

Blue Sky Stock Footage Royalty Free (RF) License Agreement

THIS IS A LEGAL AGREEMENT (THE "AGREEMENT") BETWEEN LICENSEE, PURCHASER (IF ANY) AND BLUE SKY STOCK FOOTAGE, AS IDENTIFIED IN SECTION 10.i BELOW ("BSSF"). THIS AGREEMENT APPLIES TO LICENSES ISSUED VIA THE WEB AND VIA SALES REPRESENTATIVES, AND IS APPLICABLE TO ONLINE, DIGITAL AND ANALOG (PHYSICAL) DELIVERY OF LICENSED MATERIAL. BY ORDERING A LICENSE, LICENSEE AND, IF APPLICABLE, PURCHASER, IS CONFIRMING THAT IT HAS CAPACITY TO FORM A CONTRACT UNDER ITS LOCAL LAWS.

1. **Definitions.** In this Agreement the following definitions apply:
 - a. "Order" means the computer-generated or pre-printed standard form Order provided by BSSF via email upon purchase that shall include, without limitation, the BSSF licensing company, the Licensed Material selected and the corresponding price for the license of such Licensed Material ("License Fee"). The Order shall be incorporated into this Agreement and all references to the Agreement shall include the Order.
 - b. "Licensed Material" means any film or video footage, visual representation generated optically, electronically, digitally or by any other means, including any negatives, transparencies, film imprints, prints, original digital files, or any copies thereof, or any other product protected by copyright, trademark, patent or other intellectual property right, which is licensed to Licensee by BSSF under the terms of this Agreement. Any reference in this Agreement to the Licensed Material shall be to each individual item within the Licensed Material and also to the Licensed Material as a whole.
 - c. "Licensee" means the entity purchasing a license hereunder or, if there is a separate Purchaser, the entity specifically designated as Licensee during the purchase process and set forth as such in the Order.
 - d. "Licensee Work" means an end product or service that has been created by or on behalf of Licensee using independent skill and effort and that incorporates a Reproduction of the Licensed Material as well as other material.
 - e. "Purchaser" means the entity purchasing the license hereunder on behalf of a third-party Licensee.
 - f. "Reproduction" and "Reproduce" mean any form of copying or publication of the whole or a part of any Licensed Material, via any medium and by whatever means, the distortion, alteration, cropping or manipulation of the whole or any part of the Licensed Material, and the creation of any derivative work from, or that incorporates, the Licensed Material.
 - g. "User" means any employee or subcontractor of Licensee who: (i) downloads, manipulates, edits, modifies or saves the digital file containing the Licensed Material; (ii) is otherwise directly involved in the creative process utilizing the Licensed Material; or (iii) incorporates the Licensed Material within any derivative work.
2. **Grant of Rights.** Subject to the terms of this Agreement:
 - a. BSSF grants to Licensee a perpetual, non-exclusive, non-transferable, non-sublicensable, worldwide right to Reproduce the Licensed Material identified in the Order an unlimited

number of times in any and all media for all purposes other than those uses prohibited under Section 3 of this Agreement.

- b. Licensee may have the Licensed Material Reproduced by subcontractors of Licensee (including Purchaser) for preparation of the Licensee Work, provided that such subcontractors agree to abide by the provisions of this Agreement.
- c. Licensee may store the Licensed Material in a digital library, network configuration or similar arrangement to allow the Licensed Material to be viewed by employees, partners and clients of Licensee.

3. Restrictions.

- a. Licensee may not: (i) make the Licensed Material available (separate from the Licensee Work) in any medium accessible by persons other than authorized Users; or (ii) make the Licensee Work available in any medium or manner intended to allow or invite a third party to download, extract or access the Licensed Material as a standalone file, such as for a screensaver.
- b. Licensee may not, without obtaining the prior written consent of BSSF and the payment of additional License Fees: (i) include the Licensed Material in an electronic template intended to be Reproduced by third parties on electronic or printed products; or (ii) use or display the Licensed Material on websites or in any other medium designed to induce or involving the sale, license or other distribution of "on demand" products, including, without limitation, postcards, mugs, t-shirts, calendars, posters, screensavers or wallpapers on mobile telephones, or similar items.
- c. Licensee may not falsely represent, expressly or impliedly, that Licensee is the original creator of a visual work that derives a substantial part of its artistic components from the Licensed Material.
- d. Licensed Material shall not be incorporated into a logo, corporate ID, trademark or service mark, without obtaining the prior written consent of BSSF. Licensee must obtain a separate custom quote and License for incorporation of Licensed Material into a broadcast television commercial or production or theatrical feature.
- e. If any Licensed Material featuring a model or property is used in connection with a subject that would be unflattering or unduly controversial to a reasonable person, Licensee must accompany each such use with a statement that indicates that: (i) the Licensed Material is being used for illustrative purposes only; and (ii) any person depicted in the Licensed Material, if any, is a model.
- f. Defamatory or otherwise unlawful use of Licensed Material is strictly prohibited, whether directly or in context or juxtaposition with specific subject matter. Licensee shall also comply with any applicable regulations and/or industry codes.
- g. While efforts have been made to correctly caption the subject matter of, and to provide other information (including metadata) related to, the Licensed Material, BSSF does not warrant the accuracy of such information.
- h. Where Purchaser is licensing Licensed Material on behalf of a Licensee, Purchaser hereby represents and warrants that: (i) Purchaser is authorized to act as an agent on behalf of Licensee and has full power and authority to bind Licensee to this Agreement; and (ii) if Licensee subsequently disputes such power or authority, Purchaser shall be bound and liable for any failure of Licensee to comply with the terms of this Agreement. Nothing in this Section 3.h shall serve to excuse Purchaser's obligation to make payment to BSSF of the License Fee.

- i. If the Licensed Material is Reproduced on a website, Licensee shall post terms and conditions on the website that include restrictions on downloading the Licensed Material for other than personal use, and prohibit republication, retransmission, reproduction or other use of the Licensed Material.

4. Credit and Intellectual Property.

- a. Copyright. No ownership or copyright in any Licensed Material shall pass to Licensee by the issuance of the license contained in this Agreement. Except as expressly stated in this Agreement, BSSF grants Licensee no right or license, express or implied, to the Licensed Material.
- b. Trademarks. In connection with the use of "BSSF" or any other of BSSF', trademarks, logos or service marks ("Marks"), Licensee acknowledges and agrees that (i) such Marks are and shall remain the sole property of BSSF; (ii) except as expressly required in order to satisfy credit obligations under this Agreement, nothing shall confer upon Licensee any right of use in or to the Marks; and (iii) Licensee shall not now or in the future contest the validity of BSSF' trademarks, logos or services marks.
- c. Footage Credit. When incorporating the Footage in print, film features, broadcast productions, or video products, BSSF requests a credit line that reads "Footage supplied by BlueSkyFootage.com" or "Additional Footage by Blue Sky Stock Footage" or "Stock Footage provided by Blue Sky Stock Footage" or "Blue Sky Stock Footage", subject to the approval of Licensees' Producer.
- d. Notice of Violations. Licensee will immediately notify BSSF if it becomes aware or suspects that any third party that has gained access to the Licensed Material through Licensee is wrongfully using the Licensed Material, in whole or in part, or is violating any of BSSF' intellectual property rights, including, but not limited to, Marks and copyrights.

5. Warranty and Limitation of Liability.

- a. BSSF warrants that: (i) the Licensed Material will be free from defects in material and workmanship for thirty (30) days from delivery (Licensee's sole and exclusive remedy for a breach of this warranty being the replacement of the Licensed Material); (ii) it has all necessary rights and authority to enter into and perform this Agreement; (iii) Licensee's use of the Licensed Material in accordance with this Agreement and in the form delivered by BSSF 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 (iv) In many cases, no model releases or property releases are available for Licensed Material. Licensee can request from BSSF if a release is on file, however, the Licensee shall be solely responsible for determining whether a release is required in connection with any proposed use of Licensed, and Licensee shall be responsible for obtaining any required release. (v) BSSF has all necessary rights and authority to enter into and perform this Agreement, excluding, for the avoidance of doubt, permissions or authorizations from any individuals or owners of property (including trademarks, service marks, logos and other intellectual property) depicted in the Licensed Material. BSSF' indemnification obligations under with respect to Licensed Material are accordingly limited to breaches of these limited representations and warranties. (vi) Licensee shall be responsible for payment of any amounts that may be due under, and compliance with any other terms of, any applicable collective bargaining agreement(s) (such as Screen Actors Guild in the US) as a result of Licensee's use of the Licensed Material.

- b. BSSF DOES NOT MAKE ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE LICENSED MATERIAL OR ITS DELIVERY SYSTEMS, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. BSSF SHALL NOT BE LIABLE TO LICENSEE OR ANY OTHER PERSON OR ENTITY FOR ANY PUNITIVE, SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR OTHER SIMILAR DAMAGES, COSTS OR LOSSES ARISING OUT OF THIS AGREEMENT, EVEN IF BSSF HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, COSTS OR LOSSES. NO ACTION, REGARDLESS OF FORM OR NATURE, ARISING OUT OF THIS AGREEMENT MAY BE BROUGHT BY OR ON BEHALF OF LICENSEE OR PURCHASER MORE THAN TWO (2) YEARS AFTER THE CAUSE OF ACTION FIRST AROSE. SOME JURISDICTIONS DO NOT PERMIT THE EXCLUSION OR LIMITATION OF IMPLIED WARRANTIES OR LIABILITY FOR CERTAIN CATEGORIES OF DAMAGES. WITHOUT LIMITING ANY OTHER TERM HEREIN, BSSF SHALL NOT BE LIABLE FOR ANY DAMAGES, COSTS OR LOSSES ARISING AS A RESULT OF MODIFICATIONS MADE TO THE LICENSED MATERIAL BY LICENSEE OR THE CONTEXT IN WHICH LICENSED MATERIAL IS USED IN A LICENSEE WORK.

6. Indemnification.

- a. Provided Licensed Material is only used in accordance with this Agreement and Licensee is not otherwise in breach of this Agreement and as Licensee's sole and exclusive remedy for any breach of the representations and warranties set forth above, BSSF shall, subject to the terms above and below, defend, indemnify and hold harmless Licensee and its parent, subsidiaries and commonly owned or controlled affiliates and their respective officers, directors and employees from all damages, liabilities and expenses (including reasonable outside attorney fees), arising out of or connected with any actual lawsuit or legal proceeding alleging that BSSF is in breach of its warranties set forth in above. The foregoing states BSSF' entire indemnification obligation under this Agreement.
 - b. Licensee shall, subject to the terms of Section 6.c below, defend, indemnify and hold harmless BSSF and its partners, and owners and employees from all damages, liabilities and expenses (including reasonable outside attorneys' fees), arising out of or as a result of claims by third parties relating to Licensee's use of any Licensed Material outside the scope of this Agreement or any other actual or alleged breach by Licensee of this Agreement.
 - c. The party seeking indemnification pursuant to this Agreement shall promptly notify the other party of such claim. At indemnifying party's option, indemnifying party may assume the handling, settlement or defense of any claim or litigation, in which event indemnified party shall cooperate in the defense of any such claim or litigation as may be reasonably requested by indemnifying party. Indemnified party shall have the right to participate in such litigation, at its expense, through counsel selected by indemnified party. Indemnifying party will not be liable for legal fees and other costs incurred prior to the other party giving notice of the claim for which indemnity is sought and BSSF shall not be liable for any losses arising from Licensee's failure to discontinue use pursuant to Section 10.c below.
- 7. Condition of Licensed Material.** Licensee should examine all Licensed Material for possible defects (whether digital or otherwise) before sending any Licensed Material for

Reproduction. Without prejudice to above, BSSF shall not be liable for any loss or damage suffered by Licensee or any third party, whether directly or indirectly, arising from any alleged or actual defect in any Licensed Material or its caption or in any way from its Reproduction.

8. **Interest on Overdue Orders.** If Licensee fails to pay the Order in full within the time specified in the Order, BSSF may add a service charge of one-and-one-half percent (1.5%) per month, or such lesser amount as is allowed by law, on any unpaid balance until payment is received.
9. **Unauthorized Use and Termination.** Any use of Licensed Material in a manner not expressly authorized by this Agreement constitutes copyright infringement, entitling BSSF 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 BSSF' other remedies under this Agreement, BSSF reserves the right to charge and Licensee agrees to pay a fee equal to five (5) times BSSF' standard license fee for the unauthorized use of the Licensed Material. BSSF reserves the right to terminate this Agreement in the event Licensee: (i) enters the Agreement after having received notice of unauthorized use from BSSF relating to the Licensed Material; (ii) fails to pay the License Fee in full within the time specified in the Order; or (iii) otherwise breaches the terms of this Agreement. Upon termination, Licensee must immediately (I) stop using the Licensed Material; and (II) destroy or, upon the request of BSSF, return to BSSF the Licensed Material and, in the case of termination by BSSF for cause, the Licensee Work in the possession or control of Licensee.
10. **Miscellaneous Terms.**
 - a. **Audit/Certificate of Compliance.** Upon reasonable notice, Licensee shall provide sample copies of Reproductions containing Licensed Material to BSSF. In addition, upon reasonable notice, BSSF may, at its discretion, either through its own employees or through a third party, audit Licensee's records directly related to this Agreement and use of Licensed Material in order to verify compliance with the terms of this Agreement. If any such audit reveals an underpayment by Licensee to BSSF of five percent (5%) or more of the amount Licensee should have paid for the time period that is the subject of the audit, in addition to paying BSSF the amount of such underpayment, Licensee shall also reimburse BSSF for the costs of conducting such audit. Where BSSF reasonably believes that Licensed Material is being used by more than the authorized number of Users, or that Licensed Material is being used outside of the scope of the license granted under this Agreement, Licensee shall, at BSSF' request, provide a certificate of compliance signed by an officer of Licensee, in a form to be approved by BSSF.
 - b. **Electronic Storage.** For all Licensed Material that Licensee takes delivery of in electronic form, Licensee must retain the copyright symbol, the name of Blue Sky Footage, the Licensed Material's identification number and any other information as may be embedded in the electronic file containing the original Licensed Material. Licensee shall maintain a robust firewall to safeguard against unauthorized third-party access to the Licensed Material.
 - c. **Withdrawal.** Upon notice from BSSF, or upon Licensee's knowledge that any Licensed Material is subject to a threatened, potential or actual claim of infringement of another's right for which BSSF may be liable, Licensee must immediately and at its own expense (i) stop using the Licensed Material; (ii) delete or remove the Licensed Material from its

- premises, computer systems and storage (electronic or physical); and (iii) ensure that its clients do likewise. BSSF shall provide Licensee with comparable Licensed Material (which comparability will be determined by BSSF in its reasonable commercial judgment) free of charge, but subject to the other terms and conditions of this Agreement.
- d. **Governing Law.** This Agreement will be governed in all respects by the laws of the State of New Mexico, U.S.A., without reference to its laws relating to conflicts of law. Any disputes arising from this Agreement or its enforceability shall be finally settled by binding arbitration under the Commercial Rules of the American Arbitration Association ("AAA") or of the International Chamber of Commerce ("ICC") to be held in the following jurisdiction: Santa Fe, New Mexico. The United Nations Convention on Contracts for the International Sale of Goods does not govern this Agreement. The prevailing party shall be entitled to recover its reasonable legal costs relating to that aspect of its claim or defense on which it prevails, and any opposing costs awards shall be offset. Notwithstanding the foregoing, BSSF shall have the right to commence and prosecute any legal or equitable action or proceeding before any court of competent jurisdiction to obtain injunctive or other relief against Licensee in the event that, in the opinion of BSSF, such action is necessary or desirable.
 - e. **Severability.** If one or more of the provisions contained in the Agreement is found to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not be affected. Such provisions shall be revised only to the extent necessary to make them enforceable.
 - f. **Waiver.** No action of either party, other than express written waiver, may be construed as a waiver of any provision of this Agreement. A delay on the part of either party in the exercise of its rights or remedies will not operate as a waiver of such rights or remedies, and a single or partial exercise by either party of any such rights or remedies will not preclude other or further exercise of that right or remedy. A waiver of a right or remedy on any one occasion will not be construed as a bar to or waiver of rights or remedies on any other occasion.
 - g. **Entire Agreement.** This Agreement is intended for business customers of BSSF and contains all the terms of the license agreement. No terms or conditions may be added or deleted unless made in writing and either signed by an authorized representative of both parties or issued electronically by BSSF and signed by an authorized representative of Licensee. In the event of any inconsistency between the terms contained herein and the terms contained on any purchase order or other communication sent by Licensee, the terms of this Agreement shall govern.
 - h. **Taxes.** All License Fees are exclusive of any applicable sales, use, withholding or other transactional taxes, which are the sole responsibility of Licensee or Purchaser (if any).