



ProSoundEffects®

Last Updated January 2020  
INDIVIDUAL END USER LICENSE AGREEMENT

**IMPORTANT – READ CAREFULLY:** THIS IS A LEGAL AGREEMENT (THE “AGREEMENT”) BETWEEN YOU AND PRO SOUND EFFECTS (“PSE”). THIS AGREEMENT APPLIES TO LICENSES PURCHASED BY YOU AND IS APPLICABLE TO ONLINE, DIGITAL AND ANALOG (PHYSICAL) DELIVERY OF LICENSED MATERIAL. BY ORDERING A LICENSE, YOU AND, IF APPLICABLE, PURCHASER, ENTER(S) INTO THIS AGREEMENT WITH PSE AND CONFIRM(S) THAT YOU AND/OR IT, AS THE CASE MAY BE, HAVE AND/OR HAS, AS THE CASE MAY BE, THE POWER AND AUTHORITY TO DO SO.

**This Agreement governs Your usage of the royalty-free sounds and/or sound effect collections that You purchase from Pro Sound Effects.** Individuals and single (i.e. one (1)) person entities may enter into this Agreement to purchase Licensed Material. **All Licensed Material comes with a perpetual, royalty-free synch license for You, the single end user. Any use of the Licensed Material by multiple individuals (even if at the same organization) or entities (i.e. two (2) or more) and/or from more than one computer requires a Multi-User License.** To obtain a Multi-User License, simply email [licensing@prosoundeffects.com](mailto:licensing@prosoundeffects.com) or call Pro Sound Effects at (646) 706-7728 x10. A PSE Licensing Specialist will be assigned to you to quickly and expediently issue your Multi-User License.

**Copyright infringement is a serious offense. Copyright laws and international treaty provisions protect PSE. PSE protects its copyrights by all necessary means, including legal action.**

**I. Definitions.** The following terms have the stated meanings:

- 1.1. “Audio Product”** means any product in any format or media now known or hereafter devised, embodying the Licensed Material alone, including, without limitation, hard drives, compact discs (CDs), cassettes, phonograph records, and digital downloads.
- 1.2. “Broadcast”** means to cause or permit others to cause the performance, telecast, broadcast, transmission, streaming, exhibition or distribution of the End User Work.
- 1.3. “Collection Societies”** means any performing, mechanical, or other rights society<sup>1</sup> that collects and administers royalty payments on behalf of music publishers, writers and performers.
- 1.4. “Copy”** means to duplicate or otherwise make (i) one (1) copy of the Licensed Material to be stored on Your hard drive or (ii) copies of the End User Work solely for the purpose of Broadcasting the End User Work.
- 1.5. “Edit”** means use by You of less than an entire Master, including the editing, looping, enhancing or modifying of the Licensed Material.
- 1.6. “End User Work”** means the production or program prepared by You embodying the Synchronized Licensed Material.
- 1.7. “License Fee”** means the corresponding price for the license of any Licensed Material.
- 1.8. “Licensed Material”** means the (i) sound recordings (the “Masters”), (ii) musical compositions, including but not limited to lyrics, sound elements and sound effects embodied on the Masters (the “Compositions”), and (iii) any printed, online or downloadable documentation, database information

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<sup>1</sup> E.g. ASCAP, BMI, SESAC, SOCAN, SACEM, MCPS, PRS, PPL, GEMA, GVL, SGAE, AIE.

or other electronic documentation (the "Documentation") offered for licensing by PSE and selected for use by You (such Masters, Compositions and Documentation so selected, collectively the "Licensed Material"). Any reference in this Agreement to the Licensed Material shall be to each part of the Licensed Material and also to the Licensed Material as a whole.

**1.9. "Purchaser"** means an entity purchasing the license hereunder on Your behalf.

**1.10. "Synchronize"** means to couple and/or synchronize, arrange, record, re-record, transcribe, modify or edit the Licensed Material solely in timed relation with the intended use(s) specified herein.

**1.11. "Synchronized Licensed Material"** means Licensed Material that has been coupled and/or synchronized, arranged, recorded, re-recorded, transcribed, modified or edited solely in timed relation with the intended use(s) specified herein.

**1.12. "You"** means, as applicable, the person or entity purchasing a license hereunder and, if specifically identified during the purchase process or set forth in the invoice, also means the person or entity on whose behalf the license is purchased.

## **II. License Grant and Restrictions. Subject to the terms of this Agreement:**

**2.1.** PSE grants to You a non-exclusive, non-sublicensable and non-transferable worldwide right to use, Edit and Synchronize the Licensed Material, and to Copy and Broadcast the End User Work. With PSE's consent, which may be obtained by emailing [licensing@prosoundeffects.com](mailto:licensing@prosoundeffects.com), the Licensed Material may be Copied only once in standalone form by You in order to store the Licensed Material on one hard drive. The Licensed Material, in standalone form, may not be Broadcast. As further described in Article IV, below, the rights granted herein may be subject to rights held by Collection Societies.

**2.2.** Use of the Licensed Material is strictly limited to the use, media, term of use, territory and other restrictions specified in this Agreement. The terms of the rights granted hereunder are in perpetuity. You may use the Licensed Material in any production process provided such use is a synchronized use. Use of the Licensed Material shall be limited to use in a synchronized manner. **Any use of the Licensed Material in an asynchronous or non-synchronized format without receiving proper consent and license by virtue of obtaining the necessary Custom Application License issued by Pro Sound Effects is strictly prohibited.** For inquiries related to specific usages of this nature and more information on obtaining a Custom Application License, call Pro Sound Effects at (646) 706-7728 x10 or contact us at [licensing@prosoundeffects.com](mailto:licensing@prosoundeffects.com)

**2.3.** You may license, distribute, sell, rent, lease, sublicense, assign, and/or otherwise transfer ownership of any End User Work (but not any Licensed Material or Synchronized Licensed Material contained therein) as part of the distribution process. At no point in time shall any ownership right in or to the Licensed Material or any copy of the Licensed Material vest in You.

**2.4.** You shall not provide any person or entity with any directions or instructions as to how the Licensed Material may be extracted from an End User Work or Synchronized Licensed Material, or with any invitation, suggestion or authorization that the Licensed Material may be extracted from an End User Work or Synchronized Licensed Material. Other than as part of the production of an End User Work pursuant to the terms of this Agreement, You may not modify, adapt, translate, reverse engineer, decompile, disassemble, or create derivative works based on the Licensed Material. You shall not alter or delete any "watermark" or other ordinarily imperceptible identifier embedded within the Licensed Material.

**2.5.** You may not electronically transfer the Licensed Material unless you are making one (1) copy of the Licensed Material to be stored on Your hard drive, which may only be done with PSE's consent in

accordance with Section 2.1 of this Agreement. **Any use of the Licensed Material by multiple individuals or entities (two (2) or more) and/or from more than one computer without receiving proper consent and license by virtue of obtaining the necessary Multi-User License issued by PSE is strictly prohibited. To obtain a Multi-User License, simply email [licensing@prosoundeffects.com](mailto:licensing@prosoundeffects.com) or call Pro Sound Effects at (646) 706-7728 x10.**

- 2.6. You may use the Synchronized Licensed Material as part of an End User Work to advertise or promote any such End User Work, provided that the Licensed Material is not separated from the original End User Work. Any use of Licensed Material apart from an End User Work requires a separate license. You shall not disclose access codes or passwords used in accessing any area of the Pro Sound Effects website to any other party and will maintain such codes or passwords as confidential.
- 2.7. While efforts have been made to correctly caption the subject matter of, and to provide other information (including metadata) related to, the Licensed Material, PSE does not warrant the accuracy of such information.
- 2.8. Nothing contained in this Agreement shall be deemed to grant You the right to manufacture, distribute or sell Audio Products.
- 2.9. You shall not make the Licensed Material available in a manner intended to allow or invite a third party to download, extract, redistribute or access the Licensed Material as a standalone file, and You shall exercise due diligence and maintain strict safeguards in order to ensure that no third party is able to do so. If You become aware that any third party has downloaded, extracted, redistributed or accessed the Licensed Material, You shall immediately notify PSE via email at [copyright@prosoundeffects.com](mailto:copyright@prosoundeffects.com).
- 2.10. Defamatory or otherwise unlawful use of Licensed Material is strictly prohibited, whether directly or in context or juxtaposition with other material or subject matter. You shall also comply with any applicable regulations and/or industry codes.
- 2.11. Where Purchaser is licensing Licensed Material on Your behalf, Purchaser hereby represents and warrants that: (i) Purchaser is authorized to act as an agent on Your behalf and has full power and authority to bind You to this Agreement; and (ii) if You subsequently dispute such power or authority, Purchaser shall be liable for any failure of Yours to comply with the terms of this Agreement. Nothing in this Section 2.12 shall excuse Purchaser's obligation to make payment to PSE of the License Fee.
- 2.12. You may not falsely represent, expressly or impliedly, that You are the original creator of a work that derives a substantial part of its artistic components from the Licensed Material.
- 2.13. If You Copy or Broadcast any End User Work on Your website(s), You shall not make any of the Licensed Material on Your website(s) available as a standalone file pursuant to the license granted to You hereunder. In order to make any of the Licensed Material on Your website(s) available as a standalone file, You must obtain additional authorization from PSE.
- 2.14. If End User Works are included on any social media platform or other third party website, (y) Your right to include any such End User Works on any social media platform or other third party website shall automatically be revoked in the event that the third party website seeks to exploit purported rights to the Licensed Material contrary to the terms of this Agreement and (z) in such event, upon PSE's request, You shall remove any Licensed Material from such platform or website.

### III. Music Credit

If Licensed Material is used in an audio/visual production where credits are accorded to other providers of licensed material, credit shall be accorded, where technically feasible, in equal size and comparable placement to such credit(s), substantially in the following form: “[Artist’s Name]/[Sound Effects Collection reference, if any]/PSE” or as otherwise notified by PSE.

#### **IV. Collection Society Payments.**

- 4.1.** Notwithstanding Section 4.2., below, to the extent that Licensed Material consists of tracks or sound effects from PSE’s performance royalty-free collections (the “PRF Collections”), this Agreement shall be deemed to include the direct grant to You of the right to publicly perform the Licensed Material in the licensed territory, and no fee which would otherwise become due and payable as a result of a public performance of the Licensed Material as contemplated by this License Agreement shall be due to PSE or its contributors, nor shall this Agreement require You to report usage of the Licensed Material to any Collection Societies. In furtherance of the foregoing, PSE has used reasonable efforts to ensure that it holds all rights in the content from its PRF Collections necessary to issue direct licenses, inclusive of all performing rights, mechanical, or any other similar rights, without need for payment of further royalties to any Collection Society. However, in certain jurisdictions outside of the United States, You may be required to pay royalties to Collection Societies due to exploitation of the Licensed Material in that jurisdiction (regardless of whether any contributor of the Licensed Material is a member of the applicable societies). You must determine if such requirements exist in the applicable jurisdiction and You are solely responsible for any such fees.
- 4.2.** Except as set forth above in Section 4.1. with respect to PSE’s PRF Collections, nothing contained herein shall be deemed to constitute a waiver of any fee which, as a result of the use of the Licensed Material contemplated by this Agreement, shall become due and payable to the relevant Collection Society or pursuant to union or collective bargaining requirements. You agree to submit, and to instruct any third party acquiring rights to an End User Work to submit, to all relevant Collection Societies, in any part of the territory in which an End User Work is to be Broadcast or reproduced, such filings, including so-called “cue sheets,” and further agree to take such actions as are necessary, in keeping with common industry practice, to enable such Collection Societies to monitor and administer those fees, including but not limited to performing and mechanical rights fees, payable to the copyright owners of the Licensed Material embodied in the End User Works.

#### **V. Warranty and Limitation of Liability.**

- 5.1.** PSE warrants that: (i) the Licensed Material will be free from defects in material and workmanship for thirty (30) days from delivery (Your sole and exclusive remedy for a breach of this warranty being a refund or credit); (ii) it has all necessary rights and authority to enter into and perform this Agreement; and (iii) Your use of the Licensed Material in its original form, and when used in accordance with this Agreement, will not infringe upon the rights of any third party, including copyrights and rights of privacy or publicity.
- 5.2.** EXCEPT FOR THE LIMITED WARRANTY PROVIDED ABOVE, THE LICENSED MATERIAL IS PROVIDED “AS IS.” PSE DOES NOT MAKE ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE LICENSED MATERIAL OR ITS DISCOVERY AND/OR DELIVERY SYSTEMS (SUCH AS ANY AND ALL SOFTWARE AND/OR WEB APPLICATIONS USED BY PSE’S WEBSITE IN CONNECTION WITH THE DISCOVERY AND/OR DELIVERY

OF THE LICENSED MATERIAL, FOR WHICH PSE SHALL HAVE NO LIABILITY IN THE CASE SUCH SOFTWARE AND/OR WEB APPLICATIONS DO NOT FUNCTION PROPERLY AT ANY GIVEN TIME), INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. PSE SHALL NOT BE LIABLE TO YOU 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 PSE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, COSTS OR LOSSES. SOME JURISDICTIONS DO NOT PERMIT THE EXCLUSION OR LIMITATION OF IMPLIED WARRANTIES OR LIABILITY FOR CERTAIN CATEGORIES OF DAMAGES. PSE SHALL NOT BE LIABLE FOR ANY DAMAGES, COSTS OR LOSSES ARISING OUT OF OR AS A RESULT OF MODIFICATIONS MADE TO THE LICENSED MATERIAL BY YOU OR THE CONTEXT IN WHICH LICENSED MATERIAL IS USED IN AN END USER WORK. IN NO EVENT WILL PSE'S CUMULATIVE LIABILITY WITH RESPECT TO ANY CLAIM MADE IN RELATION TO OR ARISING OUT OF THIS AGREEMENT ON ANY THEORY OR BASIS EXCEED THE LICENSE FEE PAID BY YOU OR PURCHASER FOR THE LICENSED MATERIAL.

## **VI. Indemnification.**

- 6.1.** Provided Licensed Material 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 any actual breach of the representations and warranties set forth in Section 5.1(ii)-(iii) above, PSE shall, subject to the terms of Section 5.2 above and Section 6.3 below, defend, indemnify, and hold harmless You and Your parent, subsidiaries and commonly owned or controlled affiliates and Your and their respective members, officers, directors and employees from all damages, liabilities and expenses (including reasonable attorneys' fees) arising out of or as a result of claims by third parties ("Claims") relating to any actual breach by PSE of its warranties set forth in Section 5.1(ii)-(iii) above. PSE shall have no obligation under this Section 6.1 for any Claims that arise out of or are a result of: (i) Your modification of the Licensed Material, where the Claim would not have arisen but for the modification made by You; (ii) the context in which Licensed Material is used in an End User Work, where the Claim would not have arisen but for such context; (iii) Your failure to comply with the terms of this Agreement; or (iv) Your continued use of Licensed Material following notice from PSE, or upon Your knowledge, that Licensed Material is subject to a claim of infringement of another's right. The foregoing states PSE's entire indemnification obligation under this Agreement.
- 6.2.** You shall, subject to the terms of Section 6.3 below, defend, indemnify and hold harmless (i) PSE and its parent, subsidiaries and commonly owned or controlled affiliates and their respective members, officers, directors, and employees from all damages, liabilities and expenses (including reasonable attorneys' fees) arising out of or as a result of claims by third parties relating to Your use of any Licensed Material outside the scope of this Agreement, and (ii) PSE, any third party supplier from which PSE has licensed the Licensed Material, and their respective parents, subsidiaries and commonly owned or controlled affiliates and their respective members, officers, directors and employees (individually and collectively "Third Party Supplier Persons") from all damages, liabilities and expenses (including reasonable attorneys' fees) arising out of or as a result of claims by third parties relating to any other actual or alleged breach by You of this Agreement.

**6.3.** The party seeking indemnification pursuant to this Article VI 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 reasonably be requested by indemnifying party. Indemnified party shall have the right to participate in such litigation, at its expense, through counsel selected by indemnified party, provided that such counsel shall not be "counsel of record." 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.

## **VII. Condition of Licensed Material.**

You should examine all Licensed Material for possible defects (whether digital or otherwise). Without prejudice to Section 5.1(i) above, PSE shall not be liable for any loss or damage suffered by You or any third party, whether directly or indirectly, arising from any alleged or actual defect in any Licensed Material or its caption. You may return a defective product within thirty (30) days from delivery and shall receive a refund or credit for the License Fee paid for such product, which may be used for a future purchase. PSE has no obligation to accept any returns for any other reason.

## **VIII. Invoicing; Interest on Overdue Invoices.**

You and Purchaser agree to receive invoices from PSE electronically, via fax or via United States Postal Service at the email, fax or postal address associated with Your and/or Purchaser's PSE account. If You fail to pay PSE's invoice in full within the time specified in the invoice, PSE may add a service charge of the lesser of interest on the outstanding past due principal balance at the maximum legal rate or three percent (3%) per month on the outstanding past due principal balance until payment is received.

## **IX. Reservation of Rights.**

All rights which are not expressly granted by PSE to You pursuant to this Agreement, including all promotional materials or any other property owned or controlled by PSE, are specifically reserved by PSE. Except as expressly set forth in this Agreement, nothing contained herein shall be deemed to convey or transfer to You any ownership interest, including copyright, in or to the Licensed Material or any copy of the Licensed Material. Each hard drive or any equipment, along with any connection cable or other peripherals provided to You under this Agreement is Your property. All of the information and material contained within any such hard drive or equipment is the property of PSE, and no use of any such information and/or material may be made except in compliance with this Agreement.

## **X. Miscellaneous Terms.**

**10.1. Unauthorized Use and Termination.** Any use of Licensed Material in a manner not expressly authorized by this Agreement or in breach of a term of this Agreement constitutes copyright infringement, entitling PSE to exercise all rights and remedies available to it under copyright laws around the world. In addition, and without prejudice to PSE's other remedies under this Agreement, PSE reserves the right to charge and You agree to pay a liquidated damages fee equal to fifteen (15) times PSE's standard license fee for the unauthorized use of the Licensed Material. PSE reserves the

right to terminate this Agreement in the event You: (i) fail to pay the License Fee on the due date; or (ii) otherwise breach the terms of this Agreement. Upon termination, You must immediately (i) stop using the Licensed Material; and (ii) destroy or, upon the request of PSE, return to PSE the Licensed Material.

- 10.2. Audit/Certificate of Compliance.** Upon reasonable notice, You shall provide to PSE sample copies of Copies of End User Works, which such samples may be specified or selected by PSE, containing Licensed Material, including by providing PSE with free of charge access to any pay-walled or otherwise restricted access to website(s) or platform(s) where the End User Works are Copied or Broadcast. In addition, upon reasonable notice, PSE may, at its discretion, either through its own employees or through a third party, audit Your 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 You, You shall promptly reimburse PSE for all amounts owed plus interest based on the average one month LIBOR rate for the period under audit on the amount due from the date payment was due and, in addition to such reimbursement, if an underpayment of five percent (5%) or more of the amount You should have paid for the time period that is the subject of the audit is found, You shall also reimburse PSE for the costs of conducting such audit. Where PSE reasonably believes that Licensed Material is being used outside the scope of the license granted under this Agreement, You shall, at PSE's request, promptly provide a certificate of compliance signed by You or one of Your officers, in a form to be approved by PSE, and provide evidence that such Licensed Material is being used in compliance with the terms hereof.
- 10.3. Withdrawal.** Upon notice from PSE, or upon Your knowledge that any Licensed Material may be subject to a claim of another's right for which PSE may be liable, PSE may require You to 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 and physical); and (iii) ensure that its clients do likewise. PSE shall provide You with comparable Licensed Material (which comparability will be determined by PSE in its reasonable commercial judgment), free of charge, but subject to the other terms and conditions of this Agreement.
- 10.4. Governing Law/Arbitration.** This Agreement will be governed in all respects by the substantive laws of the State of New York, U.S.A., without regard to its conflict of law provisions. Any disputes arising from or related to this Agreement or its enforceability, or the business relationship between the parties, shall be finally settled by binding, confidential arbitration held in New York, NY, U.S.A, using the rules and procedures of the Commercial Rules of the American Arbitration Association. The arbitration proceedings shall be conducted in English and all documentation shall be presented and filed in English. The decision of the arbitrator(s) shall be final and binding on the parties, and judgment may be entered on the arbitration award and enforced by any court of competent jurisdiction. The prevailing party shall be entitled to recover its reasonable legal costs relating to the aspect of its claim or defense on which it prevails, and any opposing costs awards shall be offset. The United Nations Convention on Contracts for the International Sale of Goods does not govern this Agreement. Notwithstanding the foregoing, PSE and/or Third Party Supplier Persons shall have the right to commence and prosecute an action or proceeding before any court of competent jurisdiction to obtain injunctive or other equitable relief against You in the event that, in the opinion of PSE, such action is necessary or desirable to prevent actual or threatened infringement of Licensed Material.
- 10.5. Severability.** If one or more of the provisions contained in this 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, and, if permitted, the court or arbitrator(s) shall apply any "blue pencil" rule that

may be applicable, so as to enforce the lawful intent of the parties, as found by such court or arbitrator(s).

- 10.6. 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 one occasion will not be construed as a bar to or waiver of rights or remedies on any other occasion.
- 10.7. Entire Agreement.** This Agreement is intended for end user clients of PSE and contains all the terms of the license agreement. No terms or conditions may be added or deleted unless agreed to in a writing signed by PSE. The date on which this Agreement was last updated is posted above. In the event of any inconsistency between the terms contained herein and the terms contained on any purchase order or invoice in connection with Licensed Material governed by this Agreement, the terms of this Agreement shall govern.
- 10.8. Taxes.** All License Fees are exclusive of any applicable sales, use, withholding or other transactional taxes (if any), which are the sole responsibility of You or Purchaser.
- 10.9. Binding Effect.** Except as otherwise provided herein to the contrary, this Agreement shall be binding upon and inure to the benefit of the parties, their legal representatives, heirs, successors and permitted assigns.
- 10.10. Third Party Beneficiaries.** Nothing contained in this Agreement is intended to benefit any third parties not specifically herein enumerated, and no person or entity is entitled to any benefits as a third party beneficiary hereunder on account of any obligation of the parties hereto; it being expressly understood that the benefits, duties and obligations of any of the parties hereunder are solely and exclusively the rights and obligations of said parties and are not intended to benefit any third parties unless expressly stated to the contrary herein.
- 10.11. Survival.** The termination of this Agreement will not affect the accrued rights and obligations of the parties existing at the date of termination. Section 5.2 and Article X will survive termination of the Agreement, as will any matter arising under the Agreement either expressly or that by its nature is required to be performed or apply after the term of the Agreement.

**Contact:**

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