

## **STOCKFOOD RIGHTS-MANAGED LICENSE AGREEMENT**

Last Updated: February 2015

THIS IS A LEGAL AGREEMENT BETWEEN YOU ("LICENSEE") AND STOCKFOOD ("COMPANY" or "LICENSOR"). SEASONS.AGENCY IS A DIVISION OF STOCKFOOD.

BY ACCEPTING AND USING THE STOCKFOOD CONTENT AND BY CLICKING THE "I ACCEPT" BUTTON, YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT.

### **Section 1: Definitions**

"Content" means all types of visual content including but not limited to photographs, color transparencies, black and white or color prints, drawings, illustrations, graphics, sound, text, software, paintings, imagery, film, motion footage and frames from film footage, video and frames from video, digital imagery, digital illustrations, composites, imagery derived from digital 3D scenes created within 3D programs and shall include keywords, descriptions, credits and captions associated therewith, and the selection and arrangement thereof.

"Invoice" means the agreement provided by COMPANY or an authorized distributor that includes among other terms, the permitted scope of use of the Content selected any limitations on the use of the Content and the license fee that corresponds to the use. The Invoice shall be incorporated into this Agreement and all references to the Agreement shall include the Invoice.

### **Section 2: Grant of Rights**

Limited Use License: Unless stated otherwise in the Invoice, COMPANY grants to Licensee a non-exclusive, non-sub-licensable and non-assignable right to reproduce, display, broadcast, transmit or create a derivative work (collectively "use") the Content identified in the Invoice, solely to the extent the use is explicitly stated in the Agreement. If Licensee is obtaining rights on behalf of a client, it may permit the client to exercise the rights granted, provided the client or any subcontractor or employee agrees to use the Content as limited in the Invoice and agrees to be bound by the terms of the Agreement. Notwithstanding the foregoing, Licensee and client remain jointly liable and responsible for all uses. No ownership or copyright in any Content shall transfer to Licensee by the grant of the license contained in this Agreement or Invoice. All rights not expressly granted to the Licensee are reserved to COMPANY and the copyright holder.

### **Section 3: Restrictions as to Use**

The use of the licensed Content is strictly limited to the use, medium, period of time, print run, placement, size of Content, territory and any other restrictions specified in the Invoice. Licensee may not use nor permit the use of the licensed Content beyond the terms of the limited license Agreement without first obtaining an additional license, including any electronic reproduction or promotional rights.

**Licensee may not use any Content in a manner that is defamatory, pornographic or obscene, whether directly or in context or juxtaposition with specific subject matter.**

Licensee may not incorporate the licensed Content in any logo, trademark or service mark.

Licensee may not archive, republish or transmit any Content on any database or to a network or bulletin board or otherwise distribute or allow any of the Content to be distributed to or used by anyone other than the authorized users, without prior written consent from COMPANY.

Licensee may not use the Content contrary to any restriction on use provided to Licensee prior to or at the time the Content is delivered to Licensee. Restrictions may be provided with the Content information located on COMPANY'S or any authorized distributor's website or otherwise communicated.

Licensee may not use any of the Content in any manner prohibited by any export laws, restrictions or regulations.

#### **Section 4: Sensitive Use Disclaimer**

Licensee may not use the Content in any manner that would be deemed offensive to the model. Offensive uses include but are not limited to the use of an Content that *involves or implies illegal activities, adverse medical conditions or procedures, other adverse health or mental health issues, substance abuse, welfare or economic aid, dating agencies, sexual preference, teen pregnancy, abortion and adoption, political or religious affiliation, smoking or alcohol usage, feminine hygiene, incontinence or impotence.*

If any Content featuring a model is used in (i) a manner that would lead a reasonable person to believe that the model personally uses or endorses a product or service; or (ii) in connection with a subject that would be unflattering or controversial to a reasonable person, Licensee must accompany each such use with a conspicuous statement that indicates that the person so pictured is a model and the Content is used for illustrative purposes only.

#### **Section 5: Editorial Credit**

If any Content is used in an editorial manner, the credit line, "COMPANY/Photographer's name," must appear adjacent to the Content or as otherwise indicated by COMPANY. If Licensee omits the credit, an additional fee equal to two (2) times the original amount invoiced shall be payable by Licensee at COMPANY'S discretion. The foregoing fee shall be in addition to any other rights or remedies that COMPANY may have at law or in equity. It is understood that Content used for advertising purposes does not require credit.

#### **Section 6: Releases/Captions**

COMPANY will notify Licensee if it has obtained a model release and/or a property release for Content, either in the release status information accompanying the Content on COMPANY'S website, in the Invoice or by other means. If no such notification is given, then no such model or property release has been obtained. COMPANY grants no rights and makes no warranties with regard to the use of

names, people, trademarks, trade dress, registered, unregistered or copyrighted designs or works of art or architecture depicted in any Content. Licensee shall be solely responsible for determining whether a release is sufficient for the proposed use or is required in connection with any proposed use of such Content. Licensee acknowledges that some jurisdictions provide legal protection against a person's image, likeness or property being used for commercial purposes without their consent. COMPANY used commercially reasonable efforts to identify the caption for each image, but cannot be held responsible for erroneous or incomplete caption information.

### **Section 7: Termination and Revocation**

COMPANY reserves the right to automatically terminate or revoke the license contained in this Agreement and invoice without notice if Licensee or its client fails to comply with any provision of this Agreement. Upon termination, Licensee and its client must immediately stop using the Content, delete the Content and all copies from all media and destroy all other copies. COMPANY reserves the right to discontinue the use of any Content for any reason and elect to replace the Content with alternate Content. Upon notice of any discontinuance of the use of particular Content, Licensee, its employer and its client, if applicable, agree not to use the Content in the future.

### **Section 8: Electronic Storage**

For all Content that Licensee takes delivery of in electronic form, Licensee must retain the copyright symbol, the name of COMPANY, the COMPANY identification number and all metadata associated with the Content which may be included as part of the electronic file. Licensee will take all reasonable measures to safeguard against unauthorized third-party access to the Content. Licensee may make one (1) highresolution backup copy of the Content for security reasons only. Upon the expiration or earlier termination of this Agreement, Licensee shall promptly delete the Content from its computer or other electronic storage systems and shall ensure that any client authorized to use the Content deletes the Content as well.

### **Section 9: Payment Terms and Cancellation Policy**

No licenses are fully granted until complete payment of COMPANY'S invoice is received.

When credit terms have specifically been agreed directly between COMPANY and the Licensee, Payment of COMPANY'S invoice is to be net thirty (30) days. Any claims for adjustment or rejection of terms must be made to COMPANY within seven (7) days after receipt of invoice.

**Cancellation Policy for Rights-managed Content:** If Licensee requests in writing to cancel this Agreement within 30 days of the date of receipt by Licensee of the Content, and Content has not been used by Licensee, COMPANY may cancel this Agreement and issue a credit to Licensee's account or credit card as follows: (i) with respect to Content only, an amount up to 100% of the License Fee may be credited if the request is received within 7 days of receipt of the Content; or (ii) an amount up to 50% of the License Fee may be credited if the request is received between 8 and

30 days of receipt of the Content. In each case an administration fee of US \$50 will be charged. No credits are available for any cancellation request received after 30 days from receipt of Content.

### **Section 10: Warranty and Disclaimers**

COMPANY warrants that: (i) it has all necessary rights and authority to enter into and perform this Agreement; and (ii) the Content will be free from defects in material and workmanship for 30 days from delivery (Licensee's sole and exclusive remedy for a breach of this warranty being the replacement of the Content).

#### **General Disclaimers and Limitation of Liability**

**COMPANY MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE CONTENT, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. COMPANY SHALL NOT BE LIABLE TO LICENSEE OR ANY OTHER PERSON OR ENTITY FOR ANY GENERAL, PUNITIVE, SPECIAL, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES, OR LOST PROFITS OR ANY OTHER DAMAGES, COSTS OR LOSSES ARISING OUT OF LICENSEE'S USE OF THE CONTENT OR OTHERWISE, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, COSTS OR LOSSES.**

**COMPANY'S MAXIMUM LIABILITY ARISING OUT OF OR IN CONNECTION WITH LICENSEE'S USE OF OR INABILITY TO USE THE CONTENT (WHETHER IN CONTRACT, TORT OR OTHERWISE) SHALL, TO THE EXTENT PERMITTED BY LAW, BE LIMITED TO THE VALUE OF THE LICENSE PAID BY THE LICENSEE FOR THE CONTENT.**

**THE REPRESENTATIONS AND WARRANTIES MADE BY COMPANY IN THIS AGREEMENT APPLY ONLY TO THE CONTENT AS DELIVERED BY COMPANY AND WILL BE INVALID IF THE CONTENT IS USED BY LICENSEE IN ANY MANNER NOT SPECIFICALLY AUTHORIZED IN THIS AGREEMENT OR IF LICENSEE IS OTHERWISE IN BREACH OF THIS AGREEMENT.**

**YOU MAY HAVE ADDITIONAL RIGHTS UNDER SOME STATE LAWS.**

### **Section 11: Indemnity**

Licensee Indemnity: If Licensee's use of the Content is not authorized by this Agreement, Licensee shall defend, indemnify and hold COMPANY and its parent, subsidiaries and commonly owned or controlled affiliates and their respective officers, directors and employees harmless from all damages, liabilities and expenses (including reasonable attorneys' fees and costs), arising out of or connected with any actual or threatened lawsuit, claim or legal proceeding relating to the use of such Content by Licensee, to the extent that such claim relates to the absence of a release or the Licensee's unauthorized use of the Content.

### **Section 12: Unauthorized Use/Retroactive License Fee**

Any use of Content in a manner not expressly authorized by this Agreement or in

breach of a term of this Agreement constitutes copyright infringement, entitling COMPANY to exercise all rights and remedies available to it under copyright laws around the world. Licensee shall be responsible for any damages resulting from any such copyright infringement, including any claims by a third party. In addition and without prejudice to COMPANY other remedies under this Agreement, COMPANY reserves the right to charge and Licensee agrees to pay a fee equal to up to ten (10) times COMPANY'S normal license fee for use of the Content.

### **Section 13: Miscellaneous**

Jurisdiction and Attorney's Fees: Any and all disputes, with the exception of copyright claims, arising out of, under or in connection with this Agreement, including, without limitation, the validity, interpretation, performance and breach hereof, shall be settled by arbitration in the State of Maine pursuant to the rules of the American Arbitration Association. Judgment upon the award rendered may be entered in the highest court of the forum, State or Federal, having jurisdiction. This agreement, its validity and effect, shall be interpreted under and governed by the laws of the State of Maine. If Licensee is an agent for or an employee of a non-U.S. Company but operates in a place of business in the United States or its territories, Licensee expressly agrees that any dispute regarding this contract shall be adjudicated within the United States in the manner described here. Copyright claims shall be brought to the Federal Court having jurisdiction. Licensee agrees to be subject to the jurisdiction of the Federal Court of the State of Maine. If COMPANY is caused to present claims or suit as a result of any breach of the above terms set forth, it shall be made whole for such reasonable legal fees or costs by Licensee.

No Assignment: This agreement is not assignable or transferable on the part of Licensee.

No Waiver: No action of COMPANY, other than express written waiver, may be construed as a waiver of any provision of this Agreement. A delay on the part of COMPANY in the exercise of its rights or remedies will not operate as a waiver of such rights or remedies. A waiver of a right or remedy on any one occasion will not be construed as a bar to or waiver of those rights or remedies on any other occasion.

Entire Agreement: This Agreement and the Invoice contains all the terms of the agreement between COMPANY and Licensee and no term or conditions may be added or deleted unless made in writing and signed by both parties. In the event of any inconsistency between the terms contained herein and the terms contained on any purchase order or other writing sent by Licensee, the terms of this Agreement shall govern.