

## RF Multi-A CONTENT LICENSE AGREEMENT

The RF Multi-A Content License Agreement governs the terms by which a licensee may obtain the right to use content provided by content contributors through the web site located at [www.nimia.com](http://www.nimia.com) (the “Site”). The RF Multi-A Content License Agreement is a contract between the Licensee and Ninu, Inc. (Nimia), 701 5<sup>th</sup> Avenue, Suite 4200, Seattle WA, 98104. The RF Multi-A Content License 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, 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 selecting the RF Multi-A Content License Agreement, 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. RF Multi-A License Terms

We hereby grant to you a non-exclusive, non-transferable, worldwide license to use the Content for the duration not to exceed five years (Term) for the Permitted Uses (as defined below). Unless the activity or use is a Permitted Use, you cannot do it. 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 supplier of the Content, as the case may be.

### 3. Permitted RF Multi-A License Uses

You may only use the Content for those advertising, promotional and other specified purposes which are Permitted Uses (as defined below). For clarity, you may not use the Content in products for resale, license or other distribution, unless (i) the proposed use is allowable under a resale add-on License which is available for the Content. For example, you cannot superficially modify the Content, print it on a t-shirt, mug, poster, template or other item, and sell it to others for consumption, reproduction or re-sale. These uses will not be permitted as or constitute Permitted Derivative Works. If there is any doubt that a work is a Permitted Derivative Work, you should either obtain the resale add on License or contact a licensed attorney. Any use of the Content that is not a Permitted Use shall constitute infringement of copyright.

You may only use the Content for those advertising, promotional and other specified purposes which are Permitted Uses (as defined below in section 3.1). Any use of the Content that is not a Permitted Use shall constitute infringement of copyright.

#### 3.1 Permitted Uses:

Subject to the restrictions described under Prohibited Uses below, the following are “Permitted Uses” of Content:

- a. all media categories including: advertising projects, marketing projects, promotional projects, entertainment projects, corporate projects, government projects, educational projects, and editorial projects;
- a) on-line (internet) uses containing Content or an element of the Content are limited to a maximum of 640x360 (16:9) pixels or 640x480 (4:3) for video (unless web HD add-on license is purchased) and 640x360 pixels for still pictures taken from a video frame (unless web HD add-on license is purchased);
- b. 1200 x 800 pixels for images or a maximum of 640x480 for videos;
- c. up to one million (in aggregate) views, impressions, downloads, reproductions or targeted households if 1M- is selected at purchase, and unlimited views, impressions, downloads, reproductions or targeted households if 1M+ is selected at purchase;
- d. multiple projects, but if 1M- is selected at purchase, the aggregated total views, impressions, downloads, reproductions, or targeted households of all projects shall not exceed 1,000,000 views; and
- e. any other uses approved in writing by Nimia.

If there is any doubt that a proposed use is a Permitted Use, you should contact Nimia’s Client Relations for guidance.

**3.2 Seat Restrictions.** Only you are permitted to use the Content, although you may transfer files containing Content or Permitted Derivative Works to your clients, printers, or ISP for the purpose of reproduction for Permitted Uses, provided that such parties shall have no further or additional rights to use the Content and cannot access or extract it from any file you provide. You may install and use the Content in only one location at a time. You may

physically transfer the Content and its archives from one location to another, in which case you may use the Content at the new location instead. If you require the Content to be in more than one location or accessible by more than one person, you must download the Content from the Site for each such use or obtain a multi-seat add-on License for the Content. You may make one (1) copy of the Content solely for back-up purposes, and you must reproduce all proprietary notices on this single back-up copy.

#### **4. RF Multi-A License Prohibitions**

**Prohibited Uses.** You may not do anything with the Content that is not expressly permitted in the preceding section or permitted by an add-on License. For greater certainty, the following is a non-exhaustive list of some “Prohibited Uses”. You may not:

- a) use the Content in any product for resale such as dvd, smart phone application, video game, web application, calendars, electronic greeting cards, etc. (unless a resale add-on license is purchased);
- b) use the Content in design template applications intended for resale, whether on-line or not, including, without limitation, website templates, Flash templates, business card templates, electronic greeting card templates, and brochure design templates;
- c) 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 postcards, mugs, t-shirts, posters and other items (this includes custom designed websites);
- d) use any of the Content as part of a trade-mark, design-mark, trade-name, business name, service mark, or logo;
- e) 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;
- f) 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;
- g) use or display any Content that features a model or person in a manner (a) that would lead a reasonable person to think that such person uses or personally endorses any business, product, service, cause, association or other endeavor; or (b) 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, 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;

- h) to the extent that source code is contained within the Content, reverse engineer, decompile, or disassemble any part of such source code;
- i) remove any notice of copyright, trade-mark or other proprietary right from any place where it is on or embedded in the Content;
- j) sub-license, re-sell, rent, lend, assign, gift or otherwise transfer or distribute the Content or the rights granted under this Agreement;
- k) 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;
- l) 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;
- m) use or display any video, image or illustrated Content on the internet that exceeds 640x360 (16:9) pixels or 640x480 (4:3) (unless web HD add-on license is purchased) or use or display a still image that exceeds 640x360 pixels (unless web HD add-on license is purchased);
- n) use or display an upscaling (downgrade in image quality) of video, image or illustrated Content;
- o) use the Content for more than five years from the date of purchase (unless perpetual add-on license is purchased); or
- p) if 1M- is selected at purchase, either individually or in combination with others: (i) reproduce the Content or an element of the Content in excess of 1,000,000 times; (ii) have more than 1,000,000 views of the Content or an element of the Content; (iii) have more than 1,000,000 impressions of the Content or an element of the Content; (iv) have more than 1,000,000 downloads of the Content or an element of the Content; (v) target more than 1,000,000 households with the Content or an element of the Content; or (vi) in combination of reproduction, views, impressions, downloads, targeted households exceed 1,000,000 without upgrading first to the 1M+ License.

## **5. Excess Reproduction/View/Impression/Download/Target**

In the event you contravene subparagraph 4(s) above, you agree to upgrade to the 1M+ License offered by Nimia.

## **6. Term 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 the license granted by 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 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.

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 7.1 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 7.1 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 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, NIMIA SHALL NOT BE LIABLE FOR ANY DAMAGES, COSTS OR LOSSES ARISING AS A RESULT OF MODIFICATIONS MADE TO THE CONTENT BY YOU OR THE CONTEXT IN WHICH THE CONTENT IS USED BY YOU.

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 Membership 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.