**BAPLA**

Content Use Agreement Template

*Note: This is a template and it may require tailoring to your business. We recommend that you review it carefully and seek legal advice if you have any questions.*

**General Terms**

1. What materials make up our Agreement?
   1. This document sets out the general terms and conditions relating to your use of the Content. The general terms, together with the terms set out on the Website (on any webpage(s) displaying the Content or otherwise) and/or in the separate document detailing permitted usage provided to you and/or the Invoice (individually and collectively, **Specific Terms**) form the agreement between you and us (**Agreement**).
   2. We have defined certain words and phrases for the purpose of this Agreement and, with the exception of references to you and us, we have capitalised them when used. You can find the list of the defined terms at the end and, where applicable, in the Specific Terms.
   3. If you obtain, use or pay for the Content you will be bound by this Agreement from the earliest of your use, payment or the issue of Specific Terms. The Agreement overrides any terms you may offer us before or after its conclusion, and no act or inaction on our part can be taken as acceptance of your offered terms. The Agreement may only be modified by an amendment agreement expressed as such, made in writing and signed by you and us.
   4. The Agreement starts when you use, obtain or pay for the Content, whichever is the earliest. Our general terms are available on the Website and you will be deemed to have accepted them together with the restrictions set out on the relevant Content-specific Webpage when you use the Content. They will be supplemented and modified by the Specific Terms when issued to you and accepted by your signature, notice or continued use of Content.
2. Who can use Content?
   1. The Content may be used by you, the End User (if any) and any other person referred to in the Specific Terms solely for the Permitted Purpose.
   2. We understand that in some circumstances you, the person referred to in the Specific Terms or the End User may need to sublicense the Content to group companies, subcontractors or intermediaries to produce the End Use. Such sublicences are permitted provided that the sublicensee shall not have the right to use the Content in any way other than to produce the End Use. You are not permitted to sublicense or assign your rights under this Agreement otherwise, unless agreed in the Specific Terms.
   3. You will be responsible for acts and omissions of your sublicensees, which will be deemed to be your acts or omissions for the purpose of this Agreement.
3. How you can use Content
   1. Provided that you pay the Fees and comply with the terms of the Agreement, you are granted the licence under copyright in the Content on terms further described in the Specific Terms, and, in the case of RM content, limited to the Permitted Purpose, Media, Term and Territory set out there.
   2. If no Specific Terms have been agreed, you are granted a non-exclusive right to use the Content solely to evaluate the Content for the potential End Use and determine the scope of the licence you wish to obtain from us. You may not share, publish or make the content available to third parties. If you do not seek a licence within 30 days from the first use of the Content, or do not obtain it within [3 months] from your first request for the licence, you must immediately cease using Content and remove all copies of it in your possession or under your control.
   3. The ownership of copyright in the Content, and all intellectual property rights including, without limitation, rights in the databases containing the Content, metadata and other information relating to it, vests in us and, except for the rights expressly granted under the Agreement, you acquire no right or interest in relation to the copyright in the Content or other intellectual property rights.
   4. We reserve all rights to claim the royalties, levies, mechanical copying charges and other payments available from collective management organisations or other representative bodies in connection with secondary uses of the Content as incorporated in the End Use (**Secondary Licensing Fees**), and you do not acquire any right, title or interest enabling you to claim or collect any Secondary Licensing Fees on our behalf, or on behalf of the authors we represent.
4. Restrictions on your use of Content
   1. Unless expressly permitted by the Specific Terms you may not:
      1. alter or manipulate the Content, add to it, crop it or delete any part. Cropping is permitted only if minimal and necessary due to the size and format of the End Use, and in Editorial Use, Content may be cropped or otherwise edited for technical quality, provided that the editorial integrity of the content is not compromised. Any alteration or manipulation of Content beyond what is permitted under the preceding sentence must be approved by us in writing in advance of use;
      2. incorporate the Content or any part of it in a logo, trade mark or service mark;
      3. recreate the Content in whole or any part in a drawing or other visual work; and
      4. use Content licensed for Editorial Use for Commercial Use, and vice versa; and
      5. use Content licensed to be incorporated in a work or product, on a stand-alone basis, and vice versa.
      6. use any data mining, robots or similar data gathering or extraction methods.
   2. You must not use the Content in a pornographic, obscene, defamatory, offensive, misleading, or unlawful manner or context [or in any way contravening our policy available at [link]].
   3. You will observe all restrictions set out in the Specific Terms, metadata and any other restrictions notified to you before the date of the Agreement.
   4. Authors of artistic works such as photographs have a statutory right for their authorship to be credited when their work is used. Unless otherwise in agreed in writing in advance of the use, you will ensure that the Content is accompanied by the following credit: *© [Library] / Photographer’s name*.
5. Our assurances as to Content
   1. We warrant and represent that:
      1. the Content, when used as authorised under this Agreement, will not infringe the rights of the author and the owner of copyright in the Content;
      2. if we provided you with a Model Release and/or a Property Release in respect of a person or object depicted in the Content, or the existence of the Model Release or a Property Release is referred to on the Content-specific webpage or the Specific Terms, your use as authorised under this Agreement will not infringe the rights in the nature of passing off and the right to privacy of the depicted person, or property rights of the owner of the object; and
      3. we have sufficient rights to enter into this Agreement and grant you the rights described herein.
   2. The subject matter depicted in the Content may be protected by copyright, trade marks, design rights, moral rights, privacy and personality rights, property rights and other rights not belonging to or represented by us. With the exception of the warranties in clauses 5.1(a) and (b), we make no warranties or representations and grant no rights in relation to the subject matter depicted or included in the Content, and we will not be liable for any third-party claims relating to it.
   3. While we make efforts to use accurate caption information and metadata, the information is provided “as is” and we do not warrant that such information is accurate. You must satisfy yourself that the information is correct.
   4. Except as is expressly stated, we make no other warranty, express, implied or statutory, regarding any Content, our online systems, or any rights or licences under this Agreement including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.
6. Payments for using Content
   1. In consideration for the rights granted to you under the Agreement, you will pay the Fees.
   2. The Fees shall be payable within 30 days of the date on which the Invoice is issued, by the end of the payment term specified in the Invoice or agreed by the parties in writing and the payment is required to be made electronically to the bank account notified to you in the Invoice or otherwise [or by other agreed method]. If the payment of the Fees or any part of it is not made when due, we reserve the right to charge interest on the outstanding amount [in the amount of 4% per annum above the base rate of [Barclays Bank plc]] as permitted under the Late Payment of Commercial Debts (Interest) 1998.
   3. All amounts due under this Agreement are exclusive of VAT which shall, where applicable, be due and paid by you at the prevailing rates on the due date for payment of Fees and on receipt of a VAT invoice from us.
   4. You may not set off against the Fees any amounts which may be due from us to you. The only deduction that you may make is withholding tax if required by law.
7. How can you help us protect Content?
   1. In creating the End Use, you will limit access to the Content to persons having a bona fide need to facilitate the making of it. You will ensure that all such persons cease using and remove the Content from any systems on which the Content has been recorded once the End Use is created.
   2. As part of our digital rights management, we may embed symbols, identification numbers, hashes and other information in the Content or related metadata, for example, IPTC data, (**DRM Data**). You will not remove the DRM Data. If our Content is watermarked, you will be provided a high-resolution file without a watermark for the incorporation in the End Use. Removal of DRM Data is illegal and may result in criminal charges.
   3. If Permitted Purpose involves use of the Content on the internet or any other interactive media, you will use commercially reasonable efforts to protect the Content and ensure that it cannot be copied. Use of the Content on social media may require an embedded credit-line. We reserve the right to place a limit on pixel dimensions of the Content which will be specified in the Specific Terms or communicated to you in writing.
   4. If we receive any claims in relation to the Content, we may ask you to stop using Content and if we do, you will comply with our request. At our discretion, and as your sole remedy, we may offer you alternative content or a refund of the Fees.
8. How we deliver Content to you
   1. If we provide Content to you electronically, in digital format, we will use best endeavours to ensure that the Content is free from defects in material and workmanship (but not visual artefacts inherent in the original Content). If the Content has any such defects, you must notify us within 90 days following delivery and, as your exclusive remedy for your inability to use the Content due to defects, we will provide a replacement digital copy, or at our discretion, terminate the Agreement and refund the paid Fees to you.
   2. If we deliver to you transparencies, negatives, prints or any other physical carriers of the Content such as tapes, cassettes, disks, memory sticks (**Physical Content**), you may be charged a fee to cover our costs of safe delivery. You will hold any such Physical Content on loan from us until you make copies of the Physical Content, and you will return the Physical Content in accordance with the terms set out in the Specific Terms. You will be responsible for its security and good condition while in your safekeeping. You must notify us immediately of any damage or the loss of the Physical Content and will indemnify us for all costs and losses we may incur as a result of the damage or loss.
9. Cancelling use and terminating the Agreement
   1. You are entitled to cancel any licence granted to you as follows:
      1. if you cancel the licence within 7 days from the date of the Agreement, you will be charged a reasonable transaction fee;
      2. if you cancel the licence after seven days but before 30 days after the date of the Agreement, you will be charged a cancellation fee equal to 50% of the Fees;

after 30 days no cancellation will be accepted, and you will be responsible for the payment of the full amount of Fees.

* 1. We may (by written notice to you) terminate this Agreement immediately if you fail to pay any amount due under this Agreement in full within 14 days of its due date and this failure is not remedied within 7 days of receipt of written notice to this effect.
  2. Each party may terminate this agreement if:
     1. the other party commits a material breach of its obligations under this Agreement which is incapable of remedy, or if capable of remedy, is not remedied within 14 days after the innocent party had given written notice requiring the breach to be remedied; or
     2. the other party ceases, or threatens to cease, to carry on business, or the conduct of its business is materially affected by events including, without limitation, (i) a proposal for a voluntary arrangement or other composition scheme for the benefit of creditors, (ii) by a resolution or a petition for winding up, or (iii) an appointment of a liquidator, administrator or receiver is made by the other party or a court.
  3. Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement shall remain in full force and effect.

1. If things go wrong
   1. **Audit.** You shall keep separate and detailed records of all uses of the Content to enable us to verify your compliance with the terms of this Agreement. After giving written notice of 10 days, we, or any other person authorised by us, may inspect your records, premises and/or servers during normal business hours, and take away copies to verify the information provided by you. This right of inspection shall remain in effect for a period of one (1) year after the expiry or termination of this Agreement.
   2. **Indemnity.** Each party will indemnify and hold harmless the other party against any claims, damages, losses, expenses or costs (including any direct, indirect or consequential losses, loss of profit and loss of reputation and all interest, penalties and legal costs and other expenses) arising in any manner whatsoever from or as a result of any breach by it of its obligations under this Agreement, including, without limitation, in your case, your unauthorised use of any Content supplied by us to you.
   3. **Limitation of liability.** We take pride in our Content and stand by the rights in the Content we license. Consequently, we do not limit our liability for breach of our warranties under clause 5.1 save as limited by law. Our liability for any other breaches of the Agreement is limited to the amount of the Fees received for the Content complained about.
   4. **Contractual damages.** If you fail to comply with your credit obligations under clause 4.4, or use Content in breach of your licence, we will be entitled, at our discretion, to enforce our rights, or to charge you an amount equal to [three times the amount] of the Fees as compensation for our losses incurred as a result of unauthorised use, and [50%] of the Fees as compensation for failure to credit. You agree that these contractual damages are reasonable and proportionate to protect our legitimate interests as the copyright licensor.
   5. **Waiver of certain rights**. We reserve all legal rights in respect of the Content and the enforcement of this Agreement, provided however, that if the Content is incorporated in a Production for broadcast and public showing, our sole and exclusive remedy for your breach, termination or cancellation of the Agreement, shall be limited to an action at law for damages. We waive our right to seek injunctive or other equitable relief, and at no time will you be required to remove the Content from the End Use.
2. Terms underpinning this agreement
   1. This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter. Each party agrees that it shall have no remedies in respect of any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement. No party shall have any claim for innocent or negligent misrepresentation based upon any statement in this Agreement.
   2. Clause and paragraph headings are included for convenience only and shall not affect the interpretation of this Agreement.
   3. Notices under this Agreement will be in writing and sent to a party’s registered office OR address as set out on in the Specific Terms. Notices may be given, and will be deemed received:
      1. by first-class post: two Business Days after posting;
      2. by airmail: seven Business Days after posting;
      3. by hand: on delivery;
   4. This clause does not apply to notice given in legal proceedings, arbitration or other dispute resolution proceedings.
   5. A notice given under this agreement is not validly served if sent by email.
   6. If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected. If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
   7. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims), save for infringement of copyright or non-payment of the Fees where it shall be non-exclusive. However, if your business address is in Scotland or Northern Ireland then the words “Scotland” or “Northern Ireland”, as the case may be, shall be substituted for the words “England and Wales” in the preceding two sentences of this clause 11.4.
3. Definitions

In this Agreement, the following terms shall have the meaning as assigned to them:

* + 1. **Agreement** has the meaning given to it in clause 1.1.
    2. **Commercial Use** means the use of the Content in the advertising or promotion of a product or service.
    3. **Content** means an illustration and picture of any kind whatsoever, including without limitation a photograph, film, video clip, transparency, negative, design, artwork, painting, montage, drawing, plan, lithograph, engraving, computer or electronically generated visual Illustration including without limitation a moving and interactive image, volumetric data and the component images and their combinations (stacks), and any other type of copyright work or other content in a format existing now or devised in the future which may be offered to you by us for the purposes of reproduction, which may be detailed in the Specific Terms or the invoice, including any related metadata, text, captions and information.
    4. **DRM Data** has the meaning given to it in clause 7.2.
    5. **Editorial Use** means placing Content in the context of news or any other factual or opinion-based information which is not Commercial Use.
    6. **End Use** means the work into which the Content is intended to be incorporated as may be further specified in the Specific Terms.
    7. **End User** means the person on whose direction the End Use is created.
    8. **Fees** has the meaning given to it in the Specific Terms.
    9. **Invoice** means the invoice issued by us to you in connection with your use of the Content.
    10. **Permitted Purpose** means the use described in clause 3.2 and/or the Specific Terms.
    11. **Physical Content** has the meaning given to it in clause 8.2.
    12. **Production** means a film produced otherwise than for Commercial Use.
    13. **RM**, or **Rights Managed**, means Content licensed for a Fee payable per-use basis and expressly designated as “Rights Managed” or “RM” by us.
    14. **RF**, or **Royalty Free**, means Content licensed for an unlimited number of permitted uses for a one-time Fee and expressly designated as “Royalty-Free” or “RF” by us.
    15. **Secondary Licensing Fees** has the meaning given to it in clause 3.4.
    16. **Specific Terms** has the meaning given to it in clause 1.1.
    17. **Term** means the period in which the license for Content shall be valid as described in clause 3.2 and/or the Specific Terms.
    18. **Territory** shall have the meaning given to it in the Specific Terms or the invoice.
    19. **we**, **us** (and derivatives) means [name of the BAPLA member] unless the context requires otherwise.
    20. **Website** means [insert BAPLA member’s website domain name].
    21. **you (**and derivatives) means the user of the Website or the person named in the Specific Terms.

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*These terms were drafted by Open Plan Law, a specialist law firm advising the creative industries. Please email contact@openplanlaw.com if you would like to contact the firm. BAPLA members are offered discounted fees and the first consultation at no charge.*