



Society of Motion Picture and Television Engineers (“SMPTE”)

[Name of Licensee] (“Licensee”)

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In consideration of the mutual promises and covenants contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Definitions.

- (a) “Document” means an individual document from the Licensed Products.
- (b) “Authorized Sites” means the locations identified in Schedule B.
- (c) “Authorized Users” means (1) persons affiliated with Licensee as employees, consultants, students, faculty, onsite contractors or temporary employees; (2) authorized persons physically present in Licensee's library facilities.
- (d) “Invoice” means the invoice issued by SMPTE or its authorized representative to Licensee setting forth the License Fee due pursuant to this Agreement.
- (e) “Licensed Products” means the SMPTE online product(s) selected in Schedule A.
- (f) “Remote Access” means access provided by Licensee via secured authentication means only to employees, consultants, onsite contractors or temporary employees of Licensee based at an Authorized Site who are not physically present at that Authorized Site.
- (g) “Service Date” means the start date designated in the first Invoice issued under this Agreement by SMPTE or its authorized representative to Licensee.

2. License Fee. As consideration for the rights granted by SMPTE pursuant to this Agreement, Licensee shall pay SMPTE the fees set forth in the accompanying Invoice in accordance with the terms set forth therein.

3. License.

(a) License Grant. Subject to Licensee's compliance in all material respects with the terms and conditions of this Agreement, SMPTE grants Licensee a non-exclusive, non-transferable license to use the Licensed Products and to provide access to the Licensed Products electronically via the Internet only to Authorized Users at Authorized Sites or via Remote Access in accordance with the terms and conditions of this Agreement.

(b) Authorized Uses. Licensee and its Authorized Users may access and use the Licensed Products only for scholarly and research purposes and only as follows: (1) access, search, browse and view the Licensed Products; (2) download and print individual Documents and make a reasonable number of photocopies of a printed Document; and (3) forward PDF links to individual Documents to Authorized Users and others; (4) may not create, or permit creation of, any



merchandise derived in any way from, or that is based on the Licensed Products except as may explicitly be permitted by a separate License Agreement executed by Licensee and SMPTE.

Restrictions. Except as expressly permitted in this Agreement, Licensee and its Authorized Users may not: (1) download, reproduce, retain or redistribute the Licensed Products or any journal or issue of a journal in the Licensed Products in its entirety or in any substantial or systematic manner, including, but not limited to, accessing the Licensed Products using a robot, spider, crawler or similar technological device; (2) electronically distribute, via e-mail or otherwise, any document; (3) abridge, modify, translate or create any derivative work based upon the Licensed Products without the prior written consent of SMPTE; (4) display or otherwise make available any part of the Licensed Products to anyone other than Authorized Users; (5) sell, resell, rent, lease, license, sublicense, assign or otherwise transfer any rights granted under this Agreement, including, but not limited to, use of the Licensed Products for document delivery, fee-for-service or any other substantially similar commercial purpose; or (6) remove, obscure or modify in any way copyright notices, other notices or disclaimers that appear on Documents or eBooks or in the Licensed Products.

(c) **Substantial Increase in Number of Authorized Users.** Licensee acknowledges that the License Fee has been assessed based upon the number of Authorized Users existing as of the Service Date. In the event that the number of Authorized Users substantially increases due to Licensee's acquisition of or merger with another company or organization or any other cause, Licensee shall promptly give written notice of such increase to SMPTE. Licensee agrees that such increase in the number of Authorized Users may be subject to additional license fees.

4. Intellectual Property Rights.

(a) **Ownership.** Licensee acknowledges and agrees that all right, title and interest in and to the Licensed Products, including all copyright and other intellectual property rights under United States and international laws and treaties, remain with SMPTE and its licensors.

(b) **Protection.** Licensee shall make reasonable efforts to advise all Authorized Users of the restrictions on use of and SMPTE's rights in the Licensed Products set forth in Sections 0 and 4(a). In the event that Licensee becomes aware of any unauthorized use of the Licensed Products by way of Licensee's IP addresses, equipment or other facilities, Licensee shall promptly give written notice to SMPTE of such unauthorized use and use its commercially reasonable best efforts to eliminate such unauthorized use. Licensee shall at all times implement appropriate security policies, procedures, access control methodologies and network protection techniques to safeguard access to the Licensed Products. All such measures shall comply with prevailing industry standards but in no case consist of less than reasonable care.

5. Term and Termination.

(a) **Term.** Unless terminated sooner in accordance with Section 5(b), this Agreement shall continue in effect for an initial term of twelve (12) months from the Service Date (the "Initial Term"). Licensee may renew the Agreement for additional twelve (12)-month periods (each, a "Renewal Term") upon written notice to SMPTE and payment of the annual license fee, as determined by SMPTE, within thirty (30) days prior to the expiration of the Initial Term or any Renewal Term.

(b) **Termination.** Notwithstanding Section 5(a), this Agreement may be terminated as follows:

(1) **Material Breach.** Either party may terminate this Agreement in the event of a material breach by the other party that remains uncured thirty (30) days after the non-breaching party gives the breaching party written notice of such breach.

(2) **Suspension.** In the event that SMPTE notifies Licensee of a material breach of Section 0(1), SMPTE reserves the right to suspend Licensee's access to the Licensed Products. SMPTE will make commercially reasonable efforts to limit suspension to the offending IP address or



user account, to the extent that the offending IP address or user account can be reasonably ascertained under the circumstances; otherwise, SMPTE reserves the right to suspend all online access to the Licensed Products by Licensee. The suspension shall remain in effect until Licensee has cured the material breach, and Licensee shall not be entitled to a refund of any fees during such suspension. If Licensee does not cure the material breach within thirty (30) days after notice of such breach, SMPTE shall be entitled to terminate this Agreement immediately.

(3) *Insolvency.* Either party may terminate this Agreement in the event that the other party becomes insolvent or bankrupt; becomes the subject of any proceedings under bankruptcy, insolvency or debtor's relief law; has a receiver or manager appointed; makes an assignment for the benefit of creditors; or takes the benefit of any applicable law or statute in force for the winding up or liquidation of such party's business.

(c) Events Upon Termination. Upon termination of this Agreement, Licensee shall make reasonable efforts to delete all electronic copies of content that are in its possession or control. Licensee may continue to use print copies of content made in accordance with the terms and conditions herein during the term of this Agreement, provided that Section 0 shall continue to govern use of such materials.

6. Representations, Warranties and Indemnification.

(a) Representations and Warranties. SMPTE and Licensee each represents and warrants to the other that: (1) it has the necessary power and authority to enter into this Agreement; (2) the execution and performance of this Agreement has been authorized by all necessary corporate or institutional action; (3) entry into and performance of this Agreement will not conflict with any provision of law or the certificate of incorporation, by-laws or comparable organizational documents of the party or conflict with any condition of any contract to which it is a party; (4) no action by any governmental organization is necessary to make this Agreement valid and binding upon the party; and (5) it possesses all licenses and other governmental approvals necessary to perform its obligations under this Agreement.

(b) Indemnification. SMPTE agrees that Licensee shall have no liability and SMPTE shall indemnify, defend and hold Licensee harmless against any loss, damage, costs, liability and expense (including reasonable attorneys' fees) arising from any action or claim of a third party (collectively, "Losses") that Licensee's use of the Licensed Products in material conformity with the terms and conditions of this Agreement infringes the copyright or other intellectual property right of such third party ("SMPTE Indemnification"). Licensee agrees that SMPTE shall have no liability and Licensee shall indemnify, defend and hold SMPTE harmless against any Loss, except as to Losses covered by SMPTE Indemnification, arising from use of the Licensed Products by Licensee or its Authorized Users. The indemnified party shall: (1) give the indemnifying party prompt written notice of any Loss or threat of Loss; (2) cooperate fully with the indemnifying party, at the indemnifying party's expense, in the defense or settlement of any Loss or threat of Loss; and (3) give the indemnifying party sole and complete control over the defense or settlement of any Loss or threat of Loss; provided, however, that any settlement must include a complete release of the indemnified party without requiring the indemnified party to make any payment or bear any obligation.

7. DISCLAIMER. THE LICENSED PRODUCTS ARE PROVIDED TO LICENSEE "AS IS" AND "WITH ALL FAULTS." SMPTE, TO THE MAXIMUM EXTENT PERMITTED BY LAW, EXPRESSLY DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS (EXCEPT AS SET FORTH IN SECTION 6(a), EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO: (A) THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE; AND (B) ANY WARRANTY WITH RESPECT TO THE QUALITY, ACCURACY, CURRENCY OR COMPLETENESS OF THE LICENSED PRODUCTS, OR THAT LICENSEE'S USE OF THE LICENSED PRODUCTS WILL BE ERROR-FREE, UNINTERRUPTED, FREE FROM OTHER



FAILURES OR WILL MEET LICENSEE'S REQUIREMENTS. LICENSEE ACKNOWLEDGES AND AGREES THAT THE CONTENTS OF THE LICENSED PRODUCTS ARE SUBJECT TO CHANGE.

8. LIMITATION OF LIABILITY.

(a) EXCEPT FOR EACH PARTY'S INDEMNIFICATION OBLIGATIONS IN SECTION 6(b), IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES ARISING FROM ANY TYPE OR MANNER OF COMMERCIAL, BUSINESS OR FINANCIAL LOSS OCCASIONED BY OR RESULTING FROM ANY USE OF THE LICENSED PRODUCTS, SUCH AS ANY MALFUNCTION, DEFECT OR FAILURE OF THE LICENSED PRODUCTS OR THEIR DELIVERY VIA THE INTERNET, EVEN IF SUCH PARTY HAD ACTUAL OR CONSTRUCTIVE KNOWLEDGE OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE.

(b) SMPTE UNDERTAKES NO RESPONSIBILITY FOR, AND DISCLAIMS ALL LIABILITY ARISING FROM, ANY DEFECTS OR FAILURES IN ANY COMMUNICATIONS LINES, THE INTERNET OR INTERNET SERVICE PROVIDER, LICENSEE'S COMPUTER HARDWARE OR SOFTWARE, OR ANY OTHER SERVICE OR DEVICE USED TO ACCESS THE LICENSED PRODUCTS OR TO AUTHENTICATE ANY USER AS AN AUTHORIZED USER. LICENSEE ACKNOWLEDGES AND AGREES THAT SMPTE IS NOT RESPONSIBLE FOR THE ACCURACY OF ANY INFORMATION OR DATA CONTAINED IN THE LICENSED PRODUCTS, AND SMPTE SHALL NOT BE LIABLE FOR ANY LOSSES OR DAMAGES RESULTING FROM RELIANCE ON ANY SUCH INFORMATION OR DATA UNDER ANY CIRCUMSTANCES.

9. General.

(a) Notice. Notices given under this Agreement shall be in writing and may be delivered by hand or sent by internationally-recognized courier service, e-mail or fax to the physical address, e-mail address or facsimile number for each party set forth on the first page of this Agreement. Any such notice shall be deemed successfully given: (1) if delivered personally, at the time of delivery; (2) in the case of an internationally-recognized courier service, on the date of delivery confirmation; or (3) in the case of e-mail or facsimile, at the time of successful transmission.

(b) Assignment. Licensee may not assign this Agreement, or sublicense, assign or delegate any right or obligation hereunder, by operation of law or otherwise, without the prior written consent of SMPTE.

(c) Entire Agreement. This Agreement, including all annexes, exhibits and schedules, contains the final and entire agreement of the parties on the subject matter herein and supersedes all previous and contemporaneous oral or written negotiations or agreements on the subject matter herein.

(d) Amendment. This Agreement may not be amended except in a writing executed by an authorized representative of each party.

(e) Severability. If any provision of this Agreement shall be held to be invalid or unenforceable under applicable law, then such provision shall be construed, limited, modified or, if necessary, severed to the extent necessary to eliminate its unenforceability. Such provision shall be ineffective to the extent of such invalidity or unenforceability only, without in any way affecting the remaining parts of this Agreement.

(f) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the United States of America and the State of New York, without regard to conflict of laws principles.

(g) Force Majeure. Any prevention of or delay in either party's performance hereunder due to labor disputes, acts of God, governmental restrictions, enemy or hostile governmental action, fire



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or other casualty or other causes beyond such party's reasonable control shall excuse such party's performance of its obligations hereunder for a period equal to the duration of any such prevention or delay.

(h) Non-Waiver. The failure of either party to require strict performance by the other party of any provision hereof shall not affect the full right to require such performance at any time thereafter, nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself.

(i) Survival. The provisions of this Agreement that should by their nature survive termination of this Agreement shall survive such termination, including, but not limited to, Sections 0, 4, 5(c), 6, 7, 8 and 9.

(j) Counterparts. This Agreement may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed by its duly authorized representative as of the date set forth below.

SMPTE

LICENSEE

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____



**SCHEDULE A:
LICENSED PRODUCTS**

1. Licensed Products.

- SMPTE Motion Imaging Journal, back to 1916
- SMPTE Conference Proceedings Collection
- SMPTE Standards Documents Collection

2. Availability. The Licensed Products are hosted by a third party hosting service, Highwire Press, and may be subject to periodic unavailability due to regular maintenance, including, but not limited to, maintenance of the server(s) and other equipment used to host the Licensed Products, installation or testing of software and loading of content as it becomes available. SMPTE shall use commercially reasonable efforts to minimize the extent of any period of unavailability due to such regular maintenance. Licensee shall not be entitled to any credit, reduction or set-off against the License Fee for downtime or any interruption in the availability of the Licensed Products unless such interruption exceeds twenty-four (24) continuous hours in duration. In such event, SMPTE shall provide Licensee with a credit equal to 1/365 of the annual License Fee for each continuous twenty-four (24) hour period from the time of interruption until restoration of Licensee's access to the Licensed Products, provided that Licensee promptly notifies SMPTE in writing of the service interruption. No credit will be issued for accumulating periods of non-continuous interruptions or any interruption caused by any negligence or willful misconduct of Licensee or failure of equipment, software or services not provided by SMPTE.



**SCHEDULE B:
AUTHORIZED SITES**

- A. Name and physical address(es) of Authorized Site(s) of Licensee:
- B. IP Address(es) of Authorized Site(s) - if proxy server is used, skip Part B and go to Part C.
- C. SMPTE permits Licensee to make use of one or more proxy servers to provide Authorized Users with access to the Licensed Products. Please provide responses to the questions below so that SMPTE can accurately monitor authentication and use of the Licensed Products.
1. Physical address of proxy server(s):
 2. IP address(es) of proxy server(s):
 3. Intended use(s) of proxy server(s) - check all that apply:
 - Load balancing
 - Provide Remote Access
 - Other (please specify): _____

Licensee Responsibilities

Licensee shall: (a) be responsible for verifying the status of Authorized Users; (b) provide lists of valid IP addresses to SMPTE and updating such lists promptly as changes are made; and (c) cooperate with SMPTE in the implementation of additional security procedures reasonably requested by SMPTE. Licensee represents and warrants that the list of IP addresses provided above is accurate and valid, and all such IP addresses are owned or controlled by Licensee.