

## BOUTIQ' CONTENT LICENSE AGREEMENT

The BOUTIQ' License Agreement governs the terms by which a licensee may obtain the right to use content provided by Producers through the web site located at <https://app.nimia.com> (the "Site"). The BOUTIQ' Content License Agreement is a contract between the Licensee and Ninu, Inc.

### 1. Background of Agreement

#### 1.1 Rights and Obligations:

This document affects your rights and obligations. By purchasing a BOUTIQ' License for the selected Content you accept and agree to this Agreement either for yourself or on behalf of your employer or the entity that is identified as the member account holder, and agree to be bound by its provisions. If you are accepting on behalf of your employer or the entity that is the member account holder, you represent and warrant that you have full legal authority to bind your employer or such other entity. If you do not have such authority or you do not accept or agree with these terms, do not accept the Agreement and do not download the Content.

#### 1.2 Definitions:

- (a) "you" or the "Client" means you or, if you are accepting on behalf of your employer or member account entity, then "you" means that employer or entity and affiliates;
- (b) "Nimia" or "we" means Ninu, Inc., operator of the Site;
- (c) "Content" means any multi-media data type, including but not limited to film or video footage, animation, photographic image, illustration, Flash file, visual representation generated optically, electronically, digitally or by any other means or in any media or other material that you are downloading from the Site, together with any accompanying material.

### 2. BOUTIQ' License Terms

We hereby grant to you a non-exclusive, non-sublicensable Limited License to use the Content for the purpose and duration according to the Terms selected at time of checkout (as defined below). Limited License means the right to use the Content for one project (the contemplated project at time of checkout). Terms mean the summation of the individual licensing terms selected at time of checkout. The individual licensing terms are shown in *Table 1. Content Licensing Terms* on the following page.

All activity or uses of the Content outside the Terms selected at time of checkout is prohibited in addition to the prohibited uses defined below in Section 3. BOUTIQ' License Prohibitions. A record of the Terms selected at time of checkout is provided to you in your Nimia account: login > Platform > Purchases. All other rights in and to the Content, including, without limitation, all copyright and other intellectual property rights relating to the Content, are retained by Nimia or the Producer of the Content, as the case may be.

Table 1. Content Licensing Terms

<b>1. project type</b>	the purpose of your project
<input type="checkbox"/> advertising	commercial spot or advertisement
<input type="checkbox"/> entertainment	movie, television, or youtube channel (non-advert)
<input type="checkbox"/> documentary	non-fiction motion picture
<input type="checkbox"/> educational	learning or teaching program
<input type="checkbox"/> corporate	corporations in-house uses
<input type="checkbox"/> editorial	news or magazine programs
<input type="checkbox"/> all	
<b>2. distribution medium</b>	method of distributing project
<input type="checkbox"/> broadcast,	television, cable and satellite
<input type="checkbox"/> web hd	internet, youtube, private domains, etc.
<input type="checkbox"/> live/direct	concerts, tradeshow, presentations
<input type="checkbox"/> all	
<b>3. distribution area</b>	location of project
<input type="checkbox"/> local/regional,	viewership is limited to city or state.
<input type="checkbox"/> country	viewership is limited to one country
<input type="checkbox"/> worldwide	viewership includes all countries
<b>4. number of viewers</b>	the number of people that will view your final project
<input type="checkbox"/> <100,000;	viewership is limited to less than 100,000 people
<input type="checkbox"/> <1,000,000;	viewership is limited to less than 1,000,000 people
<input type="checkbox"/> >1,000,000	viewership is unlimited
<b>5. term</b>	length of license
<input type="checkbox"/> 6 months,	licensed video can be used for 6 months
<input type="checkbox"/> 1 year,	licensed video can be used for 1 year
<input type="checkbox"/> 10 year,	licensed video can be used for 10 year
<input type="checkbox"/> perpetual	licensed video can be used into perpetuity

### 3. BOUTIQ' License Prohibitions

Prohibited Uses. You may not do anything with the Content that is not expressly permitted in the preceding section. The following is a non-exhaustive list of some "Prohibited Uses".

- a) You may not use the Content on products or in templates, whether on-line or not, including, without limitation, coffee mugs, post cards, t-shirts, posters, website templates, Flash templates, business card templates, electronic greeting card templates, and brochure design templates;
- b) You may not use or display the Content on websites or other venues designed to induce or involving the sale, license or other distribution of "on demand" products, including coffee mugs,

- t-shirts, posters, website templates, Flash templates, business card templates, electronic greeting card templates, and brochure design templates;
- c) You may not use any of the Content as part of a trade-mark, design-mark, trade-name, business name, service mark, or logo;
  - d) You may not use the Content in a fashion that is considered by Nimia (acting reasonably) as or under applicable law is considered pornographic, obscene, immoral, infringing, defamatory or libelous in nature, or that would be reasonably likely to bring any person or property reflected in the Content into disrepute;
  - e) You may not use Content designated as Editorial for commercial purposes.
  - f) You may not use Content in a manner that infringes upon any third party's trademark or other intellectual property, or would give rise to a claim of deceptive advertising or unfair competition.
  - g) You may not use "stills" derived from Content except solely in connection with the in-context marketing, promotion, and advertising of your derivative works incorporating Content.
  - h) You may not falsely represent, expressly or by way of reasonable implication, that Content was created by you or a person other than the copyright holder(s) of that Content.
  - i) You may not use or display Content, except where accompanied by a statement that indicates that the Content is being used for illustrative purposes only and any person depicted in the Content is a model, that depicts such person in a potentially sensitive subject matter, including, but not limited to mental and physical health issues, social issues, political endorsements, sexual or implied sexual activity or preferences, substance abuse, crime, physical or mental abuse or ailments, or any other subject matter that would be reasonably likely to be offensive or unflattering to any person reflected in the Content, unless the Content itself clearly and undisputedly reflects the model or person in such potentially sensitive subject matter in which case the Content may be used or displayed in a manner that portrays the model or person in the same context and to the same degree depicted in the Content itself;
  - j) You may not, to the extent that source code is contained within the Content, reverse engineer, decompile, or disassemble any part of such source code;
  - k) You may not remove any notice of copyright, trade-mark or other proprietary right from any place where it is on or embedded in the Content;
  - l) You may not sub-license, re-sell, rent, lend, assign, gift or otherwise transfer or distribute the Content or the rights granted under this Agreement;
  - m) You may not install and use the Content on more than two computers at a time or post a copy of the Content on a network server or web server for use by other users;
  - n) You may not use or display the Content in an electronic format that enables the Content's source file to be downloaded, extracted, accessed, distributed or shared in any peer-to-peer or similar file sharing arrangement, website, or product;
  - o) You may not use or display an upscaling (downgrade in image quality) of video, image or illustrated Content;
  - p) use the Content in additional future projects, eg. use in projects other than the intended project that is the current licensed use;
  - q) use the Content for editorial purposes without including the following credit adjacent to the Content or in audio/visual production credits: "© Artist's Name/NIMIA.COM";

#### 4. Term of Agreement

4.1 This Agreement is effective until it is terminated. You can terminate this Agreement by destroying the Content and any Permitted Derivative Works, along with any copies or archives of it or accompanying materials (if applicable), and ceasing to use the Content for any purpose. The Agreement also terminates without notice from Nimia if at any time you fail to comply with any of its terms. Upon termination, you must immediately (i) cease using the Content and for any purpose; (ii) destroy or delete all copies and archives of the Content or accompanying materials; and (iii) if requested, confirm to Nimia in writing that you have complied with these requirements.

4.2 Deleted.

4.3 Deleted.

#### 5. Nimia Representations and Warranties

5.1 Nimia warrants that, except in respect of Content identified as “Editorial Use Only”:

(i) your use of the Content in accordance with this Agreement and in the form delivered by Nimia will not infringe on any copyright, moral right, trademark or other intellectual property right and will not violate any right of privacy or right of publicity; and (ii) all necessary model and/or property releases for use of the Content in the manner authorized under this Agreement have been obtained or is indicated that such releases may be needed. You acknowledge that no releases are generally obtained for Content that is identified as “Editorial Use Only” and that some jurisdictions provide legal protection against a person's image, likeness or property being used for commercial purposes when they have not provided a release. For Content identified as “Editorial Use Only”, Nimia does not grant any right nor make any warranty with regard to the use of names, people, trademarks, trade dress, logos, registered, designs or works of art or architecture depicted therein. In such cases, you shall be solely responsible for determining whether release(s) is/are required in connection with any proposed use of the Content identified as “Editorial Use Only”, and shall be responsible for obtaining such release(s).

5.2 While we have made reasonable efforts to correctly categorize, keyword, caption and title the Content, Nimia does not warrant the accuracy of such information. Additionally, Nimia does not warrant the accuracy of any metadata that may be provided with the Content.

5.3 OTHER THAN AS EXPRESSLY PROVIDED IN SECTION 6.1, THE CONTENT IS PROVIDED “AS IS” WITHOUT REPRESENTATION, WARRANTY OR CONDITION OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED REPRESENTATIONS, WARRANTIES OR CONDITIONS OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. NIMIA DOES NOT REPRESENT OR WARRANT THAT THE CONTENT WILL MEET YOUR REQUIREMENTS OR THAT ITS USE WILL BE UNINTERRUPTED OR ERROR FREE. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE CONTENT IS WITH YOU. SHOULD THE CONTENT PROVE DEFECTIVE, YOU (AND NOT NIMIA) ASSUME THE ENTIRE RISK AND COST OF ALL NECESSARY CORRECTIONS. IN PARTICULAR AND WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, IF YOU ARE

DOWNLOADING CONTENT THAT IS IN A FLASH FORMAT OR FILE (WHETHER .SWF OR OTHERWISE), EXCEPT AS EXPRESSLY PROVIDED IN SECTION 6.1, NIMIA MAKES NO REPRESENTATION OR WARRANTY RESPECTING SUCH CONTENT WHATSOEVER, WHETHER AS TO OWNERSHIP, TECHNICAL OR LEGAL COMPLIANCE, OR OTHERWISE.

5.4 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.

## **6. Nimia Indemnification and Limitation of Liability**

6.1 Provided that the Content is only used in accordance with this Agreement and you are not otherwise in breach of this Agreement and as your sole and exclusive remedy for breach of the representations and warranties set forth in Section 5.1 above, Nimia shall, subject to the terms of Sections 6.2, 6.3, 6.4 and 6.5 defend, indemnify and hold harmless you, your parent, subsidiaries and affiliates and respective directors, officers and employees from all damages, liabilities and expenses (including reasonable outside legal fees), arising out of or connected with any actual or threatened lawsuit, claim or legal proceeding alleging that the possession, distribution or use of the Content by you is in breach of the representations and warranties set forth in Section 6.1 above. The foregoing states Nimia's entire indemnification obligation under this Agreement.

6.2 The indemnification set out in Section 6.1 above is conditioned on your prompt notification in writing to Nimia of such claim and our right to assume the handling, settlement or defense of any claim or litigation. You agree to cooperate with Nimia in the defense of any such claim or litigation and shall have the right to participate in such litigation at your sole expense. Nimia shall not be liable for legal fees and other costs incurred prior to the notice of the claim.

6.3 Deleted.

6.4 Deleted.

6.5 NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT, THE TOTAL MAXIMUM AGGREGATE LIABILITY OF NIMIA UNDER THIS AGREEMENT AND ANY OTHER AGREEMENT UNDER WHICH YOU HAVE LICENSED THE SAME CONTENT, REGARDLESS OF THE FILE SIZE, OR THE USE OR EXPLOITATION OF ANY OR ALL OF THE CONTENT IN ANY MANNER WHATSOEVER AND THE OBLIGATION OF NIMIA UNDER SECTION 6.1 SHALL BE LIMITED TO AN AGGREGATE OF TEN THOUSAND (\$10,000) US DOLLARS. FOR GREATER CLARITY, NIMIA'S LIABILITY TO YOU IN RESPECT OF THE CONTENT SHALL NOT EXCEED TEN THOUSAND (\$10,000) US DOLLARS REGARDLESS OF THE NUMBER OF TIMES THAT YOU LICENSE THE SAME CONTENT FROM NIMIA.

6.6 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.

## 7. Your Indemnification

You agree to indemnify, defend and hold Nimia, its affiliates, its Producers and their respective directors, officers, employees, shareholders, partners and agents (collectively, the “Nimia Parties”) harmless from and against any and all claims, liability, losses, damages, costs and expenses (including reasonable legal fees on a solicitor and client basis) incurred by any Nimia Party as a result of or in connection with any breach or alleged breach by you or anyone acting on your behalf of any of the terms of this Agreement.

## 8. General Provisions

8.1 You specifically agree and acknowledge that you have, in addition to the terms of this Agreement, reviewed the terms of the Producer Agreement, Site User Agreement, Cloud Storage Agreement, Application License Agreement, and Community Section Agreement, and to the extent of their incorporation in this Agreement you agree to be bound by them.

8.2 Nimia’s failure to insist upon or enforce strict performance of any provision of this Agreement shall not be construed as a waiver of any provision or right.

8.3 This Agreement is personal to you and is not assignable by you without Nimia’s prior written consent. Nimia may assign this Agreement without your consent to any other party so long as such party agrees to be bound by its terms.

8.4 If all or part of any provision of this Agreement is wholly or partially unenforceable, the parties or, in the event the parties are unable to agree, a court of competent jurisdiction, shall put in place of such whole or part provision an enforceable provision or provisions, that as nearly as possible reflects the terms of the unenforceable whole or part provision.

8.5 You agree to pay and be responsible for any and all sales taxes, use taxes, value added taxes and duties imposed by any jurisdiction as a result of the license granted to you, or of your use of the Content, pursuant to this Agreement.

8.6 This Agreement will be governed under the laws of the State of Washington and the federal laws of the United States. This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. You consent to service of any required notice or process upon you by registered mail or overnight courier with proof of delivery notice, addressed to the address or contact information provided by you at the time the Content was downloaded, or such other address as you may advise us in writing to use, from time to time.

8.7 Any and all disputes arising out of, under or in connection with this Agreement, including without limitation, its validity, interpretation, performance and breach, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by a single Arbitrator appointed in

accordance with such rules. The arbitration shall take place in Seattle, WA, and shall be conducted in the English language.

8.8 The parties have requested that this Agreement and all related documents be drawn up in English.

## **9. Contact**

If you have concerns relating to this Agreement, please contact Nimia at [legal@nimia.com](mailto:legal@nimia.com).

## **10. Acknowledgement**

YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND HAD AN OPPORTUNITY TO SEEK INDEPENDENT LEGAL ADVICE PRIOR TO AGREEING TO IT. IN CONSIDERATION OF NIMIA AGREEING TO PROVIDE THE CONTENT, YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. YOU FURTHER AGREE THAT IT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN YOU AND NIMIA, WHICH SUPERSEDES ANY PROPOSAL OR PRIOR AGREEMENT, ORAL OR WRITTEN, AND ANY OTHER COMMUNICATION BETWEEN YOU AND NIMIA RELATING TO THE SUBJECT OF THIS AGREEMENT.