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## Pond5 Content License Agreement

(revised 6/27/2018)

This License Agreement governs Pond5 Content that you Download. Please read this Agreement carefully. By clicking "I agree" or otherwise signifying your acceptance of this Agreement or by Downloading, copying or using any Content, you are agreeing to be legally bound by this Agreement.

### 1. Definitions.

As used in this Agreement:

- a. "Content" means any work, including video footage, a photograph, an illustration, an After Effects or Photoshop PSD template, a music or sound effects track, an animation, a 3D model or other digital media work, that is Downloaded pursuant to this Agreement.
- b. "Download" and variations thereof means downloading, obtaining or copying Content (i) from the Website, (ii) through a Pond5 or reseller application programming interface or other software Website, (iii) through a Pond5 or Reseller email, electronic or wireless delivery, or (iv) through delivery by Pond5 or reseller of physical media.
- c. "Item Page" means the specific Content item and item detail pages at the Website where item previews and information about the particular Content is made available for Pond5 Users.
- d. "Pond5 User" means an individual who is a registered Pond5 user or account holder.
- e. "Website" means our internet site at [www.pond5.com](http://www.pond5.com), and the other internet sites of Pond5 and its Affiliates and resellers.

### 2. Grant of License.

- a. **The License:** We hereby grant you a non-exclusive, worldwide, perpetual right and license (the "License") on the terms and subject to the conditions and limitations set out in this Agreement, to:
  - i. use, copy, edit, modify, manipulate, couple and synchronize the Content in any independently authored derivative or other work in any media now known or hereafter devised (including in-context works for advertising and promotion), which incorporates Content together with other substantial independently created works, and is created by or for you or on your behalf as permitted by the terms of this Agreement (a "Production"). For avoidance of doubt "Productions" include books, periodicals and the public display and performance of Content as part of a public event (including performances of the same that are broadcast and/or streamed);
  - ii. directly or indirectly copy, publish, publicly display and perform, transmit, broadcast, telecast and distribute the Content within such Production(s) world-wide and by any means now known or hereafter devised and allow others to do so; and
  - iii. use the tags, meta data, designations, disclaimers, restrictions, annotations, information and documentation that are available on the Website or otherwise provided by us to you with, in or otherwise relating to Content (the "Content Information") internally to facilitate the foregoing with regard to the Content.
- b. **Type of License:** If we expressly agree to grant you a "Business License" or a "Premium License" for specified Content, the License granted to you for such Content will be on the terms and conditions of this Agreement with the variations and additions that this Agreement states apply to a "Business License" or a "Premium License", respectively. Otherwise, the License will be an "Individual License".

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Agreement and can receive full payment of the applicable price for the license and content.

- e. **Previews.** Notwithstanding anything else in this Agreement, this Agreement does not apply to, and Content under this Agreement does not include, any preview of any item displayed in or downloaded from the Website or otherwise provided to you (a "Preview"); Previews are in all respects displayed, downloaded and provided under the Website Terms of Use.

### 3. License Limits and Additional Rights for Business and Premium Licenses.

- a. **Number of Productions:** The License authorizes an unlimited number of Productions on the terms and subject to conditions and restrictions of this Agreement, except as expressly provided on the Item Page.
- b. **Number of Seats:**
- If we have granted you an Individual License, you may allow access to or use of raw Content on your behalf to no more than 1 individual. The individual who Downloaded the Content through the Website will be deemed to be that person unless at the time of Download another individual was designated by the Pond5 User on the checkout page of the Website or otherwise in writing to us.
  - If we have granted you our Business License for the Content, you may allow access to or use of raw Content on your behalf to no more than a total of 5 natural persons over time.
  - If we have granted you our Premium License for the Content, you may allow access to or use of raw Content on your behalf to an unlimited number of natural persons.
  - For information about Business Licenses or Premium Licenses, contact us at [sales@pond5.com](mailto:sales@pond5.com).
- c. **Print Runs for Printed Productions:**
- If we have granted you an Individual License for visual Content, the License is limited to a Print Run of 100,000.
  - If we have granted you a Business License for visual Content, the License is limited to a Print Run of 500,000.
  - If we have granted you a Premium License for visual Content, the License includes the right to an unlimited number of such copies.
  - The "Print Run" is the number of physical printed copies of the Content as part of a Production or packaging of or printed material accompanying a Production, counted by the lesser of the number of physical analog printed (non-digital) copies or the circulation total for any individual edition containing the Content. Electronic copies are not counted, even if in a physical medium (e.g., a DVD).
- d. **Use in Templates:** If we have granted you a Premium License, you may incorporate the Content as an element of a digital template for sale or distribution, except as provided in Section 6 regarding Audio Content.
- e. **Use of Stills from Video:** For video Content, unless we have granted you a Premium License, you may not use "stills" derived from the Content, except in connection with the in-context marketing, promotion, and advertising of your Production that incorporates the Content.
- f. **Merchandise:**
- if we have granted you our Business License or Premium License for the Content, the License includes the right to use the Content in an unlimited number of items of physical products sold or distributed by or for you, including toys, games, physical electronic products, and paper goods, such as greeting or post cards, business cards, product packaging, product tags, calendars, posters, stationary, novelty goods, trading cards, tickets, payment cards, bank checks, or apparel (collectively, "Merchandise"). Even if we have granted you an Individual License, the License includes the right to use the Content in any of the following (which are deemed to be included in the term "Production" described in Section 2(a), rather than "Merchandise"): (i) books or periodicals, or (ii) music, video or audiovisual Productions that are in physical media (e.g., in a CD, DVD), or (iii) packaging or informational or promotional collateral that accompanies such a Production containing the Content where the Content is not sold separately from the Production, all of which are instead considered under this Agreement to be Productions.
  - The right to use Content in Merchandise includes the right to install the Content in a computer, cell phone or other electronic device located in a retail establishment where the Content is included for the purpose of

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- a. **Item Page:** In addition to the terms and conditions of this Agreement, the License to the Content is subject to any special terms that are contained or linked to in the Item Page for that particular Content, if any, including restrictions on the number or type of Productions or Merchandise in which the Content may be used.
- b. **You must Limit Access to Raw Content:** You may not allow access to raw Content, except for the purpose of creation, reproduction or distribution of Productions or Merchandise made by or for the Licensee as permitted by this Agreement. If you become aware of any unauthorized access, duplication of any Content, you should promptly notify us via the Website.
- c. **Restrictions on Transfer of License:** The License is non-transferable. However, if we have granted you a Premium License for the Content, you may one-time assign the License on the condition that the assignee agrees to the terms of this Agreement and you provide us with prompt written notice of the assignment. This means that you may not resell, sublicense, rent, loan, assign or transfer the Content to any third Person, except pursuant to an assignment permitted above or as otherwise expressly authorized in this Agreement. For avoidance of doubt, no restriction on transferability in this Agreement applies to your Productions or Merchandise that incorporate Content pursuant to the License.
- d. **No Distribution of Raw Content:** Except as expressly permitted by Section 2 or 3, you may not (i) distribute, transmit or publicly display Content as a template, a standalone file or to others for consumption, reproduction or re-sale, or (ii) superficially modify any raw Content and sell or license it to others for consumption, reproduction or resale.
- e. **No reverse Engineering:** For 3D models or After Effects or Photoshop PSD templates, you may not reverse engineer, decompile, or disassemble any part of any source code contained within the Content or avoid, bypass, remove or impair any technological measure that limits access to the Content.
- f. **No Use in Trademarks or Logos:** You may not incorporate any Content into a logo, trademark or service mark.
- g. **Editorial Content Restrictions:** For Content which the Item Page states is Editorial Content, editorial or for editorial use only (collectively, "Editorial Content"), notwithstanding anything else in this Agreement, you may not use the Editorial Content in Merchandise or in any form of advertisement, endorsement, commercial or promotion (an "Advertisement"), including use (i) in a print advertisement, (ii) in a billboard or other physical (whether static, dynamic or interactive) display advertisement, (iii) in any form of electronic, internet, mobile application display advertisement (whether static, dynamic or interactive, and including in context advertisements and infomercials), or (iv) in any form of video or audio (including on television, film, motion picture, internet, mobile application or radio) broadcast; provided that use of Content in in-context marketing, promotion, and advertising of your Production that incorporates the Content is not considered to be an Advertisement use, as long as your Production is not itself an Advertisement.
- h. **Sensitive Use:** Unless we have granted you a Premium License for the Content, you may not use any Content that features any person or property in a manner that would be unflattering or unduly controversial to a reasonable person, including use in a political context, such as the promotion, advertisement or endorsement of any party, candidate, or elected official, or in connection with any political policy or viewpoint, or as suffering from, or medicating for, a physical or mental ailment (each of the foregoing, "Sensitive Use"). For avoidance of doubt, use of Content in an obviously satirical Production that is not an Advertisement or use of Editorial Content in an accurate editorial way (e.g., not in an Advertisement or other commercial Production) would not be prohibited by the prohibition on Sensitive Use or offensive use.
- i. **No Unlawful Use:** You may not use any Content in, a pornographic, unlawful or defamatory context or manner, including use (i) in connection with pornography, adult videos, adult entertainment venues, escort services, dating services, or the like; (ii) in connection with the advertisement or promotion of tobacco products; or (iii) depicting a person in the Content as engaging in acts of moral turpitude or criminal activity.
- j. **Contact Us If You Need Rights for Use Not Permitted By this Agreement:** If you need to use any Content in a manner that is not permitted by this Agreement, contact Pond5 at [sales@pond5.com](mailto:sales@pond5.com).

## 5.Content Showing Depicted IP, Editorial Content People and Placeholders.

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solely responsible for obtaining any additional clearances relating to, any of the audio that may be required.

- c. **People Shown in Editorial Content.** We generally have not obtained any releases for Editorial Content, so for such Content we make no warranties with regard to any personally identifiable information of any person or privacy or publicity rights.
- d. **Placeholders in After Effects and PSD Templates:** After Effects and Photoshop PSD templates may contain placeholder music, dialogue, other audio, text, video and/or images. Such placeholders are intended only for demonstrations purposes, so our warranties do not apply to such placeholders and you are solely responsible for obtaining your own cleared versions of the same.

## 6. Music and other Audio Content.

- a. **Types of Audio Content:** We offer various kinds of music and other audio recording Content without video, pictures or other visual works ("Audio Content"), which may be designated on the applicable Item Page, among other things, as "Music" or "Music Tracks" (music, with or without lyrics) or "Sound FX" or "SFX" (sound effects).
- b. **PRO Content:** If the PRO box adjacent to a Music Track on the Item Page is checked or the Music Track is otherwise designated as a PRO Track, then it is considered to be "PRO Track". "PRO" means a performing rights organization or other similar organization (including ASCAP, BMI, SOCAN, SESAC, PRS, MCPS, SACEM, SDRM or JASRAC, GEMA). For PRO Tracks, notwithstanding anything else in this Agreement, the License does not include the right to public performance of the composition, there is no waiver of any PRO royalties or cue sheet obligations, and our warranties do not cover such performance rights. The foregoing may also apply to other Music Tracks created in a country (e.g., certain EU countries) where, notwithstanding the Content contributor's grant of sub-licensable performance rights to us, under applicable law, PRO membership and/or application of PRO rights may be considered to be mandatory.
- c. **Restrictions on All Audio Content:** In addition to the other restrictions in this Agreement, you may not do any of the following regarding any Audio Content:
  - i. use it in whole or part to manufacture, distribute or sell records, CDs, jukeboxes, mp3s or any other predominantly audio product embodying it, in whole or in part, that is not synchronized or combined with other audio or musical content to create a derivative work as permitted in this Agreement (for example, you cannot use it to create a CD or other music compilation to give away or sell);
  - ii. place it on or in any product or platform that makes it available in a manner such that a person can without extraordinary effort extract or access or reproduce it as an electronic file;
  - iii. use or display it in whole or part in an electronic format that enables it to be accessed or distributed or shared in any peer-to-peer or similar file sharing arrangement;
  - iv. resell it in whole or part as backgrounds, "hold" music or ringtones; or
  - v. incorporate it in whole or part in any product or platform that results in its re-distribution or re-sale (such as music download sites, stock music CDs, electronic greeting card web sites, web templates and the like).
- d. **Audio Content Cleared for Sampling:** For Audio Content designated on the Website as being "Cleared for Sampling", you may do any of the following:
  - i. edit, modify, or alter it;
  - ii. use it in whole or part without synchronization or other combination with other original work(s) of authorship so that the combination constitutes a Production;
  - iii. use it, in whole or in part, as an element of a new musical work (e.g., by combining the Audio Content with other work so that a copyright can be claimed in the resulting song); or
  - iv. modify it, in whole or in part, so that a copyright can be claimed in the resulting song other than as part of a Production that consists of an audio visual work, computer or mobile device application or an internet page.
- e. **Restrictions on Audio Content Not Cleared for Sampling:** Unless the Audio Content is designated on the Website as being "Cleared for Sampling", you may not do any of the things mentioned in paragraph (d) above; provided that you may do basic editing (e.g., setting fade-in/fade-out points, determining start and end points, or

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- commercial efforts to accompany the Production with a credit line hyperlink to [www.pond5.com](http://www.pond5.com) that reads "Stock media provided by [Content contributor Name]/ Pond5" or substantively similar language.
- b. For all other Productions incorporating the Content where crediting is customary or where other such credits are provided, you will use your reasonable commercial efforts to accompany the Production with a credit line that reads "Stock media provided by [Content contributor Name]/ Pond5" or substantively similar language.
  - c. The unintentional omission of credit attribution provided for above will not be considered to be a breach of this Agreement, and the omission of credit attribution will not be considered to be a material breach of this Agreement.

## 8. Representations, Warranties and Disclaimers.

### a. **Our Warranties:** We warrant that:

- a. We have the right and authority to enter into and grant the rights in the Content granted to you in this Agreement, subject to all applicable limitations and exclusions in this Agreement.
- b. Subject to Section 5 and 6 above, unaltered Content when Downloaded and used in compliance with this Agreement and applicable law and with respect to which you have fulfilled your responsibilities and obligations under this Agreement, including your payment of all applicable fees,
  1. will not infringe any copyright, trademark or other intellectual property right, and
  2. will not violate any third parties' rights of privacy or publicity rights.
- c. Notwithstanding the foregoing, the representations and warranties in this Section do not apply to (i) Editorial Content, or (ii) unless it is designated in the Item Page as "Select": After Effects or Photoshop PSD templates, 3D models or Audio Content (collectively, "Excluded Content").

### b. **Limited Warranty:** We warrant that there are no material defects in the Content which would prevent it from being downloaded from the Website and used as permitted herein. If there are material defects in the Content, your exclusive remedy will be as follows: (i) upon request to us within 30 days of the download of such Content, you will be permitted to download the Content again to obtain a replacement copy of the Content; or (ii) if we determine, in our sole discretion, that defects would continue to prevent it from being downloaded from the Website or used as permitted herein successfully, we will refund the fee actually paid by you for such Content.

### c. **Warranty Disclaimer:** OTHER THAN AS EXPRESSLY PROVIDED IN SECTION 8(a), THE WEBSITE, OUR SERVICES, THE CONTENT AND THE CONTENT INFORMATION ARE PROVIDED "AS IS" WITHOUT ANY REPRESENTATION, WARRANTY OR CONDITION OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR TITLE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. THE POND5 PARTIES DISCLAIM ANY REPRESENTATION OR WARRANTY THAT THE CONTENT OR THE CONTENT INFORMATION WILL MEET YOUR REQUIREMENTS OR THAT ITS USE WILL BE UNINTERRUPTED OR ERROR FREE. We only have model or property releases where expressly indicated on the Item Page. Certain jurisdictions do not allow the exclusion of implied warranties, so the above exclusion may not apply to you. You have specific rights under this warranty, but you may have others, which vary from jurisdiction to jurisdiction.

### d. **Content Information Disclaimer:** While we have made reasonable efforts to correctly categorize, keyword, caption, description and title the Content, we do not warrant the accuracy of such information. Additionally, except as expressly set forth in this Agreement, we do not warrant the accuracy of any Content Information.

### e. **Representation about You:** If you are an individual, you represent and warrant that you are of sufficient legal age and have legal capacity to create binding legal obligations set out in this Agreement.

### f. **Representation About Your Information:** You represent that all information provided to us by you or under your Pond5 User ID is accurate and true, including all information relating to the Pond5 User and the Licensee and credit card or other payment information, and you agree to update such information as is necessary for such information to continue to be accurate and complete.

### g. **Representation of Individual Pond5 User:** If you are the individual who is Downloading the Content, you represent that you are the Pond5 User under whose user ID you are doing so. If the individual who is entering into this Agreement is doing so on behalf of his/her employer, the Licensee and/or any other Person, such individual

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## 9. Indemnification.

- a. **Our Indemnity:** Subject to the limitations in Section 10(b), we will defend, indemnify and hold you harmless from any actual or threatened third party lawsuit, claim, or legal proceeding (each, a "Claim") alleging a breach or facts that if true would constitute a breach of any of our express representations and warranties in this Agreement or that the distribution or use of Content downloaded and used by you pursuant to this Agreement violates any of such representations and warranties (each, a "Pond5 Indemnified Claim"), together with any liability for direct damages arising therefrom and reasonable attorneys' fees connected therewith, provided in each case that you have paid all amounts due to us and have not otherwise materially breached the terms of the Agreement.
- b. **Indemnity Conditions:** Our obligations under paragraph (a) above (the "Pond5 Indemnification") are conditioned upon you complying with the requirements of this paragraph: (i) You must notify us in writing of the Pond5 Indemnified Claim as soon as is practical, but in any case no later than ten (10) business days from the date you know or reasonably should have known of the same. Such notification must include all details of the claim then known to you (e.g., Pond5 Content Number, a copy of the Content and your Production, name and contact information of person and/or entity making the claim, nature and date of alleged claim, copies of any correspondence received and/or sent in connection with the Pond5 Indemnified Claim). The notification must be sent to us at our address on our Website via Certified Mail, Return Receipt Requested, or reputable express delivery service, in each case, recipient's signature required, with a contemporaneous email copy to [legal@pond5.com](mailto:legal@pond5.com). (ii) You must allow us to assume and control the investigation, handling, settlement and defense of the Pond5 Indemnified Claim, and you must cooperate reasonably therewith. You shall have the right to participate in the investigation of the Claim or any litigation at your own expense. The Pond5 Indemnification will be your sole remedy for a breach of any of our representations, warranties and/or obligations. Notwithstanding anything to the contrary contained herein, we shall not be liable for, and Pond5 Indemnified Claims shall not include, any Claim related to or arising out of: (A) modifications made to Content after Download; (B) the particular context in which the Content is used; (C) use of Content not authorized by the License or breach of or failure to carry out an obligation or responsibility assumed by you in this Agreement, or (D) any Excluded Content (each such Claim referred to in (A) through (D), a "Use Related Claim"). In addition, our obligations under the Pond5 Indemnification are conditioned upon payment in full of all amounts due to us and your full material compliance with this Agreement.
- c. **Your Indemnity:** You agree to indemnify and hold Pond5, our Affiliates, our resellers and our and their respective Representatives, shareholders and partners (collectively, "Pond5 Parties") and the Content contributors harmless from and against any and all damages, liabilities, costs and expenses (including reasonable attorneys' fees and costs) arising out of or relating to any Use Related Claim; provided that this indemnity shall not apply to the Pond5 Parties to the extent that the claim arises from a breach by us of a warranty set forth in Section 8(a) above or to a Content contributor to the extent that the claim arises from a breach by the contributor of a certification, representation or warranty.

## 10. Limitations of Liability.

- a. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 9(a), The POND5 PARTIES AND THE CONTENT CONTRIBUTORS SHALL NOT BE LIABLE TO YOU OR ANY OTHER PERSON OR ENTITY FOR ANY PUNITIVE, SPECIAL, INDIRECT, EXEMPLARY, CONSEQUENTIAL OR INCIDENTAL DAMAGES, LOST PROFITS OR, IN THE CASE OF US OR THE OTHER POND5 PARTIES, ANY OTHER DAMAGES, COSTS OR LOSSES, INCLUDING THE COST OF COVER, ARISING UNDER THIS AGREEMENT OR OUT OF OR RELATED TO THE LICENSE, YOUR OR ANY OF YOUR REPRESENTATIVES' USE OR EXPLOITATION OF CONTENT, THE WEBSITE OR THE CONTENT INFORMATION, ANY SERVICES PROVIDED BY US OR THE RESULTS FROM THE USE THEREOF OR OTHERWISE, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, COSTS OR LOSSES, WHETHER THE ACTION IS BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OR OTHERWISE. SOME JURISDICTIONS DO NOT ALLOW FOR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.



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THOUSAND U.S. DOLLARS (\$250,000), and

- iii. IF WE HAVE GRANTED YOU A PREMIUM LICENSE FOR THE CONTENT, LIMITED TO ONE MILLION U.S. DOLLARS (\$1,000,000).
- c. THESE LIMITS APPLY EVEN IF WE OR ANOTHER POND5 PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. YOU ACKNOWLEDGE AND AGREE THAT (i) THE FEES FOR THE USE OF THE CONTENT REFLECT AND ARE SET IN RELIANCE UPON THE ALLOCATION OF RISK AND THE LIMITATIONS OF LIABILITY SET FORTH IN THIS AGREEMENT, AND (ii) THE LIMITATIONS OF LIABILITY HEREIN ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN YOU AND US. NOTWITHSTANDING ANYTHING ELSE IN THIS OR ANY OTHER AGREEMENT, NONE OF THE POND5 PARTIES OR THE CONTENT CONTRIBUTOR SHALL BE LIABLE FOR ANY DAMAGES, COSTS OR LOSSES ARISING AS A RESULT OF MODIFICATIONS MADE TO THE CONTENT BY YOU, ANY OF YOUR REPRESENTATIVES OR ANY THIRD PARTY AFTER THE CONTENT IS DOWNLOADED OR THE PARTICULAR CONTEXT IN WHICH THE CONTENT IS USED. Subject to our express warranties in Section 8(a), you assume full responsibility for how you use the Content or any services provided by us and the particular context of how the Content is used. We will not be held responsible for any delay or failure to comply with our obligations under this Agreement if the delay or failure arises from any cause which is beyond our reasonable control.
- d. No action, regardless of form, arising out of the License, or under this Agreement may be brought by you more than one year after the cause of the action has accrued, in addition to the notice requirements in Section 9(b) above regarding Pond5 Indemnified Claims.

## 11. Term and Termination.

- a. **Material Breach by You:** The License will terminate automatically without notice from us if you fail to cure a material breach or other material failure to comply with any provision of this Agreement within 14 days of written notice from us of the same. Upon termination, to the extent reasonably practical, you must yourself and must cause your Representatives to immediately: (i) stop using the Content; (ii) delete or remove the Content from your premises, computer systems and storage (electronic or physical); and (iii) where applicable, ensure your Representatives and licensees do the same.
- b. **Survival:** The terms and provisions of Sections 1, 3 through 14 shall survive termination or expiration of this Agreement.

## 12. Payments & Taxes.

- a. **Sale of License Final:** All sales of Licenses are final, and we are under no obligation to refund any fees paid by you for Content under any circumstances, except upon a material breach of one of our express representations and warranties set forth herein. However, if you request for a refund, and we, in our sole discretion, determine to provide you with a refund, the license granted in this Agreement for the Content will be rescinded as if never granted. Any refund will be made by such means as we determine is appropriate.
- b. **Taxes:** You are responsible for promptly paying any and all applicable sales taxes, use taxes, value added taxes, property tax, customs, duties and any related interest or penalties imposed by any jurisdiction as a result of the License or any use of the Content.
- c. **No Set-Off, Withholdings or Deductions:** You must pay all amounts due to us in a payment currency approved on the Website without any set off, deduction or withholding of any kind, including tax withholdings or amounts charged for currency conversion. To the extent that you determine that you are required under law (e.g., under a tax law) to withhold any amount from payments due to us or a financial institution or other intermediary deducts any amount for currency conversion or other services from your payment to us, the price for the applicable License is hereby increased by the amount that would cause the net amount actually received by us to equal the price that would otherwise apply for the sale of the License.

## 13. Parties.

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the United States, then the party with which you are contracting and which is granting you the license is, and as used herein the terms "Pond5", "we", "us" mean, Pond5 Media Ireland Limited, an Ireland -based subsidiary of Pond5, Inc., and "our" means the possessive of whichever of the foregoing is applicable.

## 14. Miscellaneous Provisions.

- a. **Consent to Electronic Communications:** You consent to receive communications from us electronically and you agree that all agreements, notices, disclosures and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing.
- b. **You Consent to Us Processing Your Data in Different Countries:** You consent to your personal information being shared with and processed in the course of our business by us and our Affiliates, which are located in Ireland, various other different countries in the EU, Switzerland or in the U.S., which provide varying and in some cases less privacy protection than your country.
- c. Unless the context requires otherwise, in any part of this Agreement: (i) "including" (and any of its derivative forms, e.g. "includes"), "e.g." and "for example" means "including but not limited to"; (ii) "must not", "should not", "shall not" and "may not" are expressions of prohibition, and "will", "must", "should" and "shall" are expressions of command, and not merely expressions of future intent or expectation; (iii) use of the singular imports the plural and vice versa; (iv) references to one or no gender include the other or no gender; (v) when applied to a company, "Affiliate(s)" means any/all companies that from time to time directly or indirectly are owned or controlled by such company, under common ownership or control with such company or own or control such company; (vi) "Person" means an individual or legal entity, including a company or a governmental agency or instrumentality; and (vi) the headings in this Agreement are for ease of reference only and shall not affect its interpretation.
- d. This Agreement is in addition to the Website [Terms of Use](#), the Pond5 [Privacy Policy](#), and the other terms, disclaimers, restrictions contained on the applicable Item Page (collectively, the "Website Terms"), (which are all incorporated by this reference into this Agreement), all of which together with this Agreement embody the parties' entire agreement and supersedes and cancels any prior or implied agreement with respect to its subject matter; provided that in the event of any inconsistency between this Agreement and such Website Terms, the terms of this Agreement shall govern.
- e. Notwithstanding anything else in this or any other agreement, (i) we reserve the right to make changes to this Agreement and Website Terms at any time and without notice to you, and (ii) you will be subject to the terms of the same in force at the time that the Content was first Downloaded for or by you. For avoidance of doubt, a change to any of the same will not apply to Content that was first Downloaded for or by you prior to the change. No modification, deletion, amendment of any provision is binding on us unless in writing signed by our authorized representative or posted by us on the Website.
- f. If you learn that any Content is subject to a threatened or actual third party claim of infringement, violation of another right, or any other claim for which we may be liable, you will promptly notify us of any such claim. If we learn of such a claim from you, the third party or otherwise and we, in our sole good faith discretion, determine that the claim raises an inappropriate legal risk, upon notice from us, you will (i) remove the Content from your computer systems and storage devices (electronic or physical), and (ii) cease any future use of the Content at your own expense if possible. If you do remove and cease use of the Content, we will either refund your license fees for the applicable Content or without charge provide you with other content that we determine with your consent, not to be unreasonably withheld or delayed, is comparable, subject to the other terms and conditions of this Agreement.
- g. The parties to this Agreement are independent contractors, and nothing in this Agreement or the License shall create a joint venture, partnership or franchise or fiduciary relationship between the parties.
- h. If any provision, or portion thereof, of this Agreement, or its application to any person or circumstance, shall be invalid, illegal or unenforceable to any extent, the remainder of this Agreement, such provision and their application shall not be affected thereby, but shall be interpreted without such unenforceable provision or portion thereof so as to give effect, insofar as is possible, to the original intent of the parties, and shall otherwise be enforceable to the fullest extent permitted by law.
- i. This Agreement shall be construed in accordance with the laws of the United States and the State of New York without regard to its choice of law provisions. The United Nations Convention on Contracts for the International



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- k. You will promptly reimburse us for any costs (including reasonable attorneys' fees and court costs) that are incurred by us in collecting any License fees due to us.
- l. All of the covenants, terms, provisions and agreements contained in this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and, to the extent permitted by this Agreement, their respective heirs, legal representatives, successors and permitted assigns.
- m. The Pond5 Parties and the Persons indemnified under Section 9 are intended third Person beneficiaries of this Agreement. Nothing in this Agreement, express or implied, is intended to or shall confer upon any other third Person any rights, benefits or remedies of any nature whatsoever.
- n. Except as otherwise set forth herein, any notice required or permitted to be given under this Agreement shall be in writing, delivered by hand, nationally recognized overnight courier service, email or registered or certified mail, addressed (i) to Pond5 at: our address set forth at [www.pond5.com/legal](http://www.pond5.com/legal), with a copy by email to [legal@pond5.com](mailto:legal@pond5.com); or (ii) to you at the email address or contact information provided for the Pond5 User account or registration under which the relevant Content was downloaded.
- o. If you breach any provision of this Agreement and we take no action, we will still be entitled to use our rights and remedies in any other situation where you breach this Agreement. Your obligations, the limitations and our rights and remedies set out in this Agreement are cumulative and are in addition to your obligations and the copyright owner's rights and remedies at law or in equity.
- p. Except as expressly provided in this Agreement, including Section 4(c) related to transfers of the License or your Productions, this Agreement is personal to you is not assignable by you without Pond5's prior written consent. Pond5 may assign this Agreement without your consent to an Affiliate as part of a corporate reorganization or any other Person as part of a merger or asset or business sale so long as such Person agrees to be bound by its terms.
- v. 6-27-2018

English




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