

## PUBLIC DOMAIN AGREEMENT

**THIS IS A LEGAL AGREEMENT ("Agreement") BETWEEN YOU AND NINU, INC. (NIMIA).**

PLEASE READ THIS AGREEMENT IN ITS ENTIRETY BEFORE YOU DOWNLOAD OR ACCESS ANY CONTENT CATEGORIZED AS PUBLIC DOMAIN (CONTENT) ON NIMIA OWNED WEB PROPERTIES. BY DOWNLOADING OR RECEIVING ANY CONTENT CATEGORIZED AS PUBLIC DOMAIN FROM NIMIA OWNED WEB PROPERTIES YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT.

The Public Domain Agreement (Agreement) is a contract between the You and Ninu, Inc. (Nimia), 701 5<sup>th</sup> Avenue, Suite 4200, Seattle WA, 98104. The Agreement is in addition to the Producer Agreement, Site User Agreement, Cloud Storage Agreement, Application License Agreement, and Community Section Agreement, that all persons providing content to or downloading content from the Site have previously entered into. In the event of any inconsistency between this Agreement and the other agreements, the terms of this Agreement shall govern.

### 1. Background of Agreement

#### 1.1 Rights and Obligations:

This document affects your rights and obligations. By purchasing Content, you accept 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. Terms

You may not use the Content to:

- a) incorporate the Content in any product or website that results in making the Content available in a manner such that a person can extract, access or reproduce

the original or derivative Content as an electronic file, whether for a fee or free of charge;

- b) sub-license, re-sell, rent, lend, assign, gift or otherwise transfer or distribute the Content or the rights granted under this Agreement;
- c) use or display the Content in an electronic format that enables it to be downloaded or distributed via mobile devices or shared in any peer-to-peer or similar file sharing arrangement;

## **6. Duration of Agreement**

6.1 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.

6.2 Nimia reserves the right to elect at a later date to revoke or amend this Agreement and replace the Content with an alternative for any reason. Upon notice, sent to the address or contact information provided by you for your member account, or such other address as you may advise us in writing to use, from time to time, of such replacement, the license for the replaced Content immediately terminates for any products that do not already exist, and this license automatically applies to the replacement Content. You agree not to use the replaced Content, or any Permitted Derivative Works, for future products and to take all reasonable steps to discontinue use of the replaced Content, or any Permitted Derivative Works, in products that already exist.

6.3 Upon notice from Nimia, or upon your knowledge that any Content is subject to a threatened, potential or actual claim of infringement of another's right for which Nimia may be liable, you must immediately and at your own expense (i) stop using the Content; (ii) delete or remove the Content from your premises, computer systems and storage (electronic or physical); and (iii) ensure that your clients, printers or ISPs do likewise. Nimia shall provide you with replacement Content (which shall be determined by Nimia in its reasonable commercial judgment) free of charge, but subject to the other terms and conditions of this Agreement.

## **7. Nimia Representations and Warranties**

7.1 NIMIA, Inc. has taken reasonable steps to verify the copyright status of this work or clip and has determined that it is most likely in the public domain, and can be freely used and re-used in projects at your discretion. Even though this clip is believed to be created by the U.S. Government or by another party that has released it into the public domain, please

note that NIMIA cannot absolutely guarantee the exact copyright status of the clip or offer written assurance that every or any aspect of this clip is completely cleared for all usages. Responsibility for making an independent legal assessment of a clip and securing any necessary permissions ultimately rests with persons desiring to use the clip.

Any Trademarks used in this item listing are used for strictly descriptive purposes only. No association or endorsement is implied or inferred. No character or trademark ownership is given or implied. If you intend to use any trademarks in public domain clips in a commercial usage, you should obtain an independent legal opinion as to your intended usage.

If your intended use of this clip is for commercial purposes and not educational, documentary or editorial use, you may need to secure a release from individuals (talent or recognizable person) pictured, vocal talents or musicians so as not to violate or infringe on their copyright or right of publicity. It is your responsibility to make an independent and accurate assessment, using legal counsel, as to the legality of your use of any persons pictured or heard in public domain materials and obtain their permission for commercial purposes, if necessary.

NIMIA Inc. does not issue a rights managed or royalty free licensing agreement for this clip, or offer footage assurance, but makes the clip available to you for a free download for an administration/handling/prepping fee for each clip. Therefore, the fee charged is not a license fee for the clip and NIMIA does not warrant to own any licensing interest in the clip. You agree to indemnify and hold harmless NIMIA and its successors, assignees and heirs from any legal action which results from your use of the clip, worldwide, in perpetuity.

7.2 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.

7.3 OTHER THAN AS EXPRESSLY PROVIDED IN SECTION 7.1, 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 7.1, NIMIA MAKES NO REPRESENTATION OR WARRANTY RESPECTING SUCH

CONTENT WHATSOEVER, WHETHER AS TO OWNERSHIP, TECHNICAL OR LEGAL COMPLIANCE, OR OTHERWISE.

7.4 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.

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

8.1 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 7 above, Nimia shall, subject to the terms of Sections 8.2, 8.3, 8.4 and 8.5 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 7 above. The foregoing states Nimia's entire indemnification obligation under this Agreement.

8.2 The indemnification set out in Section 8.1 above is conditioned on section 7 and 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.

8.3 IN NO EVENT SHALL NIMIA OR ANY OF ITS AFFILIATES OR PRODUCERS OR THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, SHAREHOLDERS, PARTNERS OR AGENTS BE LIABLE FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING DAMAGES FOR LOSS OF PROFITS, INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS) IN CONNECTION WITH ANY CLAIM, LOSS, DAMAGE, ACTION, SUIT OR OTHER PROCEEDING ARISING UNDER OR OUT OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION YOUR USE OF, RELIANCE UPON, ACCESS TO, OR EXPLOITATION OF THE CONTENT, OR ANY PART THEREOF, OR ANY RIGHTS GRANTED TO YOU HEREUNDER, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER THE ACTION IS BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OR OTHERWISE. NO ACTION, REGARDLESS OF FORM OR NATURE, ARISING OUT OF THIS AGREEMENT MAY BE BROUGHT BY OR ON BEHALF OF YOU MORE THAN TWO (2) YEARS AFTER THE CAUSE OF ACTION FIRST AROSE.

8.4 NOTWITHSTANDING ANY OTHER TERM HEREIN, IF YOUR INTENDED USE OF THIS CLIP IS FOR COMMERCIAL PURPOSES AND NOT EDUCATIONAL, DOCUMENTARY OR EDITORIAL USE, YOU MAY NEED TO SECURE A RELEASE FROM INDIVIDUALS (TALENT OR RECOGNIZABLE PERSON) PICTURED, VOCAL TALENTS OR MUSICIANS SO AS NOT TO VIOLATE OR ONFRINGE ON THEIR COPYRIGHT OR RIGHT OF PUBLICITY. IT IS YOUR RESPONSIBILITY TO MAKE AN INDEPENDENT AND ACCURATE ASSESSMENT, USING LEGAL COUNSEL, AS TO THE LEGALITY OF YOUR USE OF ANY PERSONS PICTURED OR HEARD IN PUBLIC DOMAIN MATERIALS AND OBTAIN THEIR PERMISSION FOR COMMERCIAL PURPOSES, IF NECESSARY.

8.5 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 8.1 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.

8.6 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.

## **9. 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 (i) any breach or alleged breach by you or anyone acting on your behalf of any of the terms of this Agreement; (ii) your use or modification of any Content, or combination of any Content, with any text or other content; (iii) your failure to obtain from third parties all permissions necessary to use the Content, (iv) content which Nimia has otherwise notified you not to license or otherwise use prior to the beginning of the Term of the license for such Content; and (v) any act or failure to act by you or any of your employees, contractors, employers, agents, clients, principles, or users.

## **10. General Provisions**

10.1 You specifically agree and acknowledge that you have, in addition to the terms of this Agreement, reviewed the terms of the Application Agreement and Terms of Use and any other agreements which may be incorporated by reference therein, and to the extent of their incorporation in this Agreement you agree to be bound by them.

10.2 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.

10.3 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.

10.4 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.

10.5 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.

10.6 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.

10.7 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.

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

## **11. Contact**

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

## **12. 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.