

Media Licence Agreement

This Agreement governs the terms under which an exclusive licence of copyright in the Media is granted by the Seller to the Buyer. By listing or bidding on Media you agree that in the event the auction is successful and you are the Seller or the Buyer of that Media, you will be bound by the terms of this Agreement. If you do not agree to be bound by this Agreement, please do not list any Media or bid on any Media auctions.

The Seller is the owner of the copyright in the Media and wishes to grant an exclusive copyright licence to the Buyer for a period of 12 months on the terms and conditions set out in this Agreement.

1. **Definitions:** Unless the context otherwise requires:

Agreement means this media licence agreement;

Business Day means any day other than a Saturday, a Sunday or a New Zealand public holiday (as defined in the New Zealand Holidays Act 2003);

Commencement Date means the date the Media is made available to the Buyer to download from the Website;

Footage means digital motion picture and/or sound footage, recording or images, or any other type of digital file capture of an event, including films and videos;

Licence Fee means the amount payable by the Buyer to the Seller under this Agreement and is the amount of the Buyer's winning bid in respect of the Media;

Media means the Footage uploaded to the Website and listed for an online auction on the Website by the Seller in respect of which the Buyer is the successful bidder at the end of the online auction, such Media ultimately being identified in an email generated by the Website functionality to each of the Seller and the Buyer;

Sellit.Media means Sell It Media Limited;

Website means www.sellit.media or any other website owned by SellIt.Media through which the Website Services are offered and from which the online auction for the Media occurred;

Website Services means any of the services offered by SellIt.Media including the online auctions of Media and any other service offered by SellIt.Media.

2. **Grant of Licence**

2.1 Subject to clause 3, the Seller hereby grants to the Buyer an exclusive worldwide licence to use, reproduce, display, publish, distribute, and transmit the Media. Subject to clause 7.3, the licence shall expire 12 months from the Commencement Date. The licence is not transferable to any other person, although the Buyer may sub-licence other persons (including SellIt.Media) the right to use, reproduce, distribute, display, publish, or transmit the Media for all or any part of the period of the licence.

2.2 The Buyer shall be solely responsible for compliance with any and all applicable laws relating to the use, reproduction, display, publication, distribution, broadcasting, streaming, and transmission of the Media by or on behalf of the Buyer or any person sub-licensed by the Buyer from the Commencement Date.

2.3 Each party will promptly notify the other party if it becomes aware of any actual or suspected third party infringement of the copyright in the Media. The parties agree that the exclusive licence grants the Buyer the right to conduct all negotiations and proceedings in respect of any third party infringement as it applies to the period of the licence. The Seller agrees to

provide, at the Buyer's cost, all reasonable assistance required by the Buyer in the course of any negotiations or proceedings regarding any such third party infringement.

2.4 The Seller unconditionally and irrevocably waives all moral rights under Part 4 of the New Zealand Copyright Act 1994 (and any other equivalent legislation in another jurisdiction) that exist or may exist in the Media for the period of the licence. Where the Seller is not the owner of those moral rights, the Seller will obtain a waiver or waivers from the owner(s) of those moral rights.

2.5 Nothing in this Agreement transfers ownership of the copyright or any other intellectual property in the Media to the Buyer.

3. **Payment**

3.1 In consideration for the licence granted by this Agreement in respect of the Media, the Buyer agrees to pay the Seller the Licence Fee. The Buyer must pay the Licence Fee promptly and no later than 24 hours following the close of the relevant auction.

3.2 The Buyer may elect to pay the Licence Fee by:

3.2.1 direct debit to the Seller's nominated bank account; or

3.2.2 where it is offered by SellIt.Media, payment to SellIt.Media via PayPal (by credit card or use of a PayPal account) for SellIt.Media to pass the payment on to the Seller.

3.3 Where the Buyer makes payment to SellIt.Media via PayPal, the Seller acknowledges that the transferring of that payment to the Seller's nominated bank account by SellIt.Media shall be a complete discharge of the Buyer's obligation to pay the Licence Fee to the Seller. Where the Buyer makes payment through PayPal's payment facility the Buyer will be responsible for any additional payment service fees charged by SellIt.Media or PayPal.

3.4 The Licence Fee is the only amount payable by the Buyer to the Seller under this Agreement. The Licence Fee must also be paid in full without any deduction or withholding.

3.5 Each of the Buyer and the Seller shall remain responsible for meeting their respective tax obligations. Any tax, duty, impost, levy, or other amount charged or imposed by a Governmental agency in respect of the Licence Fee, the Media or the licensing of the Media under this Agreement shall be the responsibility of the Buyer or the Seller on whom the tax, duty, impost, levy or other amount is charged, imposed or levied.

3.6 If the Buyer is required by law to make any deduction or withholding from, on, or in relation to, any amount paid or payable by the Buyer under this Agreement, the Buyer must gross up the payment due to the Seller under this Agreement so that the Seller receives a net amount equal to the amount that it would have received had no deduction, withholding or payment been made.

4. **Delivery**

4.1 The parties agree that delivery of the Media to the Buyer shall occur from the Website in accordance with functionality made available by SellIt.Media.

4.2 The parties agree that the Media will be delivered to the Buyer by the Website functionality making the Media available to the Buyer for download from the Website. This will occur automatically when the auction for the Media is won by the Buyer. The Buyer acknowledges that the Website will generate an electronic mail to the Buyer setting out the download process. The electronic mail may contain a link to download the Media. The Media will be available for digital download only.

5. **Warranties**

- 5.1 The Seller warrants that:
- 5.1.1 it is the owner of the Media (and the copyright in the Media) or holds the necessary licences, rights or consents to grant the licence set out in clause 2; and
 - 5.1.2 the Media is a true and accurate recording of real life events and has not been altered in any way.
- 5.2 All other warranties (including without limitation, warranties and conditions as to fitness for purpose), whether express or implied by statute, common law or otherwise, are excluded to the extent permitted by law.
6. **Indemnities**
- 6.1 The Seller shall indemnify the Buyer against any losses, costs (including solicitor and client costs), expenses, demands or liability, whether direct, indirect, consequential, or otherwise, and whether arising in contract, tort (including negligence), or equity or otherwise, in respect of any third party claim that the Media infringes the copyright of that third party.
- 6.2 The Buyer shall indemnify the Seller against any losses, costs (including solicitor and client costs), expenses, demands or liability, whether direct, indirect, consequential, or otherwise, and whether arising in contract, tort (including negligence), or equity or otherwise, in respect of any third party claim related to the use, reproduction, display, publication, distribution, broadcasting, streaming or transmission of the Media by or on behalf of the Buyer or any person sub-licensed by the Buyer or any breach of the licence in clause 2 by the Buyer or any such sub-licensed person.
- 6.3 Notwithstanding anything expressed or implied in this Agreement, neither Party ("party A") shall be liable to the other Party ("party B") for any losses, claims, damages, costs, charges, expenses, liabilities, demands, proceedings and actions suffered or incurred by party B to the extent that such losses, claims, damages, costs, charges, expenses, liabilities, demands, proceedings or actions result from or is attributable to an act or omission by party B.
- 6.4 Where a party is indemnifying (**Indemnifying Party**) the other party (**Indemnified Party**) under clause 6.1 or 6.2, the Indemnified Party must:
- 6.4.1 promptly notify the Indemnifying Party in writing upon receiving any third party claim;
 - 6.4.2 allow the Indemnifying Party to conduct all negotiations and proceedings in respect of the third party claim, and in such a case the Indemnifying Party will:
 - (a) (at the Indemnifying Party's cost) promptly defend or settle the third party claim;
 - (b) consult with and keep the Indemnified Party informed in relation to the third party claim; and
 - (c) ensure that the Indemnified Party's name and reputation are not adversely affected by any steps taken by the Indemnifying Party in relation to the third party claim;
 - 6.4.3 provide all reasonable assistance required by the Indemnifying Party in the course of any negotiations or proceedings regarding the third party claim at the Indemnifying Party's cost; and
 - 6.4.4 not make any admission in respect of the third party claim.
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7. Termination

7.1 Subject to clause 7.2, either party may on written notice to the other party terminate this Agreement immediately if the other party has materially breached any of its obligations under this Agreement and the breach:

7.1.1 if capable of being remedied, is not remedied within three (3) Business Days of the party in breach receiving written notice specifying the breach and stating that the notifying party has the right to terminate under this clause if the breach is not remedied; or

7.1.2 is not capable of being remedied.

7.2 The Seller may by written notice to the Buyer immediately terminate this Agreement if the Buyer does not make payment of the Licence Fee within the time period set out in clause 3.1. Clause 7.1 shall not apply once the Seller has received payment of the Licence Fee in cleared funds.

7.3 The exclusive licence will expire on termination of this Agreement. To avoid doubt, no licence is granted if the Licence Fee is not paid by the Buyer.

7.4 Termination or expiry of this Agreement shall not:

7.4.1 relieve either party from any right, liability or claim that has accrued before the date of termination; or

7.4.2 affect the provisions of this Agreement which by their nature, survive termination or expiry.

8. General

8.1 **Entire Agreement:** This Agreement constitutes the complete and exclusive statement of the agreement between the parties, superseding all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter of this Agreement.

8.2 **Further Assurances:** The parties must each do all such further acts (and sign any documents) as may be necessary or desirable for effecting the transactions contemplated by this Agreement.

8.3 **Waiver:** No exercise or failure to exercise or delay in exercising any right or remedy by a party shall constitute a waiver by that party of that or any other right or remedy available to it.

8.4 **Severance:** If any term of this Agreement is illegal, invalid or unenforceable for any reason whatsoever such terms are deemed to be deleted from this Agreement. Such deletion will not render the remainder of this Agreement illegal, invalid or unenforceable on its terms.

8.5 **Notices:**

8.5.1 Any notice given pursuant to this Agreement will be sufficiently given if it is in writing and delivered by email to the other party at the email address stated in the electronic mail generated by the Website functionality.

8.5.2 All notices given in accordance with this Agreement will be deemed to have been delivered at the time the sender's email system records that the email was successfully dispatched to the named recipient, provided that the sender's computer system has not received an automated response that the email has not been delivered.

- 8.5.3 Where such delivery or transmission occurs after 5.00 pm on a Business Day or on a day which is not a Business Day, delivery will be deemed to occur at 9.00 am on the next following Business Day.
- 8.6 **Assignment:** Except for the right of sub-licence under clause 2, neither party may assign, novate or transfer (or attempt to assign, novate or transfer) any of its rights or obligations under this Agreement, in whole or in part, without the prior written consent of the other party.
- 8.7 **Governing Law:** This Agreement shall be governed by New Zealand law, and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.
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