

# Digital Content Licence Agreement

## PURPOSE

This is a License Agreement document between "you" (the Customer) and The Mountain Walker ([www.themountainwalker.com](http://www.themountainwalker.com)). By purchasing and/or downloading any Digital Content from The Mountain Walker, you accept and bind yourself to the terms of this Agreement. This document describes the various ways in which you can use the Digital Content that you purchase and/or download from The Mountain Walker. The document also specifies the restrictions on Use of our Digital Content.

## PARTIES

1. Mountain Walker Private Limited, a company registered under the laws of India, having registered office at C-603, Rhythm Society, S. No. 210, Aundh Chest Hospital Road, Kalewadi Phata, Wakad, Pune – 411057, Maharashtra, India (herein after referred to as "The Mountain Walker", which expression shall unless it be repugnant to the context mean and include its heirs, executors, administrators, representatives and assigns etc) (the "**Licensor**"); and
2. You, the Customer, who downloads the Digital Content as defined in this License, as an individual ("you") (the "**Licensee**").

## LICENCE

### 1. Definitions

- 1.1 Except to the extent expressly provided otherwise, in this Licence:

"**Affiliate**" means an entity that Controls, is Controlled by, or is under common Control with the relevant entity;

"**Business Day**" means any weekday other than a bank or public holiday in India;

"**Business Hours**" means the hours of 09:00 to 17:00 IST on a Business Day;

"**Control**" means the legal power to control (directly or indirectly) the management of an entity (and "**Controlled**" should be construed accordingly);

"**Digital Content**" means media files including but not limited to stock images and footage owned by The Mountain Walker and available on our website that you have selected for purchase and which is identified on the Invoice;

"**Effective Date**" means the date of execution of this Licence, which is the date of our Invoice provided for your purchase of our Digital Content;

"**Intellectual Property Rights**" means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

**"Invoice"** means the computer-generated or pre-printed invoice and/or license document provided by The Mountain Walker that may include, without limitation, details of the Digital Content selected, any limitations on the Licence in addition to those specified herein, and the corresponding price for the Licence. The invoice or license document will specify if any Digital Content bought are Royalty Free if applicable;

**"Licence"** means this licence, and any amendments to this licence from time to time;

**"Licence Fee"** means any sum or sums payable to The Mountain Walker by you in respect of the Licence;

**"Licensed Rights"** has the meaning given to it in Clause 2.1;

**"Term"** means, in respect of this Licence, the period of 12 months beginning on the Effective Date;

**"Release"** means a model or property release or any other release of a third party right or other permission which it is necessary or desirable to obtain in respect of any Content;

**"Reproduction"** includes any form of copying or publication of the whole or part of any Content whether by printing, slide projection or other display (whether or not to an audience), electronic, digital or mechanical means, use as a reference by an artist or in an artist's illustration or by any other means. Reproduction further includes the copying or distortion or manipulation of the whole or part of any Content (for example, by computer, electronically, digitally by an artist or by any other means), even though the resulting Image or clip may not appear to a reasonable person to be derived from the original Content.

**"Use"** means to copy, Reproduce, modify, edit, synchronise, perform, display, broadcast, publish, or otherwise make use of, within defined limits and subject to restrictions of Use. Examples of how you can Use the Licensed Digital Content include: websites; blog posts; social media; advertisements; marketing campaigns; corporate presentations; newspapers; magazines; books; film and television productions.

## **2. Licence**

2.1 Subject to Restrictions of Use and other terms of this Agreement, the License grants you the following Rights of Use:

- (a) to copy, reproduce, modify, edit, incorporate, synchronise the Digital Content for personal, educational, and training purposes; and
- (b) perform, display, broadcast, publish, or otherwise make use of the Digital Content, within defined limits and subject to restrictions of Use.

Examples of how you can Use the Licensed Digital Content include: websites; blog posts; social media; advertisements; marketing campaigns; corporate presentations; newspapers; magazines; books; film and television productions.

2.2 Subject to Restrictions of Use and other terms of this Agreement, the nature of the License is defined as follows:

- (a) As per "Term", meaning the use is governed by expiration or end date, which is 12 months beginning on the Effective Date;
- (b) Single Seat, meaning only one natural person is permitted to license, download and use the Digital Content;
- (c) Non-exclusive, meaning that you do not have exclusive rights to use the content. The Mountain Walker is free to license the same Digital Content to other customers;
- (d) Non-transferable and Non-sublicensable, meaning that you cannot transfer or sublicense the Digital Content to anyone else;
- (e) Unlimited, meaning you can use the Digital Content in an unlimited number of projects;
- (f) Worldwide, meaning Digital Content can be used in any geographic territory.

### **3. Restrictions of Use**

#### **3.1 Following are the Restrictions of Use of our Digital Content:**

- (a) You may not use the caption information, keywords, accompanying text, or other metadata associated with Digital Content separate and apart from the Digital Content, or allow any third parties to access or use any such information associated with Digital Content;
- (b) You may not use Digital Content marked "editorial use only" for any commercial, promotional, advertorial, endorsement, advertising or merchandising purpose. This type of Digital Content is not Model or Property Released and is intended to be used only in connection with events that are newsworthy or of general interest (for example, in a blog, textbook, newspaper or magazine article);
- (c) You may not use the Digital Content in any way that allows others to download, extract or redistribute the Digital Content as a standalone file (meaning just the Digital Content file itself, separate from the project or end use);
- (d) You may not use the Digital Content (in whole or in part) as the distinctive or distinguishing feature of a trademark, design mark, trade name, business name, service mark or logo;
- (e) The Digital Content must not be used as references for creating drawings or other visual works;
- (f) You may not falsely represent that you are the original creator of a work that is made up largely of the Digital Content. For instance, you cannot create artwork based solely on the Digital Content and claim that you are the author;
- (g) You may not use the Digital Content in a manner that infringes upon any third party's Trademark or other Intellectual Property, or would give rise to a claim of deceptive advertising or unfair competition;
- (h) You may not use the Digital Content in electronic or digital templates intended for resale or other distribution (for example, website templates,

business card templates, electronic greeting card templates, and brochure design templates);

- (i) You may not use the Digital Content in connection with "on demand" products (e.g., products in which a Licensed Digital Content is selected by a third party for customisation of such product on a made-to-order basis), including, without limitation, postcards, mugs, t-shirts, calendars, posters, screensavers or wallpapers on mobile telephones, or similar items (this includes the sale of products through custom designed websites);
- (j) You may not use the Digital Content in a pornographic, defamatory or other unlawful manner, or in violation of any applicable regulations (including for sports content, any restrictions or credentials issued by a sports league or governing body) or industry codes.

#### **4. Release Information**

- 4.1 The Mountain Walker gives no representations or warranties whatsoever as to the existence of any Releases associated with the Digital Content.
- 4.2 You must satisfy yourself that all Releases as may be required for Reproduction of the Digital Content have been secured and are appropriate for your intended Use. You are solely responsible for obtaining all such Releases and the Licence is conditional in each case on your obtaining them. If you are unsure as to whether any Releases are needed for your Digital Content usage, then it is your responsibility to consult with relevant parties. You shall not rely upon any representation or warranty given by The Mountain Walker employees or representatives save as set out in this Agreement.
- 4.3 Failure or refusal by you to secure the relevant Releases for Reproduction of the Digital Content is considered a breach of this Agreement and a breach of Intellectual Property Rights, for which you shall be solely liable and for which you shall indemnify and hold harmless The Mountain Walker, the Artist/Photographer/ Author and their respective parents, subsidiaries, successors, assigns, and all employees and agents. This indemnification is in addition to, not in lieu of, the indemnification set forth in Section 8 herein and shall survive the expiration or earlier termination of this Agreement.

#### **5. Intellectual Property Rights and Moral Rights**

- 5.1 All of the Licensed Digital Content is owned by either The Mountain Walker or Artist/Photographer/Author who supply the Digital Content. All rights not expressly granted in this agreement are reserved by The Mountain Walker and the Artist/ Photographer/Author.
- 5.2 Licensee acknowledges that The Mountain Walker and/or the Artist/Photographer/ Author as identified in a particular Digital Content is the first and sole owner of the specific Digital Content, and own the copyright of the specific Digital Content, and shall remain the first and sole owner of all Digital Content available for purchase and/or download from The Mountain Walker.
- 5.3 This License does not transfer or assign any Intellectual Property Rights or Copyright to the Licensee whatsoever. For the sake of clarity, it is stated that this Agreement is only a Licence to Use.

- 5.4 It is not required to give credit if the Digital Content is being used as part of a digital presentation or similar aggregation. If the use is in a manner or situation where credit would reasonably be expected, including for editorial purposes such as part of a blog, the following credit should be provided: "The Mountain Walker/ Artist/Photographer/Author."
- 5.5 The Licensor reserves all Rights, including but not limited to Intellectual Property Rights and Copyright, on the Digital Content, not expressly granted by the Licensor in this Licence.

## **6. Consideration**

- 6.1 The Licensor has entered into this Licence, and agrees to the provisions of this Licence, in consideration for the payment by the Licensee to the Licensor of the sum as specified in the description of the Digital Content and our Invoice, receipt of which the Licensor now acknowledges.

## **7. Warranties**

- 7.1 The Licensor warrants to the Licensee that it has the legal right and authority to enter into this Licence and to perform its obligations under this Licence.
- 7.2 The Licensor warrants to the Licensee that:
- (a) the Use of the Digital Content by the Licensee in accordance with this Licence will not breach any law or regulation, infringe any person's Intellectual Property Rights or other legal rights, or give rise to any cause of action against the Licensee or any other person in each case under any applicable law and in any jurisdiction;
  - (b) the Digital Content is not and has never been the subject of any threatened or actual legal proceedings or formal complaint, save as disclosed by the Licensor to the Licensee before the Effective Date;
  - (c) "Editorial Use Only" Warranty Disclaimer: For Digital Content identified as "editorial use only", The Mountain Walker warrants that the Digital Content will not infringe on any Copyright or moral right of the Artist/Photographer/ Author, but it does not grant any Right or make any Warranty with regard to the use of names, people, trademarks, trade dress, logos, registered, unregistered or copyrighted designs, works of art or architecture depicted or contained in the Digital Content. In such cases, you are solely responsible for determining whether Release(s) is/are required in connection with your proposed use of the Digital Content identified as "editorial use only" and you are solely responsible for obtaining such Release(s). You acknowledge that no Releases are generally obtained for Digital Content identified as "editorial use only" and that some jurisdictions provide legal protection against a person's image, likeness or property being used for commercial purposes when they have not provided a Release;
  - (d) Caption and File Information Warranty Disclaimer: The Mountain Walker does not exclusively warrant the accuracy of the captioning, key-wording or any other information associated with the Digital Content;
  - (e) General Warranty Disclaimer: The Mountain Walker gives no representations or warranties whatsoever with respect to the use of names, trademarks,

logos, uniforms, registered or copyrighted designs or artistic works depicted in any Digital Content.

- 7.3 The Licensee warrants to the Licensor that it has the legal right and authority to enter into this Licence and to perform its obligations under this Licence.
- 7.4 All of the Parties' warranties and representations in respect of the subject matter of this Licence are expressly set out in this Licence. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Licence will be implied into this Licence or any related contract.

## **8. Indemnities**

- 8.1 You agree to defend, indemnify and hold harmless The Mountain Walker and/or the Artist/Photographer/Author, and each of their respective officers, directors and employees from all damages, liabilities and expenses (including reasonable outside legal fees) arising out of or in connection with any breach or alleged breach by you (or anyone acting on your behalf) of any of the terms of this Licence Agreement.

## **9. Limitations and Exclusions of Liability**

- 9.1 The Mountain Walker will not be liable to You or any other person or entity for any punitive, special, indirect, consequential, incidental or other similar damages, costs or losses arising out of this Agreement.

## **10. Assignment**

- 10.1 The Licensee hereby agrees that the Licensor may assign, transfer or otherwise deal with the Licensor's contractual rights and obligations under this Licence.
- 10.2 The Licensee must not assign, transfer or otherwise deal with the Licensee's contractual rights and/or obligations under this Licence without the prior written consent of the Licensor.

## **11. No Waivers**

- 11.1 No breach of any provision of this Licence will be waived except with the express written consent of the party not in breach.
- 11.2 No waiver of any breach of any provision of this Licence shall be construed as a further or continuing waiver of any other breach of that provision or any breach of any other provision of this Licence.

## **12. Severability**

- 12.1 If a provision of this Licence is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions will continue in effect.
- 12.2 If any unlawful and/or unenforceable provision of this Licence would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect.

## **13. Third Party Rights**

- 13.1 This Licence is for the benefit of the parties, and is not intended to benefit or be enforceable by any third party.

13.2 The exercise of the parties' rights under this Licence is not subject to the consent of any third party.

#### **14. Variation**

14.1 This Licence may not be varied except by means of a written document signed by or on behalf of each party.

#### **15. Entire Agreement**

15.1 The main body of this Licence shall constitute the entire agreement between the parties in relation to the subject matter of this Licence, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.

15.2 Neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into this Licence.

15.3 The provisions of this Clause 15 are subject to Clause 9.

#### **16. Law and Jurisdiction**

16.1 This Licence shall be governed by and construed in accordance with the laws of the state of Maharashtra in India.

16.2 Any disputes relating to the terms and conditions of this Licence Agreement shall be subject to the exclusive jurisdiction of the courts of Maharashtra, India.

#### **17. Interpretation**

17.1 In this Licence, a reference to a statute or statutory provision includes a reference to:

- (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
- (b) any subordinate legislation made under that statute or statutory provision.

17.2 The Clause headings do not affect the interpretation of this Licence.

17.3 References in this Licence to "calendar months" are to the 12 named periods (January, February and so on) into which a year is divided.

17.4 In this Licence, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.

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