon LICENSEE any right of use in or to the Marks; and (iii) LICENSEE shall not now or in the future contest the validity of the Marks. All use of the Marks by LICENSEE shall inure to the benefit of FILMPAC. All goodwill arising out of LICENSEE's use of the Marks shall inure solely to the benefit of FILMPAC.

#### **SECTION 5. RECORDKEEPING; AUDITS**

- 5.1 Recordkeeping. LICENSEE will keep records in accordance with generally accepted accounting principles and in sufficient detail to permit the determination of LICENSEE's compliance with the Restrictions on Use and payment and other obligations required under this Agreement.
- 5.2 Audits. On two business days' written notice requesting an audit, LICENSEE will permit auditors designated by FILMPAC, together with any legal and technical support that FILMPAC deems necessary, to examine, during ordinary business hours, the books, records, materials, and facilities of LICENSEE for the purpose of verifying compliance with this Agreement. Each party will pay its own costs incurred in the course of the audit, however, if the results of an audit conducted in accordance with this section show LICENSEE is not in compliance with its obligations under this Agreement, LICENSEE shall reimburse FILMPAC for the cost of the audit.

#### **SECTION 6. TERM; TERMINATION; CANCELLATION; WITHDRAWAL**

- 6.1 Term. The term of this Agreement commences on the Effective Date and continues until the last to occur of the following: (a) LICENSEE ceases developing End Product; (b) all End Product is removed from Use; or (c) this Agreement is otherwise terminated as permitted herein.
- 6.2 Termination. FILMPAC may terminate this Agreement at any time if LICENSEE or Purchaser breaches any of the terms of this or any other Agreement with FILMPAC, in which case LICENSEE must immediately: cease using the Licensed Media and all Reproductions thereof; delete or destroy any copies of the Licensed Media; and, if requested, confirm to FILMPAC in writing that LICENSEE has complied with these requirements.
- 6.3 Content Withdrawal. FILMPAC may discontinue licensing any item of content at any time in its sole discretion. Upon notice from FILMPAC or upon LICENSEE's or Purchaser's knowledge, that any content may be subject to a claim of infringement of a third party's right for which FILMPAC may be liable, FILMPAC may require LICENSEE to immediately, and at LICENSEE's own expense: cease using the content, delete or destroy any copies; and ensure that LICENSEE's Direct End Clients, Sublicensees, and all other third parties with access to the

Licensed Media, or Reproductions thereof, do likewise. Where commercially reasonable, FILMPAC will provide LICENSEE with replacement content (determined by FILMPAC in its reasonable commercial judgment) free of charge, subject to the other terms of this Agreement.

**SECTION 7. DISCLAIMER; INDEMNITY**

- 7.1 Warranty Disclaimer. THE LICENSED MEDIA IS PROVIDED "AS IS". FILMPAC AND ITS CONTRIBUTORS AND AFFILIATES EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED REPRESENTATIONS, WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE, TO THE MAXIMUM AMOUNT PERMITTED BY LAW. FILMPAC AND ITS AFFILIATES DO NOT REPRESENT OR WARRANT THAT THE LICENSED MEDIA OR THE FILMPAC WEBSITE WILL MEET LICENSEE'S REQUIREMENTS OR THAT USE OF THE LICENSED MEDIA OR OTHER CONTENT AVAILABLE ON THE FILMPAC WEBSITE WILL BE UNINTERRUPTED OR ERROR FREE.
- 7.2 Indemnity by FILMPAC. Provided LICENSEE is not in breach of any provision of this Agreement or any other agreement between LICENSEE and FILMPAC, FILMPAC agrees, subject to the terms of this Section 7 and the limitations set forth in Section 8, to defend, indemnify, and hold LICENSEE, its Affiliates and their respective officers, directors, agents, representatives, and employees, harmless from any and all Losses arising out of any claim by a third party that: (a) the Licensed Media, in the form delivered by FILMPAC, infringes, misappropriates or otherwise violates the intellectual property rights of such third party; or (b) Use of any Licensed Media other than Music requires LICENSEE to pay royalties or other fees to any guild, association, union, or collective rights society; but only to the extent such claim(s) are not Excluded Claims. This indemnification does not apply to Losses arising out of any continued use of any Licensed Media after receipt of notice from FILMPAC, or after LICENSEE or Purchaser otherwise became aware of the possibility that the Licensed Media is subject to a claim by a third party.
- 7.3 Indemnity by LICENSEE. LICENSEE, at its sole expense, will defend, indemnify, and hold FILMPAC, its Affiliates and contributors, and their respective officers, directors, agents, representatives, and employees, harmless against any and all Losses, arising out of, connected with, or resulting from LICENSEE's or a Sublicensee's activities under or in furtherance of this Agreement (but excluding any Losses that directly arise out of a claim eligible for indemnity protection under Section 7.2 above), or LICENSEE's or Sublicensee's breach of any provision of this Agreement.
- 7.4 Indemnification Procedures. The party seeking indemnification must promptly notify in writing the other party about the claim. The indemnifying party has the right to assume the handling, settlement or defense of any claim or litigation. The indemnified party has to cooperate in any way reasonably requested by the indemnifying party. The indemnifying party will not be liable for legal fees and other costs incurred prior to the other party giving notice of the claim for which indemnity is sought. In no event shall LICENSEE settle any suit or claim imposing any liability or other obligations on FILMPAC without FILMPAC's prior written consent.

- 7.5 Sole and Exclusive Remedy. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, THE PROVISIONS OF THIS SECTION 7 (Indemnity) CONSTITUTE LICENSEE'S SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT WITH RESPECT TO ANY CLAIM OF MISAPPROPRIATION, INFRINGEMENT OR OTHER VIOLATION OF ANY INTELLECTUAL PROPERTY RIGHT OR OTHER PROPRIETARY RIGHT OF ANY THIRD PARTY, INCLUDING CLAIMS FOR ROYALTIES AND OTHER FEES.

**SECTION 8. LIMITATION OF LIABILITY.** EXCEPT WITH RESPECT TO DAMAGES CAUSED BY FILMPAC'S WILLFUL MISCONDUCT OR GROSS NEGLIGENCE, IN NO EVENT WILL FILMPAC OR ANY CONTRIBUTOR OR AFFILIATE BE RESPONSIBLE OR LIABLE TO LICENSEE, PURCHASER, OR ANY OTHER INDIVIDUAL OR ENTITY, FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OR LOST PROFITS, REGARDLESS OF LEGAL THEORY, AS A RESULT OF THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES. FILMPAC'S AGGREGATE LIABILITY TO LICENSEE AND PURCHASER FOR ALL DAMAGES AND LOSSES ARISING OUT OF OR RELATED TO THE LICENSED MEDIA, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL BE LIMITED TO THE TOTAL AMOUNT OF MONIES RECEIVED FROM OR OTHERWISE PAID TO FILMPAC UNDER THIS AGREEMENT IN THE 12 MONTHS PRECEDING THE CLAIM.

**SECTION 9. MISCELLANEOUS**

- 9.1 Miscellaneous. This Agreement, the Licensed Media invoice or receipt emailed to Purchaser, the purchase confirmation page and any other terms and conditions set forth at [www.filmpac.com](http://www.filmpac.com) (which are hereby incorporated by reference) set forth the entire agreement and understanding between the parties as to the subject matter hereof. In the event of a conflict between the terms of this Agreement and the FILMPAC website, the terms of this Agreement shall govern. There shall be no amendments or modifications to this Agreement, except by a written document provided to LICENSEE by FILMPAC which is affirmatively consented to by LICENSEE (a document only viewable by LICENSEE/PURCHASER online, whether through LICENSEE/PURCHASER's account with FILMPAC or whether otherwise sent via email to the email address of record for LICENSEE/PURCHASER, is an acceptable form of writing). This Agreement shall not be construed or interpreted in favor of or against FILMPAC or LICENSEE on the basis of draftsmanship or preparation of the Agreement. Captions contained in this Agreement are for reference purposes only, and are not intended by either party to describe, interpret, define, broaden or limit the scope, extent or intent of this Agreement or any of its provisions. Any delay in enforcing a party's rights under this Agreement or any waiver as to a particular default or other matter shall not constitute a waiver of such party's rights to the future enforcement of its rights under this Agreement, excepting only as to an express written and signed waiver as to a particular matter for a particular period of time. Nothing in this Agreement, express or implied, is intended or may be construed to confer on any person, other than the parties to this Agreement, any right, remedy, or claim under or with respect to this Agreement
- 9.2 Severability; Electronic Signature; Notice. If any provision of this Agreement is found to be invalid, void or otherwise unenforceable, that provision shall be deemed severable and shall not affect the validity and enforceability of any remaining provisions. The parties hereto specifically agree to contract with each other via electronic transmissions and that email communications shall be the primary format for all communications regarding this Agreement. Any notice to be provided to FILMPAC pursuant hereto shall be delivered to [info@filmpac.com](mailto:info@filmpac.com). Any notice to be provided to LICENSEE shall be by email to the email

address FILMPAC then currently has on file as the email of record, postings within the LICENSEE/PURCHASER's FILMPAC online account or other reasonable means. Any such notice shall be considered received when actually sent to recipient's correct email address or FILMPAC account, if applicable, by the sender.

- 9.3 Assignment. This Agreement is personal to LICENSEE and is not assignable by LICENSEE without FILMPAC's prior written consent. FILMPAC may assign this Agreement, without notice or consent, to any Affiliate or to any successor in interest, provided that such entity agrees to be bound by these terms.
- 9.4 Governing Law; Arbitration. This Agreement shall be governed by the laws of the State of Oregon excluding its conflict of law provisions. In the event of any controversy between LICENSEE or Purchaser and FILMPAC relating to this Agreement or LICENSEE's use of the Licensed Media, the parties will provide formal notice to the other of the dispute. The parties will attempt to resolve all disputes informally. Any disputes that are not resolved will be submitted to binding arbitration pursuant to the Oregon Uniform Arbitration Act. Arbitration procedure shall be pursuant to the Oregon Rules of Civil Procedure, the parties are free to engage in all discovery permissible under the Oregon Rules of Civil Procedure and any discovery requests or subpoenas may be enforced pursuant to ORS 36.675 by petition to the Circuit Court. The parties will agree upon a single arbitrator and, if the parties cannot agree, they will select a neutral third party, who will make a selection from a list comprised of six potential arbitrators, three proposed by each party. The parties expressly waive any right to trial by jury or class treatment of any claim, demand, action or cause of action arising out of or relating to this agreement or the breach thereof. On the application of either party, the award in the arbitration may be enforced by the order of a court of competent jurisdiction. All arbitration proceedings shall be held within Lane County in the State of Oregon.
- 9.5 Headings Not Controlling. The section headings contained herein are for reference only and are not part of this Agreement. The headings shall not control or alter the meaning of this Agreement as set forth in the text.
- 9.6 Relationship. The parties are independent contractors with respect to each other. Neither party shall be deemed a partner, agent, or representative of the other party. Each party shall be responsible for its own business activities including its own liabilities and business expenses and the other party shall have no liability therefore.
- 9.7 No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended or may be construed to confer on any person, other than the parties, any right, remedy, or claim under or with respect to this Agreement.
- 9.8 Survival. In the event of expiration or termination of this Agreement by either party, the following provisions shall remain in full force and effect, together with any other provisions which by their nature should survive such expiration or termination: Sections 4.1, 5, 7, 8 and 9.

## **SECTION 10. DEFINITIONS**

- 10.1 "Affiliate" means with respect to any organization or entity, any other organization or entity that controls, is controlled by or is under common control with such organization or entity. For purposes of this definition, "control" means the power to direct or cause the direction of



the management and policies of an organization or entity, directly or indirectly, whether through ownership interest, by contract or credit arrangement, as trustee or executor, or otherwise. For purposes of this Agreement, "Affiliate" shall also include any organization or entity that, directly or indirectly, controls, is controlled by, or is under common control with an Affiliate.

- 10.2 "Digital/Internet Streaming" means audio or video heard or viewed by the public via websites, social media, podcasts and other mobile applications (e.g. YouTube), whether viewed on a computer, phone, tablet or other device capable of streaming images and sounds, but excluding use in video games.
- 10.3 "Direct End Client" means any individual, organization or entity which commissions LICENSEE, or otherwise directly engages LICENSEE, to develop an End Product for such individual, organization or entity.
- 10.4 "Editor" means a single individual (e.g. an employee of LICENSEE) who Uses the Licensed Media for development of End Product.
- 10.5 "Effective Date" means the date on which Purchaser clicked "AGREE" or the date on which Purchaser purchased access to the Licensed Media covered by this Agreement from FILMPAC, whichever is earlier.
- 10.6 "End Product" means an end product that has been created by or on behalf of LICENSEE using independent skill and effort and that incorporates a Reproduction of content from the Licensed Media as well as other material. End Product does not include merchandise of any kind (e.g. t-shirts, mugs, post cards, wallpaper for mobile phones) or templates for electronic products (e.g. website templates, e-card templates). For purposes of clarification, under no circumstances may an End Product be a new musical work; Music may only be Used in End Products that consist of an audio visual work, computer or mobile device application or an internet page.
- 10.7 "Excluded Claims" means claims regarding or arising from sounds, business names, logos, or other words/designs protectable under trademark law that are depicted within the Licensed Media; copyright protected materials depicted within Licensed Media, such as designs, works of art, and architecture; Reproductions; infringement of a patent or inducement to infringe a patent; and any act, error or omission of LICENSEE.
- 10.8 "Ineligible Damages" means loss of earnings or profit by LICENSEE, or the salaries, wages, fees, overhead, benefit expenses or other compensation payable by LICENSEE; costs to comply with regulatory orders, settlements or judgements or administrative decisions; governmental, civil or criminal fines or penalties; production costs or the cost of reprinting, recalling, recovering, correcting, reprocessing, restoring, repairing, replacing, reproducing or removing Licensed Media or Reproductions from End Product; the costs of complying with an order granting injunctive or non-monetary relief, in any form.
- 10.9 "Internal/Industrial Direct Display" means audio or video End Products that are not widely commercially distributed (e.g. internal presentations, employee training within a single organization, wedding video, use on a Direct End Client's intranet, trade shows, industrial fairs and exhibitions).

- 10.10 “Large Broadcast” means any radio broadcast or segment thereof, television show or segment thereof, audiovisual or audio only commercial, motion picture, cinematography film or photoplay of any kind or character which is distributed via a radio, television, or On-Demand (e.g. Netflix, Hulu, Amazon Prime) broadcast channel targeted at viewers in more than one state or international equivalent.
- 10.11 “Large Budget Film” means motion picture, cinematography film or photoplay with a production budget of more than \$150,000.
- 10.12 “Licensed Media” means the proprietary group of music, sound effects, still images, film or video owned by FILMPAC or its contributors and identified by name in Purchaser’s purchase confirmation email and the online order confirmation.
- 10.13 “LICENSEE” means the business, or individual, who is the intended beneficiary of the license grant described in Section 1.1 of this Agreement. The LICENSEE may be the PURCHASER, but is not required to be so long as the LICENSEE is properly identified to FILMPAC during the Licensed Media purchase process.
- 10.14 “Local Broadcast” means any radio broadcast or segment thereof, television show or segment thereof, audiovisual or audio only commercial, motion picture, cinematography film or photoplay of any kind or character which is distributed via a radio, television, or On-Demand (e.g. Netflix, Hulu, Amazon Prime) broadcast channel targeted at viewers within one state or international equivalent.
- 10.15 “Losses” means all suits, losses, liabilities, damages, awards, claims, settlements, costs and expenses, including reasonable attorney fees, but excluding Ineligible Damages.
- 10.16 “Music” means any Licensed Media that is music.
- 10.17 “Reproduction” means any form of copying or publication of the whole or a part of any Licensed Media, via any medium and by whatever means, the distortion, alteration, cropping or manipulation of the whole or any part of the Licensed Media, and the creation of any derivative work from, or that incorporates any of the Licensed Media.
- 10.18 “Restricted Use” means any of the prohibited uses described in Sections 2.2 and 2.3 of this Agreement.
- 10.19 “PROs” means any applicable performing rights societies, including without limitation, the American Society of Composers Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), and Society of European Stage, Authors and Composers (SESAC).
- 10.20 “PURCHASER” or “you” or “your” means the individual who is purchasing Licensed Media via the FILMPAC online store on behalf of the LICENSEE. Where the individual is acting as a company representative (e.g. as an employee) for a business, rather than as an individual, the “PURCHASER” is the business, not the individual.
- 10.21 “Small Budget Film” means a motion picture, cinematography film or photoplay with a production budget of \$150,000 or less.

- 10.22 “Theatrical, Out-of-Home” means audio or video End Products that are widely commercially distributed or viewed (e.g. theaters, stadiums, other public displays such as digital billboards).
- 10.23 “Use” means to copy, reproduce, modify, edit, stream, synchronize, perform, display, broadcast, publish, transmit, exhibit or otherwise make use of in any manner not identified herein as a Restricted Use.
- 10.24 “Video Games” means audio or audiovisual End Products included in games which are distributed for use on major gaming consoles and streaming platforms (e.g. PlayStation, XBOX, Nintendo).

Last Revised: May 30th, 2021