

# STOCKPIPELINE™

## HOSTING, ECOMMERCE & FULFILLMENT CONTRACT

This **Hosting, Ecommerce & Fulfillment Contract** (hereafter referred to as the "Agreement") is made effective as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year 200\_\_\_\_ between Stock Media Corporation with offices at 1123 Broadway, Suite 1006, New York, NY 10010, doing business as StockPipeline.com, (hereafter "StockPipeline") and \_\_\_\_\_ located at \_\_\_\_\_ (hereafter the "Rights Holder").

### WITNESSETH:

**WHEREAS**, StockPipeline is serving as a web site hosting provider, technology enabler and fulfillment center in exchange for a fee, and Rights Holder desires that StockPipeline serve in this capacity, now, therefore, in consideration of the mutual conditions and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1) **Definitions Agreement.** For the purposes of this Agreement,

- a) "Client" or "Clients" means individuals or companies or end users who license or download Photos from Web Sites.
- b) "Confidential Information" means the business or technical information of a party, including but not limited to (i) any information relating to the party's product plans, designs, costs, product prices and names, trade secrets, business methods and strategies, finances, marketing plans, business opportunities, personnel, research, development or know-how; and (ii) any other information designated by a party as "confidential" or "proprietary" or which, under the circumstances taken as a whole, would reasonably be considered confidential. Confidential Information does not include information that is or becomes generally known or available by publication, commercial use or otherwise through no fault of the receiving party or is known to the receiving party at the time of disclosure.
- c) "Credit Card Fees" means the finance and service charges charged by credit card companies for the execution of an Image License for Photos.
- d) "Distribution" means the conveyance of Photos to third parties for the purpose of marketing and licensing Photos through those third parties.
- e) "Fee" or "Fees" means monies due to StockPipeline from the Rights Holder for various mutually agreeable services performed by StockPipeline.
- f) "Licensing Royalties" means fees paid for the use Photos by Clients or end users.
- g) "Photo" or "Photos" means any and all images and creative works delivered by Rights Holder to StockPipeline and accepted by StockPipeline, regardless of form or format.
- h) "Rights-Managed" means Photos to license for uses that are paid for on a fee-per-use basis and that are limited by media type, usage, size, duration, quantity of locations or viewers or other such similar licensing parameters.
- i) "Royalty-Free" means Photos to sell for uses that are substantially or entirely unrestricted in perpetuity for which Clients pay one flat fee.
- j) "Transaction Fee" means charges levied by StockPipeline for the download of Photos from Web Sites.
- k) "Web Site" or "Web Sites" means internet pages and databases that display Photos via the World Wide Web, whether supported, owned, operated or affiliated with the Rights Holder or StockPipeline.

2) **Grant of Authority.** Rights Holder grants StockPipeline the non-exclusive right to:

- a) Host, annotate, archive, edit, resize and display Photos, at its sole discretion, through Web Sites for use in any and all forms,
- b) Collect monies owed to the Rights Holder that are paid by credit card from Clients on behalf of the Rights Holder, and
- c) Charge, collect and retain a Transaction Fee, the amount of which is indicated in the online licensing process at Web Sites and may be changed at any time at the sole discretion of StockPipeline.

- 3) **Services Provided.** StockPipeline will provide these services to the Rights Holder. StockPipeline will:
- a) Provide an e-commerce licensing process for Photos,
  - b) Host high resolution image files of Photos in JPEG format,
  - c) Fulfill Client transactions for Photos online via automated processes, and
  - d) Provide the Rights Holder with functionality of the stock photo licensing platform of StockPipeline that as advertised by StockPipeline as a normal part of its services.
- 4) **Responsibilities of Rights Holder.** Not limiting this Agreement in any way, the Rights Holder is responsible for the upload and content of Photos, associated text and for maintaining and supporting its web site and Clients in a manner that enables interactions between Web Sites and Clients. The Rights Holder will:
- a) Invoice Clients for Licensing Royalties and for the Transaction Fee that are not paid by credit card via Web Sites,
  - b) Renew as needed the domain name registration for its web site,
  - c) Provide adequate, spell-checked caption information and keywording to facilitate the search of Photos,
  - d) Provide high resolution digital files of Photos in JPEG format that are of adequate quality for Client fulfillment,
  - e) Provide model releases and property releases as needed if their existence is represented by the Rights Holder,
  - f) Modify and update design elements of its web site to include appropriate computer code for linkage to Web Sites of StockPipeline,
  - g) Edit Photos for quality, redundancy and appropriateness to ensure their commercial viability,
  - h) Clearly separate submissions for licensing as Rights-Managed or Royalty-Free and assign appropriate licensing parameters and pricing upon upload to Web Sites,
  - i) Provide and update usage restrictions and the online/offline status of Photos, and
  - j) Designate Photos for inclusion or exclusion for Distribution upon upload.
- 5) **Responsibilities of StockPipeline.** Not limiting this Agreement in any way, StockPipeline will:
- a) Provide automated processes that will create a thumbnail-sized image, a preview-sized image, and a deliverable image that is 18 inches on the longest side at 300 dpi and store these images as JPEG files,
  - b) Provide automated processes that will assemble and upload Photos and related metadata into its e-commerce software for licensing by Clients,
  - c) Fulfill orders for Photos as needed via the automated e-commerce process of the Web Sites, and
  - d) Facilitate access of accounting information to enable the Rights Holder to invoice Clients for the use of Photos.
- 6) **Payments.** The parties will pay each other as follows:
- a) The Rights Holder will receive one hundred percent (100%) of Licensing Royalties.
  - b) StockPipeline will charge a Transaction Fee for each download or licensing of Photos at Web Sites, the amount of which will be determined by StockPipeline at its sole discretion. The Transaction Fee will:
    - i) Be charged to the Client upon licensing and fulfillment of Photos, and
    - ii) Be paid to StockPipeline by the Rights Holder if not paid by the Client.
  - c) Credit Card Fees will
    - i) Be paid from the Transaction Fee, provided that the amount does not exceed the that of the Transaction Fee, and
    - ii) Be paid by the Rights Holder to StockPipeline in their entirety should the amount of Credit Card Fees exceed the amount of the Transaction Fee.
  - d) The Rights Holder will pay StockPipeline:
    - i) Fees, as described herein, in advance of services being provided by StockPipeline,
    - ii) The Transaction Fee, in the event that usage fees for Photos are not paid by credit card at Web Sites or if the Rights Holder directly invoices Clients for Licensing Royalties, and
    - iii) Credit Card Fees, in their entirety, in the event that the costs of a credit card transaction for the licensing of Photos at Web Sites exceed the Transaction Fee for that license.
  - e) StockPipeline will pay the Rights Holder:
    - i) Licensing Royalties for monies received by StockPipeline for transactions paid by credit card at Web Sites.
  - f) Monies owed to each party by the other will be paid without unreasonable delay.
  - g) StockPipeline will offset any and all monies due to StockPipeline from the Rights Holder against any monies owed to Rights Holder from StockPipeline.

- 7) **Fees.** The Rights Holder will pay StockPipeline the following Fees:
- a) **Setup Fee.** The Rights Holder will pay StockPipeline two hundred dollars (US\$200), or a mutually agreeable promotional amount, for StockPipeline to initiate the necessary steps required to execute this Agreement.
  - b) **Image Storage Fee.** The Rights Holder will, each month in advance of service, pay StockPipeline five dollars (US\$5.00) for each one hundred (100) Photos or portion thereof that are provided by the Rights Holder under this Agreement and stored on StockPipeline servers in the preceding month with a minimum monthly fee of fifty dollars (US\$50.00).
  - c) **Optional Services.** The Rights Holder may elect to, but is not obligated to, request or engage optional services from StockPipeline. The Rights Holder will pay StockPipeline mutually agreeable amounts for these services that might include customized header/banner branding, customized price lists or image integration in bulk quantities.
- 8) **Submissions.** Rights Holder will directly upload Photos to Web Sites, accompanied by proper and accurate captions, keywords and related metadata, as well as designation for inclusion or exclusion in Distribution with each Photo in a form acceptable to StockPipeline. StockPipeline will provide an online facility for submissions. The Rights Holder agrees that StockPipeline may reject any Photos for any reason. StockPipeline is not responsible for any accidental loss or damage to Photos. The Rights Holder will only submit Photos that are not pornographic, libelous or obscene and that do not knowingly violate any laws or third party rights.
- 9) **Return Of Photos.** Photos that are no longer to be included in Web Sites, for any reason, will be purged or deleted by StockPipeline and not returned to the Rights Holder. Photos will be purged, deleted or destroyed upon termination of this Agreement.
- 10) **Links.** The Rights Holder will display an HTML link from its own web site to whatever unique URL that StockPipeline assigns to the Rights Holder. This link will appear on a web page that is accessible, directly or indirectly, from a link on the home page of the Rights Holder. StockPipeline will provide an online process to facilitate the creation of links that enable searching of Photos from the web site of the Rights Holders.
- 11) **Confidential Information.** During the term of this Agreement and for one (1) year after it terminates or expires, each party will refrain from using the other party's Confidential Information, except in performing this Agreement, from disclosing the other party's Confidential Information to any third party except to employees, licensors and contractors as reasonably required in connection with performing this Agreement, and will take reasonable precautions to protect such Confidential Information which is at least as stringent as the precautions it takes to protect its own Confidential Information. Each party will remain the owner of all rights, title and interest in and to its Confidential Information and all intellectual property rights in it. StockPipeline owns all new information gained, acquired and/or derived from the process of licensing or selling Photos at Web Sites.
- 12) **Trademarks.** "Stock Pipeline" is a trademark of StockPipeline. Rights Holder agrees to not use or permit use trademarks of StockPipeline without prior written authorization of StockPipeline.
- 13) **Representations and Warranties.** For so long as this Agreement remains in effect, the Rights Holder continuously represents and warrants to StockPipeline and any and all licensees of Photos, and StockPipeline continuously represents and warrants to the Rights Holder, that:
- a) Each party has the requisite power and authority (corporate or otherwise) to execute and deliver this Agreement and to perform fully its respective obligations hereunder. The execution and delivery of this Agreement, the performance of each party's obligations hereunder and the consummation of the transactions contemplated hereby have been duly authorized by all requisite corporate action or management directive.
  - b) Each party has duly executed and delivered this Agreement. This Agreement constitutes the legal, valid and binding obligation of each party, enforceable against it in accordance with its terms.
  - c) The Rights Holder has all necessary rights to the Photos, including but not limited to copyright, model rights and property rights. The Rights Holder further warrants that Rights Holder has no knowledge or reasonable assumption that Photos do or would infringe on any third party rights, including but not limited to copyright, model rights, property rights, patent, trademark, trade secrets, or any other intellectual property right or privacy right and do not knowingly defame or liable any third party or are likely to defame or liable any third party.

- d) The Rights Holder further represents and warrants that he/she/it accepts full responsibility for Photos and that Rights Holder has done due diligence to insure that Photos are appropriate, legal and non-infringing of third party rights.
  - e) All information conveyed to StockPipeline or licensees of Photos by the Rights Holder is true and correct to the best knowledge of the Rights Holder.
- 14) **Modification of Agreement.** StockPipeline may modify any of the terms and conditions in this Agreement at any time with the written authorization and consent of the Rights Holder to these modifications.
- 15) **Term and Termination.** This Agreement will commence on the date indicated herein and will remain in full force for one (1) year from that date and will renew automatically monthly for consecutive one (1) month terms thereafter unless terminated by either party, as permitted herein. The terms of termination are as follows:
- a) During its first year in force, this Agreement may be terminated by either StockPipeline or the Rights Holder, provided that a breach of this Agreement has occurred by the party that is not initiating termination and that party has been advised in writing of said breach by the terminating party and has not cured said breach within thirty (30) days.
  - b) After the first year in force, this Agreement may be terminated at any time by either party upon thirty (30) days written notice.
  - c) In the event of termination by either party:
    - i) The terminating party must deliver written notice of termination to the terminated party and receive confirmation of receipt of the termination notice from the terminated party; and
    - ii) The Provision entitled "Confidential Information" herein will continue in force as provided thereunder; and
    - iii) Any and all monies due from StockPipeline to the Rights Holder or from the Rights Holder to StockPipeline at the time of termination will continue to be due and payable according to the terms and conditions herein; and
    - iv) StockPipeline has the right, in its sole discretion, subject to the terms and conditions of this Agreement, to purge, delete and/or destroy all Photos in its possession or control within a reasonable time following termination.
- 16) **Limitation of Liability.** StockPipeline will not be liable for any loss, injury, claim, liability or damage of any kind resulting in any way from the unavailability of Web Sites or any features thereof or any materials included therein.
- 17) **NEITHER STOCKPIPELINE NOR ANY ENTITY AFFILIATED WITH STOCKPIPELINE SHALL BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES) IN ANY WAY DUE TO, RESULTING FROM, OR ARISING IN CONNECTION WITH STOCKPIPELINE'S FAILURE TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT. WITHOUT LIMITING THE FOREGOING, STOCKPIPELINE SHALL HAVE NO LIABILITY ARISING OUT OF OR IN ANY WAY RELATED TO (A) ANY FAILURE OR MALFUNCTION OF THE WEB SITES, (B) ANY FAULT IN DELIVERY, DELAY, OMISSION, SUSPENSION, INACCURACY OR TERMINATION, OR ANY OTHER CAUSE, IN CONNECTION WITH THE FURNISHING, PERFORMANCE, MAINTENANCE, USE OF OR INABILITY TO USE ALL OR ANY PART OF THE WEB SITES, OR ANY INACCURACY THEREIN. LIABILITY UNDER THIS AGREEMENT OR IN CONNECTION WITH ANY OTHER CLAIM ARISING OUT OF OR RELATING TO THE RELATIONSHIP BETWEEN STOCKPIPELINE AND THE END USER OF PHOTOS OR STOCKPIPELINE AND THE RIGHTS HOLDER SHALL NOT EXCEED THE AMOUNT PAID TO RIGHTS HOLDER BY STOCKPIPELINE UNDER THIS AGREEMENT IN THE PRECEDING TWELVE (12) MONTHS.**
- 18) **Indemnification.**
- a) The Rights Holder agrees to defend, indemnify and hold harmless StockPipeline against any and all claims, suits, actions, or other proceedings brought against StockPipeline based on or arising from any claim:
    - i) that StockPipeline's use of any Photos infringes on any copyright, patent, trademark, trade secret or any other intellectual property right of any third party, or
    - ii) that results from any act alleged to be defamatory or libelous or a violation of privacy by the Rights Holder, or
    - iii) that results from breach of this Agreement by the Rights Holder,

- iv) and further agrees to pay any and all costs, damages and expenses, including reasonable attorneys' fees for an attorney of StockPipeline's own choosing, incurred by StockPipeline in connection with or arising from any such claim, suit, action or proceeding.
- b) StockPipeline agrees to defend, indemnify and hold harmless the Rights Holder against any and all claims, suits, actions, or other proceedings brought against the Rights Holder based on or arising from any claim that results from breach of this Agreement by StockPipeline.

19) **Miscellaneous.**

- a) **Good Faith.** The Rights Holder and StockPipeline will work together in good faith and act ethically with honesty and integrity in all dealings and representations to each other.
- b) **Notices.** All notices under this Agreement will be deemed given when delivered personally, sent by commercial overnight courier, sent by fax or E-mail with confirmation of receipt of said fax or E-mail, or sent by U.S. certified mail, return receipt requested, to the name and address provided below.
- c) **Headings.** The headings and titles contained in this Agreement are included for convenience only and will not limit or affect the terms of this Agreement.
- d) **Binding Effect.** This Agreement will be binding upon the parties hereto and their respective successors, heirs, assigns and legal representatives, whether or not any such person will have executed this Agreement or otherwise agreed in writing to become a party hereto. "StockPipeline" and "Rights Holder" in all instances will include the corporate entity and all employees, shareholders, agents, affiliates and authorized representatives of each respective company or individual, provided that StockPipeline or the Rights Holder, if a corporate entity, is solely liable and that shareholders and individuals associated with the corporation of each party are not personally liable.
- e) **Entire Agreement; Waiver.** This Agreement represents the entire Agreement between the parties, oral and written. No waiver of any provision of this Agreement will be valid unless in writing and signed by the person against whom it is sought to be enforced. No course of dealing, course of performance, or the failure of either party to strictly enforce any term, right or condition hereof will be construed as a waiver of any term, right, or condition.
- f) **Presumptions.** This Agreement has been drafted on mutual contribution of language, and is not to be construed against any party hereto as being the drafter hereof or causing same to be drafted.
- g) **Survival of Intent.** If any provision of this Agreement is held to be invalid or unenforceable, that provision will be eliminated or limited to the minimum extent necessary such that the intent of the parties is maintained, and the remainder of this Agreement will have full force and effect.
- h) **Further Assurances.** From and after the date of this Agreement, each of the parties hereto agrees to execute whatever additional documentation or instruments as are reasonably necessary to carry out the intent and purposes of this Agreement.
- i) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original and all of which together will constitute one and the same instrument.
- j) **Relationship of the Parties.** The Rights Holder is an independent contractor, responsible for all charges, fees, taxes, duties and government regulations concerning all monies paid to it, including Licensing Royalties. Nothing in this Agreement will be construed as creating or constituting a partnership, joint venture, employment, or agency relationship between the parties. Neither party will have the power to bind the other or to incur obligations on the other's behalf without the other's prior written consent.
- k) **Incorporated Addendums.** This Agreement will incorporate any supplemental documents if they are mutually agreed upon and signed by both parties, such as the Distribution Addendum.

- 20) **Disputes.** This Agreement will be governed by and interpreted in accordance with the laws of the State of New York, U.S.A applicable to agreements executed and to be performed entirely therein. The parties hereby irrevocably consent and submit to the sole and exclusive jurisdiction of any court or tribunal of the State of New York, County of New York. Any disputes arising hereunder which the parties cannot resolve in good faith within two (2) months of the date of the written notice of such dispute, will be submitted to the American Arbitration Association in the State of New York, County of New York, for arbitration in accordance with its commercial rules of procedure. The parties agree that the arbitral award will be final and binding upon both parties. Nothing herein will be deemed to prevent a party from seeking equitable relief from a Court of competent jurisdiction regarding any breach hereof.

**IN WITNESS WHEREOF**, StockPipeline and the Rights Holder agree to the terms and conditions herein.

StockPipeline Corporation

Rights Holder:

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

Randy Taylor  
CEO  
StockPipeline Corporation  
1123 Broadway, #1006  
New York, NY 10010  
PH: (212) 463-8300  
rtaylor@StockMedia.net  
www.StockMedia.net

Name:

Title:

Company:

Address:

City, State, Zip

Phone:

Fax:

E-mail:

Web Site:

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