

# Vizi License Agreement

Updated January 13, 2022

**Note: This is a legal agreement between you, (“the Customer”), and Vizi365. Clicking “agree” shows your acceptance and agreement to adhere to the terms and conditions below.**

As consideration for the license of each Image to the Customer (whether purchased individually, in a package or as a subscription or as part of a ViziMagazine), the Customer and Vizi365 understand and agree to the following:

## **Ownership And Copyright Of Image**

- 1) Ownership In Image.** The Vizi Affiliate who originally submitted the Image to Vizi365 retains the ownership and copyright of the Image.
- 2) Vizi365’s Right to Sublicense Image.** The Affiliate who owns the Image granted Vizi365 a perpetual, non-exclusive, assignable, fully-paid, royalty-free, worldwide license to the Image, including the right to sublicense Vizi365’s rights to Customer.

## **Vizi365’s License To Customer**

- 3) Vizi365’s License to Customer.** In consideration for Customer’s payment to Vizi365, Vizi365 hereby grants the Customer a perpetual, non-exclusive, assignable, fully-paid, royalty-free, worldwide license to commercially exploit the Image in any format or medium without limitation; to use, reproduce, publicly display, distribute, modify, public perform, and translate or transform the Image; to present, distribute, market, or promote the Image; to modify and create derivative works based on the Image; and to sell or commercial exploit the Image while the Image is incorporated with or onto any item of merchandise or other creative work.
- 4) Restrictions on License.** This License is subject to the following restrictions:
  - a)** Customer has the right but not the obligation to credit the Vizi Affiliate who created the image.
  - b)** Customer shall not manipulate the Image so that it no longer resembles the original.
  - c)** Customer shall not use the Image in any way that implies that any people or animals in the Image endorse any product, service, or idea.

- d) Customer shall not use the image in a way that is illegal, tortious, obscene, pornographic, defamatory, or invasive of the privacy of anyone depicted in the Image.
  - e) Customer shall not use the Image for merchandise in which the primary subject of the merchandise is the Image itself - for example: posters, canvases or wall art. But this limitation on this License does not apply if the Customer uses Image as the primary subject of a free promotional give-away
  - f) Customer shall not resell or sub-license this Image.
- 5) **Anti-Assignment.** Customer shall not assign or sublicense this License to someone else without Vizi365's consent. Any such assignment or sublicense shall be void. Vizi365 will consent to Customer's assignment to any ultimate clients or consumers whom Customer represents.

#### **Vizi's Deliverable and Refund / Exchange Policy**

- 6) **Vizi's Deliverable.** Vizi365 will deliver the Image that Customer purchased in the following digital formats: .jpeg, .jpg and .png.
- 7) **No Refunds.** All sales are final. Vizi365 will not provide any refunds or exchanges.
- 8) **No Warranty.** Customer is solely responsible for ensuring that the image is what Customer wants/needs. Vizi365 makes no warranty that the image will be suitable for Customer's purposes.
- 9) **Customer's Responsibility To Check For Viruses.** Vizi365 makes reasonable attempts to ensure that Image downloads are virus free, but Customer is responsible for blocking any viruses. Customer releases Vizi365 to the extent permissible by law from any claims of negligence (but not gross negligence) related to viruses.

#### **Vizi's Rights In Event Of Customer's Violation of This Agreement**

- 10) **Vizi365's Right To Terminate.** Vizi365 can terminate this License if Customer breaches the terms of this agreement and does not cure that breach within 30 days. To terminate the License, Vizi365 shall send Customer a written notice of termination to Customer's last known email address.
- 11) **Effect of Termination.** If Vizi365 terminates this License, all Customer's rights under this License Agreement shall cease. Customer understands that Vizi365 and its Affiliates may pursue all legal remedies for unlicensed use of Images, including copyright infringement lawsuits, DMCA take-downs, etc. Customer

obligations, including the Arbitration Clause and Indemnification clause in this Agreement, shall survive termination.

- 12) Effect On Vizi365 Affiliate Relationship.** If the Customer is a Vizi365 Affiliate and breaches this License Agreement, then Vizi365 may impose disciplinary sanctions under Section 9 of the Vizi365 Policies and Procedures.

### **Indemnification**

- 13) Indemnification.** Customer agrees to defend and indemnify Vizi365 (and its owners, officers, directors, employees, agents, corporate parents and subsidiaries, Affiliates, and business associates) against any harm, liability, claim, damage, demand, lawsuit, fine, loss, arbitration, or lawsuit (including any legal fees and litigation costs) (including, but not limited to, all claims for copyright infringement, invasion of privacy, false light, infliction of emotion distress) arising from Customer's use of the Image or violation of this Licensing Agreement.

### **Arbitration**

**14) Arbitration.**

**Customer and Vizi365 shall resolve any controversy or claim arising out of or relating to the Licensing Agreement, or the breach of the Licensing Agreement, exclusively by arbitration. The Parties waive all rights to trial by jury or to any court.** The arbitration shall be filed with, and administered by, the American Arbitration Association ("AAA") or JAMS Endispute ("JAMS") under their respective rules and procedures. The *Commercial Arbitration Rules and Mediation Procedures* of the AAA are available on the AAA's website at [www.adr.org](http://www.adr.org). The *Streamlined Arbitration Rules & Procedures* are available on the JAMS website at [www.jamsadr.com](http://www.jamsadr.com). Copies of AAA's *Commercial Arbitration Rules and Mediation Procedures* or JAM's *Streamlined Arbitration Rules & Procedures* will also be emailed to Customer upon request to Vizi365's Legal Department.

Notwithstanding the rules of the AAA or JAMS, the following shall apply to all Arbitration actions:

- ❖ The Federal Rules of Evidence shall apply in all cases;
- ❖ The Parties shall be entitled to all discovery rights permitted by the Federal Rules of Civil Procedure;
- ❖ The Parties shall be entitled to bring motions under Rules 12 and/or 56 of the Federal Rules of Civil Procedure;
- ❖ The arbitration shall occur within 180 days from the date on which the arbitrator is appointed, and shall last no more than five business days;

- ❖ The Parties shall be allotted equal time to present their respective cases, including cross-examinations.

All arbitration proceedings shall be held in Salt Lake City, Utah. There shall be one arbitrator selected from the panel that the Alternate Dispute Resolution service provides. Each party to the arbitration shall be responsible for its own costs and expenses of arbitration, including legal and filing fees. The arbitration shall occur within 180 days from the date on which the arbitration is filed, and shall last no more than five business days. The parties shall be allotted equal time to present their respective cases. The decision of the arbitrator shall be final and binding on the parties and may if necessary, be reduced to a judgment in any court of competent jurisdiction. This agreement to arbitrate shall survive the cancellation or termination of the Agreement.

The parties and the arbitrator shall maintain the confidentiality of the entire arbitration process and shall not disclose to any person not directly involved in the arbitration process:

- ❖ The substance of, or basis for, the controversy, dispute, or claim;
- ❖ The content of any testimony or other evidence presented at an arbitration hearing or obtained through discovery in arbitration;
- ❖ The terms or amount of any arbitration award;
- ❖ The rulings of the arbitrator on the procedural and/or substantive issues involved in the case.

Notwithstanding this arbitration provision, residents of the State of Louisiana shall be entitled to bring an action against Vizi365 in their home forum and pursuant to Louisiana law.

### **Miscellaneous**

- 15) Entire Agreement.** This agreement constitutes the entire agreement between the Customer and Vizi365. It supersedes all previous agreements and/or understanding between the two parties, whether written or oral relating to the use of the Images purchased from Vizi366.
- 16) Choice of Law.** Utah law governs this Licensing Agreement, disregarding any choice of law or conflict of law provisions.
- 17) Forum Selection.** All disputes about this Licensing Agreement will be brought in the courts (State or Federal) of Salt Lake City, Utah.
- 18) Consent to Jurisdiction.** Customer and Vizi365 consent to the jurisdiction of the courts (State or Federal) of Salt Lake City, Utah.

**19) Written Changes Only.** The parties may only amend this Contract through a subsequent written contract signed by all parties.

**20) Anti-Waiver.** If Vizi365 does not insist on Customer's performance of a specific obligation at one time, that will not waive Vizi's right to insist on the Author's performance at a later time.

**21) Severability.** If any part of this Licensing Agreement is found unenforceable, that provision shall be modified to reflect the parties' intentions if possible. If that provision cannot be modified to reflect the parties' intentions, the provision shall be stricken and the rest of the Licensing Agreement shall remain in force.

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