

Terms of Use

END-USER SUBSCRIPTION AGREEMENT March 2023

This End-User Subscription Agreement (the "Agreement") is by and between Food Media Pro, Inc. (hereinafter referred to as "FMP"), with business offices located at 515 Las Olas Blvd, Fort Lauderdale, FL 33301, and you (hereinafter referred to as the "Subscriber"). This Agreement shall be effective as of the date of electronic acceptance by clicking a box indicating acceptance ("Effective Date"). Each of FMP and Subscriber is a "Party" and together they are the "Parties" to this Agreement.

FMP has developed and maintains an Internet based subscription program allowing subscribers full access to stock photography and videography on the website for the specific purposes of advertising subject to the conditions in this Agreement (the "Services"), provided said Subscriber is in good standing. Subscriber further understands that the terms of use are applicable to Subscriber's End-Users, and Subscriber is responsible for (i) communication of the terms and conditions of this Agreement to End-Users, and (ii) failure by the End-User to abide by the terms and conditions of this Agreement.

NOW, THEREFORE, the Parties hereto, for good and valuable consideration, including the continual right to the License while the subscription is active, the receipt, adequacy, and sufficiency of which are hereby acknowledged, and intending to be legally bound, hereby agree as follows:

1. License Grant.

a) **License to Use Service.** FMP hereby grants to Subscriber a nonexclusive, nontransferable, non-sublicensable license during the Term (the "License") to access and use the Services in accordance with this Agreement. All rights not expressly granted to Subscriber under the License are reserved by FMP. The License granted to Subscriber pursuant to this Agreement will permit use of the Services by no more than five (5) Subscriber employees or affiliates ("End-Users"). Subscribers with greater than five (5) End-users should contact FMP to purchase a separate **Enterprise License**.

SUBSCRIBER SHALL BE RESPONSIBLE FOR THE FAILURE OF ANY SUBSCRIBER EMPLOYEE OR AFFILIATE ("END-USER") TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT. UPON TERMINATION OF THIS AGREEMENT, SUBSCRIBER AND ITS END-USERS SHALL IMMEDIATELY CEASE USE OF ANY AND ALL FMP IMAGES.

b) **Designated End-users.** Each End-user will be designated as an End-user within the subscription Services structure. The License to use the Services by each End-user may not be shared or used by more than five (5) End-users who are employed by the Subscriber (collectively "Designated End-Users") may be re-issued from time to time to new End-users upon prior written notification to and acceptance by FMP. Any unauthorized access to Services, or other abuse or impermissible activity on the Site or in connection with the Services may result in immediate suspension or termination of End-user accounts pursuant to Section 4 of this Agreement, or for damages as set forth in the Agreement. Subscriber will promptly notify FMP of any unauthorized use of the Services in breach of this Agreement, any unauthorized use of accounts, or any other known or suspected breach of security.

c) **Limitations on Use.** The Services are for use only by Subscriber and its assigned End-users. Except as permitted by this Agreement, the Services may not be transferred, distributed, resold, sublicensed, or used to create any derivative works. Subscriber may use the Site and Services only for its internal business purposes and shall not use the Services in association with sending spam or

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otherwise duplicative or unsolicited messages; use the Services in association with infringing, obscene, threatening, libelous, or otherwise unlawful or tortuous material, including material harmful to children or material in violation of third party privacy rights; or attempt to gain unauthorized access to the Site, Services, or its related systems or networks. Subscriber is responsible for ensuring that all Subscriber employees, affiliates, and End-users have a copy of this Agreement and/or are advised in writing of the terms and conditions, and the penalties for breach, including without limitation termination, suspension, or penalty of \$10,000 per image or video, per medium/channel of use.

2. Service Details.

The subscription plan enables the Subscriber to download vector files or JPG images or mp4 video files (each a "Work" or "Works") of any available size. The Subscriber has the right to move a file (or files containing it) physically, but copies can be made only for back-up or archival purposes. Files downloaded from the Site may be used by the Subscriber for advertising or similar purposes as permitted by the License Agreement.

If a Work is in violation of a third-party right, FMP may instruct Subscriber to cease all use, distribution and possession of such Work, and Subscriber must promptly comply with such instructions. FMP reserves all rights not expressly granted in these terms.

Subscriber may use the license granted under this Agreement for the benefit of up to five (5) client banners, provided that Subscriber's client(s) must also comply with these terms and comply with all licenses and use restrictions. Subscriber is solely responsible and liable for any and all use of the Work by its client(s). If Subscriber intends to use the same Work for the benefit of clients with more than five (5) locations or if Subscriber intends to use the same Work with more than five (5) unique clients, then Subscriber must purchase a separate Enterprise License.

Clients of Subscribers may only use licensed Works as long as the Subscriber maintains an active subscription to the Service. Upon termination, Subscriber and Subscriber's clients must discontinue use of the Works; however, clients of Subscribers may continue to distribute **pre-printed** stock items containing the Work or Works for a period of six (6) months following the termination of the Subscriber's subscription.

Each client of Subscriber must be designated, in writing, to FMP's IP Director as a client of the Subscriber. This client list shall be updated on a quarterly basis. Any unauthorized access to Services, or other abuse or impermissible activity on the Site or in connection with the Services may result in immediate suspension or termination of Subscriber accounts pursuant to Section 4 of this Agreement. Subscriber will promptly notify FMP of any unauthorized use of the Services in breach of this Agreement, any unauthorized use of accounts, or any other known or suspected breach of security.

3. FMP Proprietary Information.

The Site, Services, and its Contents ("FMP IP") are owned or licensed by FMP and protected by U.S. and international copyright, trademark, service mark, patent and/or other proprietary rights and laws. Except as expressly provided in this Agreement, nothing contained herein shall be construed as conferring to Subscriber any license or right under copyright or other intellectual property law. No part of the FMP IP may be altered, copied, photocopied, reproduced, translated, or reduced to any electronic medium or machine-readable form, in whole or in part, except as specifically provided in this Agreement. Subscriber shall not take any action that shall interfere with or diminish FMP's right in any of the FMP IP.

4. **Term, Suspension, and Termination.**

Unless terminated earlier pursuant to this Section 5 of this Agreement, the initial term ("Initial Term") of this Agreement shall be for a period of twelve (12) months from the Effective Date and shall thereafter automatically continue under this Agreement annually, for successive twelve-month (12) periods ("Subsequent Term") unless either Party provides a ninety-day (90) written notice of termination prior to the end of each twelve-month period. The Initial Term and Subsequent Term shall together be known as the "Term".

5. **Fees, User Limits, Notices.**

a) **Exclusive, Unlicensed, and Prohibited Use.** Exclusive use of FMP stock photography or videography is available at a rate starting at \$10,000 per image or video, per medium/channel of use. Any unlicensed or prohibited use of any FMP stock photography or videography will carry with it a minimum penalty of at least \$10,000 per image or video, per medium/channel of use.

b) **Additional End-users.** Subscriber may add Designated End-User licenses at any time during the Initial or Subsequent Terms, not to exceed five (5) Designated End-Users per license and shall notify FMP of the same.

c) **Notices.** Any communication or notice required or permitted to be given under the Subscription shall be in writing, and mailed by registered, certified mail to Food Media Pro, Inc. to its principal place of business, Attention: Intellectual Property Director, to the address as appearing on the records of the Company. Although Subscriber may decrease End-user licenses at any time, there will be no refunds issued to Subscriber, regardless of nonpayment, nonuse, or other conduct or inaction, and all Subscription Fees will continue to be due through the end of the Initial or Subsequent Terms.

d) **Enterprise Licenses.** Enterprise licenses are available for Subscribers who require greater than five (5) End-user licenses or who need to use any Work for the benefit of clients with more than five (5) locations or with more than five (5) unique clients. Please contact FMP to obtain a separate Enterprise license.

6. **Amendments.**

The Parties agree that, in order to continually improve its Services, FMP may, from time to time, amend its Site and Services in its discretion and will make commercially reasonable efforts to notify Subscribers of said amendments. Subscriber is encouraged to periodically check the Site for notices of changes, updates, and improvements.

7. **Representation and Warranties.**

a. **FMP's Representations and Warranties.** FMP hereby represents and warrants to Subscriber that:

(1) FMP has the full power, capacity and right to enter into this Agreement and has exclusive rights to grant a nonexclusive license to Subscriber from FMP for stock photography and videography images and videos;

(2) FMP knows of no pending or threatened action in law or in equity which adversely affects the rights granted herein, and knows of no basis for any of the foregoing;

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(3) To the knowledge of FMP, neither the execution and delivery of this Agreement nor compliance with the obligations of FMP hereunder, will violate any law or regulation or any order or decrees of any court or government instrumentality;

(4) To the knowledge of FMP, neither the execution and delivery of this Agreement nor compliance with the obligations of FMP hereunder, will conflict with, or result in the breach of, or constitute a default under, any contract, agreement, instrument or judgment to which FMP is a party, or which is or purports to be binding upon FMP;

(5) No action, approval, or consent, including, but not limited to, any action, approval, or consent by and federal, state, municipal or other governmental agency, is necessary in order to constitute this Agreement as valid, binding, and enforceable obligations of FMP in accordance with its terms;

(6) FMP is the sole legal and beneficial owner of the FMP Intellectual Property.

b. Subscriber's Representations and Warranties. Subscriber hereby represents and warrants to FMP that:

(1) It has the full power, capacity and right to enter into this Agreement;

(2) All corporate action necessary to authorize Subscriber to enter into this Agreement and be legally bound by its terms has been taken;

(3) It knows of no pending or threatened action in law or in equity which adversely affects the rights granted herein; and it knows of no basis for any of the foregoing;

(4) To the knowledge of Subscriber, neither the execution and delivery of this Agreement nor compliance with the obligations of Subscriber hereunder, will violate any law or regulation or any order or decrees of any court of government instrumentality;

(5) Neither the execution and delivery of Subscriber hereunder, will conflict with, or result in the breach of, or constitute a default under, any contract, agreement, instrument or judgment to which Subscriber or any officer, director, employee or controlling person of Subscriber is a party, or which is or purports to be binding upon any of the foregoing persons; and

(6) No action, approval, or consent, including, but not limited to, any action, approval, or consent by any federal, state, municipal or other governmental agency, is necessary in order to constitute this Agreement as a valid, binding and enforceable obligation of Subscriber in accordance with its terms.

8. Limitation of Liability; Indemnification.

Subscriber agrees to indemnify, defend and hold harmless FMP, its officers, directors, employees, agents, licensors, suppliers and any third party information providers to the Site or Services from and against all claims, losses, expenses, damages and costs, including reasonable attorneys' fees (collectively, "Losses"), resulting from or in connection with: (i) any breach of any obligation of Subscriber; (ii) violation of any applicable laws by Subscriber, its officers, directors, employees, agents, contractors, or affiliates, End-users, or clients ("Subscriber Responsible Parties"); or (iii) any misuse, loss, damage, corruption, or destruction of the Services by Subscriber Responsible Parties or any breach of security relating to the same. ^[L]_[SEP]

9. Additional Miscellaneous Provisions.

a) **Governing Law; Jurisdiction; Venue; Attorney's Fees.** This Agreement shall be construed in accordance with, and governed by, the laws of the State of Florida, except for that body of law addressing conflicts of law. The Parties submit to the jurisdiction of said courts and waive any defense of forum non convenes. The Parties waive all rights to jury trials. Attorney's fees for the prevailing party shall be paid by the non-prevailing party. ^[L]_[SEP]

b) **Personal Information.** FMP agrees to protect Subscriber's Personal Information, as that term is defined in FMP's Privacy Policy, in accordance with the terms of the FMP Privacy Policy, which can be found here. www.foodmediapro.com/privacy-policy

c) ^[L]_[SEP] **Severability of Terms.** If any provision of the Agreement is found by a court of competent jurisdiction to be invalid, the Parties nevertheless agree that the court should endeavor to give effect to the Parties' intentions as reflected in the provision, and the other provisions of the Agreement remain in full force and effect.

d) **Amendment.** Notwithstanding Section 6, this Agreement may be modified only in writing, signed by a duly authorized representative of each Party.

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10. Acknowledgement.

You acknowledge that you have read this Agreement, understand it and agree to be bound by its terms and conditions. You agree that this Agreement is the complete and exclusive statement of the agreement between you and FMP, which supersedes any proposal or prior agreement, oral or written, and other communication between you and FMP relating to the subject matter of this Agreement.