

## **CONTENT LICENSE AGREEMENT (DOWNLOAD AGREEMENT)**

This agreement ("Agreement", "Content License Agreement", "Download Agreement") shall be binding upon AudioMicro, Inc. ("we" and / or "ImageCollect") and any member ("you", "your", and / or "Non-Exclusive Downloading Member") who downloads a photograph, illustration, image or other pictorial or graphic work (the "Work") from the [ImageCollect.com](http://ImageCollect.com) website. The Non-Exclusive Downloading Member acknowledges and agrees that he or she shall be bound by the terms and conditions of this Agreement and that this Agreement applies to each Work that the Non-Exclusive Downloading Member downloads.

### **1. No Sale**

The Non-Exclusive Downloading Member acknowledges and agrees that this Agreement does not effectuate any sale of the Work. Except for the rights specifically sublicensed under this Agreement, the Non-Exclusive Downloading Member shall not have any right, title or interest in or to, and in any event shall have no ownership of, the Work, including any copyright and other intellectual property rights.

### **2. Standard License Terms**

We hereby grant to you a perpetual, non-exclusive, non-transferable worldwide license to use the Content for the Permitted Uses (as defined below). Unless the activity or use is a Permitted Use, you cannot do it. ImageCollect or the supplier of the Content retains all other rights in and to the Content, including, without limitation, all copyright and other intellectual property rights relating to the Content, as the case may be.

### **3. Permitted Standard License Uses**

(a) You may only use the Content for those editorial, personal and / or non-commercial purposes, which are Permitted Uses (as defined below). For clarity, you may NOT use the Content commercial purposes or in products for resale, license or other distribution, unless (i) the proposed use is allowable under an Extended License which is available for the Content; or (ii) if the original Content has been fundamentally modified or transformed sufficiently that it constitutes an original work entitling the author or artist to copyright protection under applicable law, and where the primary value of such transformed or derivative work is not recognizable as the Content nor is the Content capable of being downloaded, extracted or accessed by a third party as a stand-alone file (satisfaction of these conditions will constitute the work as a "Permitted Derivative Work" for the purposes of this Agreement). 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 an Extended License or contact us for

guidance. Any use of the Content that is not a Permitted Use shall constitute copyright infringement.

(b) 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, although subject to the Prohibited Uses and the other terms of this Agreement, you are entitled to utilize the Permitted Uses an unlimited number of times. 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. 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.

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

1. entertainment publications such as magazines, newspapers, books, editorials, periodicals, newsletters, television, video, broadcast and theatrical presentations solely for editorial use;
2. online or electronic publications, including blogs, iPhone / iPad apps, and web pages solely for editorial use;
3. prints, posters (i.e. a hardcopy) and other reproductions solely for personal use and not for resale, license or other distribution; and
4. any other uses approved in writing by ImageCollect.

If there is any doubt that a proposed use is a Permitted Use, you should contact us for guidance.

#### **4. Standard License Prohibitions**

You may not do anything with the Content that is NOT expressly permitted in the preceding section or permitted by an Extended License. For greater certainty, the following are “Prohibited Uses” and you may NOT:

1. use the Content for commercial purposes (i.e. to directly promote a product or service of any kind);
2. use the Content in advertisements and promotional projects, including print advertising, billboards, product packaging, films, commercials, catalogs, brochures, promotional greeting cards and promotional postcards (i.e. not for resale or license);

3. 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;
4. 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, as well as sites such as [www.zazzle.com](http://www.zazzle.com));
5. use the Content in any posters (printed on paper, canvas or any other media) or other items for resale, license or other distribution for profit;
6. use any of the Content as part of a trade-mark, design-mark, trade-name, business name, service mark, or logo;
7. incorporate the Content in any product that results in a re-distribution or re-use of the Content (such as electronic greeting card web sites, web templates and the like) or is otherwise made available in a manner such that a person can extract or access or reproduce the Content as an electronic file;
8. use the Content in a fashion that is considered by ImageCollect (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;
9. use or display any Content that features a 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;
10. to the extent that source code is contained within the Content, reverse engineer, decompile, or disassemble any part of such source code;
11. remove any notice of copyright, trade-mark or other proprietary right from any place where it is on or embedded in the Content;
12. sub-license, re-sell, rent, lend, assign, gift or otherwise transfer or distribute the Content or the rights granted under this Agreement;
13. install and use the Content in more than one location at a time or post a copy of the Content on a network server or web server for use by other users;

14. 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;
15. use the Content for editorial purposes without making a best effort to include the following photo credit: “©ImageCollect.com/Photographer’s Username”;
16. either individually or in combination with others, reproduce the Content, or an element of the Content, in excess of 250,000 times without obtaining an Extended License, in which event you shall be required to pay an additional royalty fee.
17. use the Content on the cover of a newspaper, magazine, or book without obtaining an Extended License, in which event you shall be required to pay an additional royalty fee; or
18. display the Content on a website with a resolution in excess of 1,000 x 1,000 pixels (regardless of the resolution of the Content when originally downloaded from ImageCollect).

## **5. Excess Reproduction Run and Newspaper, Magazine, and Book Covers**

In the event you contravene subparagraphs 4(a)(16) and / or subparagraphs 4(a)(17) above without purchasing an Extended License, you further agree to notify ImageCollect in the event that you (or a combination of you and others involved with you) reproduce the Content, or an element of the Content in excess of 250,000 times or on the cover of a newspaper, magazine, or book. Such disclosure notice must be sent to ImageCollect each and every month after which the Content, or an element of the Content, has been reproduced in aggregate over the term of this Agreement in excess of 250,000 times or on the cover of a newspaper, magazine or book. Each such notice must contain the number of reproductions made in any particular month, provided however the first such notice will only be require disclosure of those reproductions which are in excess of 250,000 or on the cover of a newspaper, magazine, or book. ImageCollect shall invoice you for the fees associated with such excess use and you agree to pay such invoice within 30 days of receipt.

## **6. Payments and Pricing**

The Non-Exclusive Downloading Member shall pay to ImageCollect a sublicense fee in accordance with ImageCollect’s pricing and payment policies.

## **7. Ownership and Retention of Rights**

The Non-Exclusive Downloading Member acknowledges and agrees that ImageCollect and/or its licensor retains all rights, title and interest in and to the Work (except for the rights granted pursuant to this Agreement), and that neither title nor any ownership interest in or to the Work is transferred to the Non-Exclusive Downloading Member by virtue of this Agreement. ImageCollect and/or its licensor (as applicable) shall also retain the right to use, reproduce or display the Work solely to demonstrate the Work as part of

his or her professional portfolio. Without any limitation to any other rights that ImageCollect may retain, ImageCollect shall continue to have the right to use the Work for internal archival and reference purposes.

## **8. Representations and Warranties**

In addition to the representations and warranties made by the Non-Exclusive Downloading Member above, each of ImageCollect and the Non-Exclusive Downloading Member hereby represent and warrant that it, or he or she, has the right to enter into this Agreement.

## **9. Indemnification**

The Non-Exclusive Downloading Member agrees to indemnify, defend and hold harmless ImageCollect and its affiliates, and their respective officers, directors, employees, owners, agents, representatives, licensors and (sub)licensees (collectively, "Indemnitees") from and against all claims, expenses (including attorney fees) or other liability arising from the Non-Exclusive Downloading Member's breach of any of his or her representations, warranties or obligations under this Agreement, and from any and all uses of the Work, including, without limitation, any claims or actions based on infringement or violation of intellectual property rights, libel or slander or other defamation, right of privacy or "false light", right of publicity or blurring or distortion or alteration whether or not intentional. ImageCollect shall have the right, in its sole discretion, to control the defense of any claim, action or matter subject to indemnification by the Non-Exclusive Downloading Member with counsel of its own choosing. The Non-Exclusive Downloading Member shall fully cooperate with ImageCollect in the defense of any such claim, action or matter.

## **10.A Limitations and Disclaimer**

This Section 10A is subject to the limited warranty provided in Section 10B below, and shall not derogate from any of the provisions contained in such Section 10B.

The Non-Exclusive Downloading Member agrees that neither ImageCollect nor its affiliates, nor any of their respective officers, directors, employees, owners, agents, representatives, licensors and (sub)licensees (other than the Downloading Member), shall be liable for any damages, whether direct, incidental, indirect or consequential, arising from any use or non-use of the Work, even if such parties have been advised, or advised of the possibility, of such damages.

The Non-Exclusive Downloading Member acknowledges that ImageCollect generally does not have releases for the trademarks, logos or other intellectual property of other parties that may be depicted in some Works. The procuring of such releases is the responsibility of the Non-Exclusive Downloading Member.

The Non-Exclusive Downloading Member acknowledges that ImageCollect generally does not have releases from property owners, manufacturers or designers of commercial products such as (without limitation) automobiles, aircraft, packaged products, designer clothing, etc. that are depicted in some Works. It is generally not possible for any stock image library or photographer to get blanket releases for such products, but they can often be obtained on a case-by-case basis. The procuring of such releases is the responsibility of the Non-Exclusive Downloading Member.

THE WORK IS PROVIDED "AS IS" AND, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

### **10.B Limited Warranty**

(a) Subject to the terms and conditions contained in this Agreement, including without limitation the provisions relating to limitation of liability in this Section 10B, ImageCollect hereby represents and warrants that, notwithstanding anything to the contrary in Section 10A above, the utilization by the Non-Exclusive Downloading Member of an unaltered Paid-for Work (as defined below) pursuant to the terms of this Agreement shall not infringe or violate the intellectual property rights, publicity rights or privacy rights of any third party. "Paid-for Work" means any Work downloaded from ImageCollect's website, apart from any Work which (i) is a part of ImageCollect's collection of free Works, and/or (ii) otherwise can be downloaded without payment of credits or monetary compensation.

(b) Subject to subsections (c), (d) and (e) below, ImageCollect agrees to indemnify, defend and hold harmless the Non-Exclusive Downloading Member from and against all damages, liabilities and expenses (including reasonable attorney fees) arising directly from any actual or threatened lawsuit, claim or legal proceeding (collectively, a "Claim") commenced by a third party against the Non-Exclusive Downloading Member, where such Claim alleges that the Non-Exclusive Downloading Member's utilization of the unaltered Paid-for Work pursuant to the terms of this Agreement is in breach of the representations and warranties set forth in subsection (a) above; conditioned upon and provided that the Non-Exclusive Downloading Member gives ImageCollect (i) prompt written notice of any threatened Claim known to the Non-Exclusive Downloading Member or any suit or proceeding actually initiated against the Non-Exclusive Downloading Member, (ii) full information, assistance and cooperation for the defense or settlement thereof, and (iii) at ImageCollect's option, sole control of any defense, settlement or action related thereto; and further provided that the use and/or distribution by the Non-Exclusive Downloading Member of the unaltered Paid-for Work has been at all times in accordance with the terms and conditions of this Agreement and that the Non-Exclusive Downloading Member is not otherwise in breach of this Agreement.

(c) ImageCollect shall have no liability for, and ImageCollect's obligations under subsection (b) above shall not apply to: (i) any damages, liabilities or expenses incurred by the Non-Exclusive Downloading Member prior to its notification of the Claim to ImageCollect; and/or (ii) any Claim based on or arising out of: (1) the modification by the Non-Exclusive Downloading Member of the Paid-for Work; (2) the combination of the Paid-for Work with any other work(s); and/or (3) the context in which the Paid-for Work has been used by the Non-Exclusive Downloading Member.

(d) Notwithstanding anything to the contrary contained in this Agreement or in any other agreement between ImageCollect and the Non-Exclusive Downloading Member, the total maximum aggregate liability of ImageCollect with respect to any Paid-for Work downloaded or licensed by the Non-Exclusive Downloading Member shall in no event exceed the total amount paid to ImageCollect for the specific Paid-for Work (calculated on a pro-rated basis by taking the total payments made by the Non-Exclusive Downloading Member and dividing it by the total number of Paid-for Works downloaded by the Non-Exclusive Downloading Member), irrespective of the number of times the Paid-for Work is downloaded or licensed. ImageCollect shall not be liable under this Section 10B in respect of any Work which is not a Paid-for Work.

(e) The foregoing states the entire liability and obligation of ImageCollect, and the sole and exclusive remedy of the Non-Exclusive Downloading Member, with respect to any breach of the representations and warranties contained in subsection (a) above.

## **11. Term and Termination**

This Agreement shall continue in perpetuity unless terminated in accordance with this Section 11. ImageCollect may at any time terminate this Agreement with respect to any Work in the event of any breach by the Non-Exclusive Downloading Member of any of his or her representations, warranties or obligations under this Agreement. The Non-Exclusive Downloading Member may at any time terminate this Agreement. Each of ImageCollect and the Non-Exclusive Downloading Member shall notify the other in the event that he or she terminates this Agreement. ImageCollect shall also have the right, in its sole discretion, to deny the downloading of any Work from the ImageCollect.com website. Upon termination of a license for any particular Work, the Non-Exclusive Downloading Member shall immediately cease using such Work, destroy, or upon the request of ImageCollect return the Work to ImageCollect, delete or remove the Work from its premises, computer systems and storage (electronic and physical), and shall ensure that its clients and customers do likewise.

## **12. Effect of Termination**

Upon the termination of this Agreement, the Non-Exclusive Downloading Member shall cease using the Work and destroy all copies of the Work, and all derivative works and related materials (if any), in his or her possession or control. At ImageCollect's request, the Non-Exclusive Downloading Member shall certify in writing to such destruction of

the Work, derivative works and/or related materials. Termination of this Agreement shall not relieve the Non-Exclusive Downloading Member from any payment obligations that may have arisen prior to such termination. The provisions of Sections 1, 2, 4, 5, 6, 7, 8, 10, 11, 12, 13 and 14 shall survive the termination of this Agreement.

### **13. Miscellaneous**

This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to any conflict of laws principles. Any legal action, suit or proceeding arising out of or relating to this Agreement shall be instituted in a court of competent subject matter jurisdiction in the federal or state courts of the State of California, and the Non-Exclusive Downloading Member and ImageCollect each submit to the personal jurisdiction of such court and waive any right each might otherwise have to claim lack of personal jurisdiction or inconvenience of forum.

The relationship between ImageCollect and the Non-Exclusive Downloading Member under this Agreement is that of independent contractors. For clarification purposes, the parties are not joint ventures, partners, principal and agent, or employer and employee. Neither party shall have the power to bind or obligate the other in any manner.

The Non-Exclusive Downloading Member agrees that he or she shall be responsible for all use, sales, value-added and similar taxes and duties imposed by any governing authority in any jurisdiction in connection with the license granted to him or her under this Agreement.

No waiver on the part of ImageCollect to exercise any power, right, privilege or remedy under this Agreement, and no delay on the part of ImageCollect to exercise any such power, right, privilege or remedy, shall preclude any other or further exercise thereof or of any other power, right, privilege or remedy.

Except with respect to any trademark rights, all rights and licenses granted by ImageCollect under or pursuant to this Agreement are for all purposes of Section 365(n) of Title 11 of the United States Code ("Title 11"), licenses of rights to "intellectual property" as defined in Title 11. ImageCollect agrees that, in the event of commencement of bankruptcy proceedings by or against ImageCollect under Title 11, the Non-Exclusive Downloading Member, as licensee of such rights under this Agreement, shall retain and may fully exercise all of its rights under this Agreement (including the license granted under this Agreement) and all of its rights and elections under Title 11.

ImageCollect shall have the right, in its sole discretion, to assign any or all of its rights or obligations under this Agreement. The Non-Exclusive Downloading Member shall have no right to assign any of his or her rights or obligations under this Agreement.



Without limitation of ImageCollect's indemnity obligations herein, ImageCollect is relying on the representations and warranties made by ImageCollect's Uploading Members regarding the Works and their compliance with ImageCollect's Terms and Conditions of Use, including the non-infringement of Works, and ImageCollect does not have the right or ability to control the Works for purposes of the Digital Millennium Copyright Act or any claim of liability made by any third party against ImageCollect.

This Agreement shall be inure to the benefit of, and be binding upon, ImageCollect and the Non-Exclusive Downloading Member, and their respective successors and assigns. Nothing in this Agreement, express or implied, is intended to confer upon any person or entity, other than ImageCollect and the Non-Exclusive Downloading Member, and their respective successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

Whenever the context so requires, the singular number shall include the plural and vice versa, and the masculine, feminine and neutral genders shall include each other.

If any term or provision of this Agreement is invalid, illegal or unenforceable, all other terms and conditions of this Agreement shall nevertheless remain in full force and effect.

The underlined headings contained in this Agreement are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement.

#### **14. ACKNOWLEDGEMENT, ACCEPTANCE, AND AGREEMENT**

**BY LICENSING CONTENT FROM IMAGECOLLECT AND/OR USING AND/OR PREVIEWING CONTENT THROUGH THE SERVICE, YOU EXPRESSLY ACKNOWLEDGE, ACCEPT AND AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS CONTENT LICENSE AGREEMENT AND OUR TERMS OF SERVICE, AS APPLICABLE.**

**YOU ACKNOWLEDGE AND AGREE THAT YOU HAVE READ AND UNDERSTAND THE TERMS AND CONDITIONS OF THIS CONTENT LICENSE AGREEMENT AND IMAGECOLLECT'S TERMS OF SERVICE AND UNDERSTAND THAT YOU ARE AGREEING TO BE BOUND BY THIS CONTENT LICENSE AGREEMENT AND IMAGECOLLECT'S TERMS OF SERVICE, AS MAY BE AMENDED OR MODIFIED BY IMAGECOLLECT FROM TIME TO TIME.**