

RubberBall Productions Royalty Free End User License Agreement

This license agreement ("Agreement") is between you, the party licensing imagery through this Agreement ("Licensee"), and RubberBall Productions ("Licensor"). Licensee's use of the Digital Media as defined below constitutes your acceptance of the terms of this Agreement.

1. License Terms

1.1 Covered Materials.

1.1.1 The photographs, fonts, illustrations, film clips, software and any and all other media and content in any form delivered to Licensee by Licensor, whether via CD-ROM, DVD-R, by download from Licensor's website or otherwise (collectively, the "Digital Media") are licensed, not sold, to Licensee by Licensor for use pursuant to the terms of this Agreement.

1.1.2 Licensee may own the media on which the Digital Media are recorded, but Licensor, for itself or on behalf of its contributors, retains ownership of the Digital Media.

1.1.3 Any reference in this Agreement to the Digital Media shall be to each individual item within the Digital Media and also to the Digital Media taken as a whole. **1.2 Permitted / Non-Permitted Uses and Rights.**

Subject to the terms of this Agreement: 1.2.1 Licensee has the non-exclusive, non-transferable, non-sublicensable right to copy, reproduce, transmit and display the Digital Media an unlimited number of times in any and all media for the following purposes:

1. **Advertising and promotional materials;**
2. **Online or Electronic Distribution Systems, including Web page Design to a maximum resolution of 72 dpi;**
3. **Broadcast and Theatrical Exhibitions;**
4. **Publications and Products not for resale; and**
5. **Any other uses approved in writing by Licensor.**

1.2.2 Licensee may not use the Digital Media for the following purposes without the express consent of RubberBall: * Clothing, greeting cards, stationary, posters and other materials for resale where the primary value of the media is based upon the Digital Media.

1.2.3 Licensee has the right to have the Digital Media reproduced by subcontractors of Licensee, provided that such subcontractors agree to abide by the restrictions of this Agreement.

1.2.4 Licensee may alter, crop, manipulate and create derivative works of the Digital Media.

1.2.5 Licensee's rights to the Digital Media are worldwide and perpetual.

1.2.6 Licensor reserves all rights not expressly granted to Licensee herein. 1.3 Number of Users / Seat License

Licensee may create a digital library, network configuration, or similar arrangement to allow the Digital Media to be viewed by employees, partners and clients of Licensee, but under no circumstance may the Digital Media be used by more than 10 employees of Licensee. Licensee must purchase a separate seat license from Licensor for each additional individual user, before such additional use begins. Contact RubberBall Productions to negotiate an applicable seat license.

1.4 Restrictions

1.4.1 Licensee may not sublicense, sell, assign, convey or transfer any of its rights under this Agreement but Licensee may sell or license derivative works incorporating the Digital Media in accordance with the Permitted Uses. Licensee may not sell, license or distribute its work in such a way that Licensee's customer can extract or access the Digital Media as a stand-alone file.

1.4.2 Digital Media shall not be incorporated into a logo, trademark or service mark.

1.4.3 Licensee may not post the Digital Media online in a downloadable format.

1.4.4 If any Digital Media featuring a model is used in a manner that would lead a reasonable person to believe that the model personally uses or endorses a product or service (for example, any Digital Media is used in a testimonial advertisement), Licensee must accompany each such use with a statement that indicates that the person is a model and the Digital Media is being used for illustrative purposes only. Licensee shall not under any circumstances use a photo with a recognizable person in a way that may be construed as humiliating, libelous or defamatory to the person. Any use of one or more Digital Images in connection with morally sensitive subjects such as bodily or mental disability, or those subjects unduly controversial to a reasonable person, must receive an explicit written agreement from RubberBall Productions allowing each use.

1.4.5 The Digital Media may not be used in a pornographic, defamatory, libelous or otherwise illegal manner, whether directly or in context or juxtaposition with other materials.

1.4.6 Licensee must retain the copyright symbol, the name of RubberBall Productions and the Digital Media's identification number as part of the electronic file and as otherwise contained on the original Digital Media.

1.4.7 Licensor grants no rights and makes no warranties with regard to the use of names, trademarks, trade dress, registered, unregistered or copyrighted designs or works of art or architecture depicted in any Licensed Material, and Licensee must satisfy itself that all the necessary rights or consents regarding any of the above, as may be required for reproduction, have been obtained.

2. Indemnity

2.1 Licensee agrees to indemnify and hold RubberBall Productions harmless against all claims arising out of any breach of this Agreement.

3. Warranties

3.1 Licensor warrants the Digital Media to be free from defects in material and workmanship for 30 days from delivery. The sole and exclusive remedy for a breach of the foregoing warranty is the replacement of the Digital Media.

3.2 LICENSOR MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE DIGITAL MEDIA, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. LICENSOR SHALL NOT BE LIABLE TO LICENSEE OR ANY OTHER PERSON OR ENTITY FOR ANY GENERAL, PUNITIVE, SPECIAL, DIRECT, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES, OR LOST PROFITS OR ANY OTHER DAMAGES, COSTS OR LOSSES ARISING OUT OF LICENSEE'S USE OF THE DIGITAL MEDIA, THIS AGREEMENT, ANY INVOICE REGARDING THE DIGITAL MEDIA OR OTHERWISE, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, COSTS OR LOSSES.

4. Termination and Revocation

4.1 The license contained in this Agreement will terminate automatically without notice from Licensor if Licensee fails to comply with any provision of this Agreement. Upon termination, Licensee must immediately (i) stop using the Digital Media, (ii) destroy or, upon the request of Licensor, return the Digital Media to Licensor (in the case of analogue materials), and (iii) delete or remove the Digital Media from Licensee's premises, computer systems and storage (electronic or physical).

4.2 Licensor reserves the right to revoke the license to use the Digital Media for good cause and elect to replace such Digital Media with alternative Digital Media. Upon notice of any revocation of a license for any particular Digital Media, Licensee shall immediately cease using such Digital Media and shall ensure that its clients and customers do likewise.

5. Severability

5.1 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 reformed only to the extent to make it enforceable.

6. Choice of Law

6.1 This Agreement will be governed in all respects by the laws of the State of Utah, U.S.A., without reference to its laws relating to conflicts of law. Any disputes arising from this Agreement or its enforceability shall be settled by binding arbitration to be held in Orem, Utah. The United Nations Convention on Contracts for the International Sale of Goods does not govern this Agreement.

6.2 Notwithstanding the foregoing, Licensor 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 Licensor, such action is necessary or desirable.

7. Waiver

7.1 No action of Licensor, other than express written waiver, may be construed as a waiver of any provision of this Agreement.

8. Entire Contract

8.1 This contract contains all the terms of the license agreement and no terms or conditions may be added or deleted unless made in writing and signed by an authorized representative of both parties.

8.2 This license, dated 9/25/02, takes precedence over all previous RubberBall Productions Royalty Free License Agreements.