

## Photogenica License Agreement

This License Agreement (“Agreement”) governs the terms by which registered users (herein after referred to as “Users” or “Licensees”) download and sublicense photographic, video and other media content (“Content”) from Photogenica Sp. z o.o. located at 16 Zbocze St., 02-493 Warsaw (“Photogenica”), via the website located at [www.photogenica.pl](http://www.photogenica.pl) (the “Site”). By obtaining, using or paying for any Content from Photogenica, the User / the Licensee agrees to be bound by and comply with all of the terms of this Agreement. If the User / the Licensee does not agree with any of the applicable terms, should not obtain or use any Content from Photogenica.

This Agreement also incorporates by reference the “Website Usage Agreement” located at [www.photogenica.pl](http://www.photogenica.pl) (My account - Website Usage Agreement) and the information provided by the User on the website registration form. The User acknowledges that he/she has read, understands and accepts the Website Usage Agreement. In the event of a conflict between this Agreement and the Website Usage Agreement, the order of preference will be (a) this Agreement and then (b) the Website Usage Agreement.

This Agreement is a lengthy document – please read it carefully and be sure you understand it fully. By checking the box “I Accept the Website Usage Agreement and the Photogenica License Agreement” on the registration page, the User represents and warrants that he/she is 18 years of age or older, is lawfully able to enter into and perform a legally binding contract, and agrees to be bound by the terms and conditions in this Agreement, in case of downloading Content displayed on the Site. It is highly recommended that the User prints a copy of this Agreement and retains it for his/her records.

### 1. Parties.

This Agreement is a binding legal agreement between Photogenica and any User of the Site or any Licensee who desires to download and use Content.

- a. Photogenica sublicenses Content owned by third parties (“Contributors”) via the Site. In uploading or otherwise delivering the Content (as defined below), Contributors authorize Photogenica to grant licenses to use their Content to Users and Licensees, in accordance with the terms and conditions of this Agreement. Photogenica does not act as agent for Contributors who license Content or Users who use the Content, and does not guarantee the quality, title, or legality of the Content, or the truth or accuracy of listings associated with the Content. Accordingly, the Licensee hereby irrevocably and unconditionally releases and waives any and all claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, that the Licensee may have or assert against Photogenica relating to or arising out of the purchase of a license to or the use of the Content.
- b. For purposes of this Agreement, the “User” means either: (a) the individual listed as the registrant of the Photogenica User Account through which the Agreement and the license(s) granted hereunder are entered (“Registrant”), or (b) if Registrant is entering into this Agreement and the license(s) granted hereunder are on behalf of Registrant’s employer (“Employer”) then such Employer. If Registrant is entering into this Agreement and the licenses hereunder on behalf of Employer, then Registrant: (a) represents and warrants that such Employer has authorized Registrant to enter into this Agreement, that the licenses granted hereunder are on that Employer’s behalf, that such Employer has agreed to be bound hereby and that Registrant has actual and express authority to act on behalf of and bind such Employer to the terms of this Agreement; (b) the Content (and any use thereof) is solely for the benefit of the Employer and that Registrant will not use the Content or (any use thereof) for the benefit of any other person or entity without entering into a separate license with Photogenica, and (c) Registrant will comply with the terms of this Agreement and will be jointly and severally liable for any breach of the terms of this Agreement by Employer.

### 2. License Grant.

Subject to the terms of this Agreement, Photogenica grants the Licensee a non-exclusive, worldwide, non-transferable license (with no rights to grant further sub-licenses) with respect to the Content to use, reproduce by any technique, distribute, publish, place in, make available and transmit through computer and telecommunication networks including the Internet, publicly exhibit, publicly perform, publicly display, publicly playback, broadcast, transmit, incorporate into other content or collective work, use and disseminate derivative works of, and also sale, lease and otherwise - paid or free of charge - make available materials including the Content, in accordance with the selected license option of “Standard License” or “Extended License” as each option is described below (and as identified in the particular web page

associated with the Content and license option the Licensee selects). There may be limited licensing options applicable to particular items of Content, so not all licensing options listed here may be available to all Content and all Users. This license is conditioned upon (a) the Licensee's compliance with all provisions of this Agreement, and (b) receipt of the Licensee's payment in full of the license fee and any other charges associated with the particular Content and license option selected by the Licensee, which fees and charges will be displayed on the website prior to payment (and in the invoice). The Licensee will be asked to confirm these terms prior to concluding the transaction. The license and the Licensee's right to use the Content will immediately terminate upon the Licensee's failure to comply with any provision of this Agreement, the Website Usage Agreement or failure to make full payment when due, in which case Photogenica will be entitled to pursue all other remedies by law, including in the event of an infringement of copyrights, the remedies available under copyright and other laws. All charges for use of Content, including license fees, will be billed automatically without prior notification in accordance with the payment method defined by the Licensee on the Site.

## **2.1. Option 1: Standard License**

Under the Standard License, the Licensee is granted the following rights:

- a. Permitted Uses. Subject to the restrictions described under Prohibited Uses below, the following are "Permitted Uses" of Content:
  - (i) advertising and promotional projects, including hard copy printed materials, product packaging, presentations, film and video presentations, commercials, catalogues, brochures, promotional greeting cards and promotional postcards (i.e. not for resale or license) up to 500,000 copies
  - (ii) entertainment applications, such as books and book covers, magazines, newspapers, editorials, newsletters, and video, broadcast and theatrical presentations up to 500,000 copies
  - (iii) on-line or electronic publications, excluding electronic product for resale (2.2.c), including web pages to a maximum of 800 x 600 pixels as well as advertising and promotional campaigns targeting mobile devices including but not limited to mobile telephones and personal digital assistants
  - (iv) hard copy prints, posters and other reproductions for personal use or promotional purposes specified above (in 2.1a.(i)) up to 500,000 copies, but not for resale, license or other distribution
- b. Prohibited Uses. The Licensee may not do anything with the Content that is not expressly permitted in the preceding section (2.1.a) or permitted by an Extended License. For greater certainty, the following are "Prohibited Uses" and the Licensee may not:
  - (I) use the Content in design template applications intended for resale, whether on-line or not, including, without limitation, website templates, Flash templates, business card templates, electronic greeting card templates, and brochure design templates
  - (ii) use or display the Content on websites or other venues designed to induce or involving the sale, license or other distribution of "on demand" products, including postcards, mugs, t-shirts, posters and other items
  - (iii) use the Content in any posters (printed on paper, canvas or any other media) or other items for resale, license or other distribution for profit
  - (iv) use any of the Content as part of a trade-mark, design-mark, trade-name, business name, service mark, or logo
  - (v) incorporate the Content in any product that results in a re-distribution or re-use of the Content (such as electronic greeting card web sites, web templates and the like) or is otherwise made available in a manner such that a person can extract or access or reproduce the Content as an electronic file
  - (vi) use the Content in a fashion that may be considered by Photogenica in its sole but reasonable discretion, or under applicable law, pornographic, obscene, immoral, infringing, defamatory or libelous in nature, or that would be reasonably likely to bring any person or property reflected in the Content into disrepute
  - (vii) use or display any Content that features a model or person in a manner that (a) would lead a reasonable person to think that such person uses or personally endorses any business,

product, service, cause, association or other endeavour; or (b) that depicts such person in a potentially sensitive subject matter, including, but not limited to mental and physical health issues, social issues, sexual or implied sexual activity or preferences, substance abuse, crime, physical or mental abuse or ailments, or any other subject matter that would be reasonably likely to be offensive or unflattering to any person reflected in the Content

- (viii) to the extent that source code is contained within the Content, reverse engineer, decompile, or disassemble any part of such source code
- (ix) remove any notice of copyright, trade-mark or other proprietary right from any place where it is on or embedded in the Content
- (x) sub-license, re-sell, rent, lend, assign, gift or otherwise transfer or distribute the Content or the rights granted under this Agreement
- (xi) install and use the Content in more than one location at a time or post a copy of the Content on a network server or web server for use by other users
- (xii) use or display the Content in an electronic format that enables it to be downloaded or distributed via mobile devices or shared in any peer-to-peer or similar file sharing arrangement
- (xiii) either individually or in combination with others, reproduce the Content, or an element of the Content, in excess of 500,000 copies without obtaining an Extended License, in which event the Licensee shall be required to pay an additional royalty fee.

## **2.2. Option 2: Extended License.**

Under the Extended License, the Licensee is granted the rights available under the Standard License (2.1), in addition to and as amended by the following rights and uses:

- a. Unlimited reproduction / print runs - unlimited copies of "hard copy" prints: advertising and promotional projects, product packaging, presentations, film and video presentations, commercials, catalogues, brochures, promotional greeting cards and promotional postcards (i.e. not for resale or license) and website placement of images larger than 800 x 600 pixels
- b. Product for resale - the following products/merchandise bearing or incorporating licensed Content or works derived from licensed Content: posters, calendars, cards, stationery items, stickers, mugs, Tshirts and other apparel items, mouse pads, games (electronic, computer and all other media) toys, entertainment goods, framed artwork, or packing for the same
- c. Electronic product for resale - unlimited copies of electronic/digital items in downloadable, electronic or digital format intended for multiple distribution, including: screensavers, web site templates, presentation templates, application or other software products and templates, e-greetings, applications (other than games) and images used on or in connection with mobile devices, including but not limited to mobile telephones and personal digital assistants.

## **3. Prohibited Uses.**

The Licensee may not sublicense, re-sell, transfer or assign to any third party the Content or any rights thereto, or the rights granted to the Licensee under this license. The Licensee may not exploit the Content individually apart from the product, merchandise or service or separately from advertising, promotion and other forms of marketing or supporting specific ideas. The Licensee may not use Content in any product, merchandise or service where the Content may be accessed or used apart from the product, merchandise or service.

## **4. Additional Software Required.**

Content may be downloaded in alternate formats. The User may select the format from those available when the User selects the Content. However, viewing and using Content in certain formats may require additional software, which the User must obtain from the manufacturer of the software, subject to additional terms and payment as required by the manufacturer. This software is not included in the price for the Content.

## **5. Payment and billing.**

- a. Payment. Each time the Content is licensed the Licensee agrees (a) to pay all fees and charges

associated with an order, and that (b) all such fees and charges and additional amounts (including taxes, as applicable) will be charged to such payment method as the User has selected for specific order. Without limitation, the Licensee is responsible for reporting and payment of any taxes applicable to the Licensee's license and use of Content. All placed orders are final and are not subject to payment refunds or credits.

- b. Prepayment. The User may prepay any amount within the range between PLN 20 (say: twenty zloty) and PLN 20 000 (say: twenty thousand zloty), or its equivalent in other currencies operated by Photogenica. Every prepayment increases the balance of the Photogenica User Account. Prepaid funds may be utilized for clearing current orders, fees and charges. Prepayments are not subject to refunds or credits and should be utilized within one year from the date a prepayment has been made ("Prepayment Validity"). Prepaid amounts, not utilized within the Prepayment Validity, expire, unless the User extends the Prepayment Validity by making another prepayment of the minimum (PLN 20) or higher amount, before the Prepayment Validity expires. Every single prepayment extends the Prepayment Validity of the entire Photogenica User Account balance, by one additional year.
- c. Billing. Every payment and prepayment made on-line on the Site automatically generates an invoice, subject to the User's information filled in the registration form. The User acknowledges that the taxation of transactions may depend on the details specified by the User in the registration form, especially with respect to the User's country of residence. In case of selecting the payment option: traditional bank money transfer (based on Pro Forma), an invoice will be generated and made available on the Photogenica User Account upon crediting the Photogenica bank account.

## **6. Ownership and Intellectual Property.**

Each Contributor retains all right, title, and interest in and to Content provided by such Contributor, including all copyrights, patent rights, trademarks, trade secrets, and all other proprietary rights. No rights in any Content are granted except the licenses specified in this Agreement. Any right, title or interest arising in any compilation or derivative work created using the Content will not entitle the Licensee to use any Content except as permitted hereunder. The Licensee does not acquire any copyright ownership or equivalent rights in or to any Content as a result of any license under this Agreement.

## **7. Disclaimer of Warranty.**

Content is made available "as is" and without warranty of any kind. The Licensee assumes the entire risk as to use of the Content. To the greatest extent permitted by applicable law, Photogenica and its Contributors hereby disclaim all warranties, express, implied, or statutory, including the implied warranties of merchantability, fitness for a particular purpose, title and non-infringement, with respect to the Content. Photogenica does not represent or warrant that the Content will meet Licensee's requirements or that its use will be uninterrupted or error free. The entire risk as to the quality and the performance of the Content is with the Licensee. Should the quality of such Content be defective, the Licensee (and not Photogenica nor its affiliates, employees, subsidiaries or agents nor the contributors (hereinafter referred to as "Photogenica Parties")) assumes the entire risk and cost of all corrections.

## **8. Limitation of Liability.**

Except for any liability which cannot by law be excluded or limited, the Photogenica Parties will not be liable to the Licensee or any other third party claiming through the Licensee for indirect, incidental, special, punitive, statutory or consequential damages arising out of, or relating to this agreement and/or use or inability to use the Content, whether framed as a breach of warranty of merchantability, title, non-infringement, or fitness for a particular purpose, in tort, contract, or otherwise. In no event will Photogenica Parties' total maximum aggregate liability to the Licensee or any third party claiming through the Licensee arising from this Agreement or the use of any Content licensed hereunder, exceed the amount actually paid by the Licensee for the Content, regardless of the number or type of claims. The foregoing exclusions and limitations are applicable notwithstanding any failure of essential purpose. Certain jurisdictions do not allow the exclusion of implied warranties, or the limitation or exclusion of liability for incidental or consequential damages, so the above exclusion may not apply to the Licensee. In such jurisdictions, the liability of the Photogenica Parties will be limited to the greatest extent permitted by applicable law.

## **9. Alteration.**

Special ethical and legal considerations apply to use of Content that depicts subjects of editorial, news, people, and fine art nature. When using such Content, the Licensee is solely responsible for, and will indemnify Photogenica Parties for any claims related to or arising from any modifications to or alterations of the Content or to the caption information.

## **10. Releases and Clearances.**

The rights granted the Licensee under this license do not include a license to, and Photogenica Parties make no representations or warranties that it owns or licenses any rights related to or in any persons, places, property (real, personal or of any other kind) or subject matter (including underlying works protected by copyright or viewable trademarks) depicted in any Content. All Content may be subject to copyrights, trademarks, rights of publicity, moral rights, property rights or other rights belonging to another party. Content designated as “model released” or “property released” will not be deemed to be a warranty or representation regarding the legal right to use such depicted person(s) or property, it means only that the Contributor has provided a general release purportedly signed by the model or property owner depicted within Content. Notwithstanding any release purported to exist with respect to such Content, the Licensee is solely responsible for determining whether the use of any Content requires the consent of any other party or the license of any additional rights, and the Licensee may not rely on the information provided on the Site. The Licensee is solely responsible for obtaining any and all releases and clearances as may be required, including without limitation (a) rights from any representative guild, union, professional organization, or other authorized representative; and (b) if any music is included in the Content, master use, synchronization and performance licenses from the copyright proprietors of the applicable master recording(s) and composition(s) and such other persons, firms or associations, societies or corporations as may own or control the performing rights thereto. In case of doubts as to whether additional rights are needed for a specific use, the Licensee is responsible for consulting with competent legal counsel.

## **11. Unauthorized Uses.**

Without limitation, Content may not be used as or as part of a trademark or service mark, or for any pornographic use, unlawful purpose or use, or to defame any person, or to violate any person’s right of privacy, publicity or moral rights, or to infringe upon any copyright, trade name or trademark of any person or entity. The Licensee does not acquire, and will not claim, any rights (trademark, copyright or otherwise) in the Content itself apart from the limited license granted. Even under Option 2, the User may not use Content in any product, merchandise or service where the Content may be accessed or used apart from the product, merchandise or service. Unauthorized use of Content constitutes infringement of copyright and other applicable rights and will entitle Contributor to exercise all rights and remedies under applicable copyright and other laws, including monetary damages against all users and beneficiaries of the use of such Content.

## **12. Indemnification.**

The Licensee agrees to indemnify, defend and hold the Photogenica Parties harmless against all claims (including, without limitation, claims by third parties), liability, damages (including punitive damages), judgments, settlements, costs and expenses, including reasonable legal fees and expenses, arising out of or related to (a) the Licensee’s breach of any terms, conditions or restrictions of this Agreement, (b) the Licensee’s use of or modification to any Content, or combination of any Content with any text or other content, (c) the Licensee’s failure to obtain from third parties all permissions necessary to use the Content regardless of whether Content is designated as “model released” or “property released”, (d) any act or failure to act by the Licensee or anyone acting at the Licensee’s direction or under the Licensee’s control or supervision.

## **13. Credit Line and Copyright Notice.**

If the Content licensed is used for editorial purposes the Licensee agrees to include a copyright notice and credit adjacent to each Content (in the format: “© Contributor’s name / Photogenica” or as specified on the Site) with each publicly distributed Content. The Licensee will not remove or alter any copyright notice, watermark, or other copyright management information from any Content without consent.

## **14. Termination.**

Photogenica may terminate the license to use the Content under this Agreement if the Licensee violates any of the terms of this Agreement or if the Licensee’s right to access the Site is terminated as provided in the Website Usage Agreement. Termination will be effective immediately upon written notice to the Licensee or as otherwise provided herein. Upon termination the Licensee will immediately discontinue all use of the Content. Photogenica also reserves the right to amend the license granted by this Agreement and replace the Content licensed for any reason. Upon receiving such notice from Photogenica, the Licensee agrees to not use the replaced Content for any future works or future products and take all reasonable steps to discontinue use of the replaced Content in any products that already exist.

#### **15. Electronic Signature.**

The Licensee acknowledges and agrees that each time the Licensee orders any Content, submits account information or conducts any other transaction in connection with the Site or Content, each such transaction constitutes the Licensee's Agreement and intent to be bound by the terms of this Agreement and the Website Usage Agreement.

#### **16. Security.**

The Content may be protected from unauthorized access and use by digital rights management technology. The User agrees not to circumvent or attempt to circumvent any such technologies. The Site used to access and license the Content uses a security technology to protect the User's information and the use of the Site is subject to the Website Usage Agreement, which is subject to change from time to time, as provided in the Website Usage Agreement. Any violation or attempt to violate any security components of the Site may result in civil or criminal liability.

#### **17. Choice of Law / Jurisdiction/Attorneys' Fees.**

Any dispute regarding this Agreement shall be governed by the laws of Poland before a court having jurisdiction over Photogenica's seat. This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly disclaimed. The parties hereto confirm that it is their wish that this Agreement as well as any other documents relating hereto, including notices, has been and will be written in the English language and in the event of any conflict between the English language version of this Agreement and a version in any other language, the English language version shall prevail. In any dispute between any of the Photogenica Parties and the Licensee regarding this Agreement where any of the Photogenica Parties prevails, the applicable Photogenica Party will be entitled to recover its reasonable attorneys' fees, legal expert fees, court costs, and other legal expenses.

#### **18. Survival.**

The terms of this Agreement will survive termination of the license granted hereunder.