

## **VIDEO COPILOT END-USER SOFTWARE & CONTENT LICENSE AGREEMENT**

**Version 4.0 Effective March 5, 2021**

IMPORTANT! The Video Copilot software (“**Software**”) and any Video Copilot Content (as defined in Section 3.B. below) that You (defined below) seek to download from the Video Copilot website located at videocopilot.net (or any successor website) is licensed to You only if You agree to the terms and conditions set forth below (the “**Agreement**”). In this Agreement, “**we,**” “**us**” and “**our**” refers to Video Copilot, the owner and/or licensor of the Software and Content. PLEASE READ THE TERMS OF THIS SOFTWARE & CONTENT LICENSE AGREEMENT CAREFULLY.

BY YOUR USE OF THE SOFTWARE OR ANY CONTENT YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT.

The Software and Content (defined below) that You are about to access was developed by and is owned by Final Image, Inc. dba Video Copilot, a California corporation located at 18277 Pasadena St., Suite 108, Lake Elsinore, CA 92530, USA, or its licensors. This Agreement sets forth the terms under which You, as an individual or entity, may use the Software and any Content that You download or access. “**You**” and “**Your**” refers to You as the user of the Software and/or Content, or someone who enables a single user other than Yourself to use the Software and/or Content on a Named User basis, as explained below. References to the Software in this Agreement include any related help documentation.

Based on the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, You and Video Copilot agree as follows:

**1. NATURE OF AGREEMENT.** This Agreement is an enforceable contract between You and Video Copilot and You will be asked to agree to it. Once you purchase any Product (defined below) through the Video Copilot store, the Product will be added to your Video Copilot account for download. If You wish to access and use the Software and/or Content, You need to comply with this Agreement.

### **2. WHO CAN USE THE LICENSE.**

(A) This license to Software and/or Content is a single user license, to You as an individual, often called a “**Named User**” license. You cannot share this license with anyone else. However, if You are downloading Software and/or Content (collectively, “**Product**”) from Video Copilot as part of Your role at a company or organization (“**Company**”), You have the right to assign each license that You obtain on behalf of Your Company to a Named User within the Company. You should keep track of each Named User within Your Company, and from time to time we may request that you send us a list of Your current Named Users to [license@videocopilot.net](mailto:license@videocopilot.net).

(B) A Named User has the right to install the Product on two (2) devices, such as an office computer and a laptop, for ease of use, provided that the Product is not used on both devices concurrently.

(C) Notwithstanding the foregoing, if Your Company purchases at least ten (10) licenses to the same Video Copilot Product, then the licenses can be used as “**floating licenses**” or “**Concurrent Licenses**,” meaning that the licenses to a specific Product purchased can be used by users other than Named Users within the Company or its Affiliates, provided that no more than the total number of licenses purchased by the Company and its Affiliates can be used concurrently. For example, if the Company has purchased 15 licenses to Element 3D, then up to 15 users at the Company and its Affiliates can use the licenses concurrently. For the purpose of this Section 2, “**Affiliate**” shall mean an entity controlling, controlled by, or under common control with the Company, where “**control**” means ownership of at least 50% of the equity in the controlled entity/Company as the case may be, or in the absence of control by ownership of equity, the clear contractual ability to direct the management of the controlled entity/Company.

(D) If a Named User at the Company has left the Company or will never again be using the Product license purchased by the Company, then You can send us an email notice to [license@videocopilot.net](mailto:license@videocopilot.net) informing us as to which Named User will no longer be using the Product, and providing the name and contact information of the new Named User at the Company to whom You are assigning the license.

(E) In one other context, explained in Section 4(A) below, an “**End User**” license to a Product can be shared temporarily with a third party who does not intend to continue using such Product except to assist the End User with rendering his/her Production (defined below).

### **3. LICENSE TO SOFTWARE AND CONTENT; PRODUCTIONS.**

Video Copilot grants You a perpetual (unless terminated in accordance with Section 8), worldwide, non-exclusive, nontransferable, non-sublicensable, royalty-free right and license to:

(A) Use the specific Software that You have licensed from Video Copilot in object code format for the purposes of Your creating, modifying and rendering images into productions such as videos (collectively, “**Productions**”) for Your own use, and even for sale, subject to the restrictions set forth in this Agreement. You agree not to reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the Software. In the event that You are located in a jurisdiction that permits You to decompile the Software for purposes of interoperability, You agree that first You will request the necessary interoperability information from us in writing, and give us a reasonable time period to respond. We have the right to impose reasonable conditions on Your decompilation, and the right to request a reasonable fee before providing such information.

(B) Use the Content that You purchase from Video Copilot, which may include Software plug-ins and tools, design packs, model packs, and our proprietary music files, to create, render and modify images, audio files and other digital files into Productions. “**Content**” refers to the proprietary objects, images, presets and other digital files owned by Video Copilot and its licensors that are included in certain of our packages and offerings to facilitate Your creation of special effects, and may include various audiovisual content such as videos and clips, photographs, models, drawings, wire files, textures, motion files, sound effects and music.

(C) Your Productions are subject to this Agreement to the extent that they incorporate any Software or Content proprietary to Video Copilot or our licensors. You may not sell, sublicense, rent, loan or lease the Software or Content to any third party. You may make a limited number of copies of any documentation related to the licensed Software and/or Content to be used strictly for Your internal development purposes (except as otherwise set forth in this Agreement), and not for distribution by any means. Any of Your

employees, agents or assigns who use the Software or Content require individual licenses and shall be subject to this Agreement. This is a single user license for You or the person for whom You have purchased it except as otherwise indicated in Section 2. You may install the Software and Content on up to two (2) devices that You use, such as a desktop computer at work and a laptop that You carry and/or use at home, so that You are able to use the Software at Your reasonable convenience. In the event that the Software is defective, or You lose Your access because of a computer crash or for some other reason, You should contact us at support@videocopilot.net, providing complete details, and we will make a reasonable effort to ensure that Your proper and honest use of the Software can continue.

#### 4. ADDITIONAL LICENSE RESTRICTIONS.

(A) *Template/Pre-Render and Stock Media Restrictions.* The Software enables You to render and create Your own Productions. You can create a Production using the Software so long as no Content/media from any source is pre-rendered or flattened, and offer or sell, lease or license those Productions to third parties. But You must be VERY CAREFUL to observe the following restrictions regarding Your Productions:

(1) Social Media: No Template Resellers or Stock Media Templates. You have the right to use and display Your Productions as You wish, such as on social media (e.g., YouTube, Instagram, TikTok, Twitter or Facebook) or offer, transfer, license or sell Your Productions to End Users, but not to resellers of templates or to stock media companies or websites. “**End Users**” are individuals or Companies that purchase Your finished, locked Productions to use or display, or even to incorporate into a finished media product that they offer, but not into a template (e.g., a film studio could incorporate a Production such as a video clip into a film or trailer). End Users cannot be resellers of the standalone Production; they do not purchase Your Production to incorporate into their own template that they might offer to resellers or End Users, or pre-render or flatten (export) Your Production for use as stock footage, stock photography or stock media, as animated background or editable media files, which could then be offered to other resellers or End Users. But if You sell, license or offer Your Productions to template makers who then offer Your pre-rendered Production as part of their template, or to resellers or to stock media companies or websites, whether offered for free or for pay, such templates or stock media offerings might compete with Video Copilot Products, which is not permitted by this license. The permitted exception for transfer or sale of a finished, locked Production to a single End User does not grant You the right to Your own offering of our model packs/Content that could compete with Video Copilot Products, whether or not rendered, which is strictly prohibited. You are also granted the right to transfer a finished, locked Production to a finishing studio for the purpose of broadcast or film-out, provided the studio does not reuse any of Your Production for any other film or production.

(2) No Pre-Rendered or Flattened Content. Your offer or sale of Your Productions to others cannot include any Content that You have pre-rendered or flattened or rendered into such Productions; the End User purchaser or licensee of Your Production must own or acquire a separate license to use/display such Content by purchasing the appropriate Software from Video Copilot. In other words, the raw Content files used to make Your Productions cannot be transferred or distributed by You. Once the End User acquires the necessary Software, that person can outsource to You its license to the Software so that You or a third party can modify Your Production as necessary for such End User’s desired use/display of Your finished, locked Productions.

(3) Video Game Content. Another example of the application of the restrictions set forth above would be if You want to create graphics Content for a video game that is not owned by You with a license from Video Copilot. In this example, the video game publisher would be the licensee of Your Production and must own or acquire a separate license to use/display such Content by purchasing the appropriate Software from Video Copilot. Once the video game publisher acquires the necessary Software, You can use the Software to create a finished, locked Production which the video game

publisher can then distribute as part of its video game Production (e.g., a video game intro, promotional video, or special effects in the video game itself) under the appropriate Video Copilot license. To be clear, any video game publisher, including You as the publisher, are able to license Software from Video Copilot so that You can include Content to facilitate Your creation of great special effects in Your games (Productions); you only need to ensure that Your video game Productions are finished and locked, so that the graphics (Content) cannot be extracted by any user.

(B) *Use of Third Party Brands in Content.* Some of the Content offered by Video Copilot include certain insignia, brands, trademarks and logos that are typically found on such Content or may bear a resemblance to known brands. For example, You may see the insignia, markings and brand of a manufacturer on many objects, such as weapons or aircraft models and equipment. While You have the right to use and sell any generic, unbranded Content provided by Video Copilot, subject to the restrictions set forth in this Agreement, Video Copilot makes no representation or warranty that the owners of specific brands will not object should You attempt to monetize Productions that incorporate such brands or logos, or images bearing a resemblance to known third-party products. In the event that You seek to monetize or sell a Production incorporating a specific brand or logo or likeness, (i) You need to seek the approval of the owner of such brand, or its agent, and they may insist on a direct license with You; and (ii) You agree to indemnify, defend and hold harmless Video Copilot and its licensors against any claim made by any brand owner or third party claiming that Your use of such brand or image in a Production infringes their rights.

(C) *Music Content.* Our Pro Scores or other music/sound Content and Products can only be synchronized with audiovisual productions (for example, used with a video); You cannot use music and sound Content to make and publish an audio file or track.

(D) *Content Extraction.* You may not extract any Content from any Video Copilot Product that cannot be extracted and used as stand-alone Content without the use of reverse engineering tools or techniques.

(E) *Prohibited Uses.* The Content that You adapt and modify for use in Your own Productions shall not be used in a Production that infringes the copyright or other intellectual property right of any third party, that is defamatory, libelous or obscene, or that is in any way unlawful. In addition, You will not attempt to violate any security mechanisms in the Content or Software, or to misrepresent who You are, or to engage in any other unlawful or undesirable conduct. In order to ensure Your compliance, Video Copilot reserves the right to monitor Your use of the Product.

**5. SUPPORT.** Video Copilot is not under any obligation to provide any support under this Agreement, including upgrades or future versions of the Software or related Products. Nonetheless, You should bring any concerns or problems You have to our attention at [support@videocopilot.net](mailto:support@videocopilot.net). We want to make sure our users have a very positive experience with our Software and Content, and we will use commercially reasonable efforts to address concerns that we believe, in our discretion, will improve the user experience.

**6. OWNERSHIP OF SOFTWARE AND CONTENT.** We own and retain all rights to the Software and related documentation that are not specifically granted in this Agreement, including ownership of all copyright and other intellectual property rights therein, and this Agreement does not transfer to You any title to or any proprietary or intellectual property rights in or to the Software, any updates or derivative works thereto, or any copyrights, patent rights, or trademarks embodied or used in connection therewith, except for the rights expressly granted in this Agreement. The Software and related documentation and Content are protected by United States copyright laws and international treaties. You agree that all copies of the Software or any components thereof, or of related documentation or of any Content reproduced for any reason by You will contain the same copyright, trademark, and other proprietary notices as the original Product. You have no copyright or patent rights in the Software or Content unless otherwise set forth herein.

YOU MAY NOT USE, COPY, OR MODIFY THE SOFTWARE, IN WHOLE OR IN PART, EXCEPT AS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT.

**7. YOUR OBLIGATIONS.** You shall be solely responsible for the following: (a) providing all hardware, software, and communications capabilities required for use of the Software, including, without limitation, personal computers with the proper processor speed; RAM; hard drive storage space; video card; internet access and java-enabled browser, as more specifically identified in the particular Software specifications; (b) providing and maintaining, at all times during the term of this Agreement, the Internet access necessary, if any, for Your use of the Software.

**8. TERM AND TERMINATION.** The license granted in this Agreement remains in effect unless terminated by one of the parties hereto in accordance with the term hereof. The term of this Agreement and the license grant herein shall commence on the date You consent to this Agreement and install the Software. You may terminate the license and this Agreement at any time on 30 days' prior written notice to Video Copilot by email, to [license@videocopilot.net](mailto:license@videocopilot.net). However, Your termination of such license and Agreement or Video Copilot's termination of this license and the Agreement for Your breach shall not under any circumstances entitle You to a refund or any other compensation from Video Copilot. Video Copilot may terminate the license and this Agreement at any time that You or Your agent fails to pay any amount due to us under this Agreement on thirty (30) days' prior notice of default, during which time You shall have the opportunity to cure the default if You wish to avoid the Agreement being terminated. This license shall also terminate upon Your failure to comply with any of the terms of this Agreement. On termination of this Agreement, You agree to promptly destroy all printed copies and delete all electronic copies of any documentation that You have downloaded, printed, or created relating to the Software or Content, and to ensure that no copies of any of the Software screens, data, or other Content remain archived or otherwise stored on Your computers. However, unless we terminate this Agreement for Your breach because Your Productions have infringed third party rights or You have not observed the restrictions in this Agreement applicable to Your Productions, You may continue to use and display such Productions, subject to the ongoing application of this Agreement to such Productions. Notwithstanding any termination, the provisions of Sections 4, 6 and 8-19 of this Agreement shall survive and continue to apply.

**9. CONFIDENTIALITY.** You agree that You shall not disclose to any third party the Software or any portion thereof, any technical, product, financial, customer, competitive or business information, or any information that Video Copilot identifies as confidential (collectively, "**Confidential Information**") related to the Software or any Content without the prior written consent of Video Copilot. You shall maintain the confidentiality of all Confidential Information and shall not use it for any purpose other than the performance of this Agreement.

Notwithstanding the foregoing, Confidential Information does not include information that You can demonstrate was: (a) publicly available at the time of disclosure, or later became publicly available through no act or omission by You; (b) in Your possession before disclosure by Video Copilot; or (c) disclosed to You by a third party who did not violate any obligations of confidentiality to Video Copilot or to any third party.

**10. INDEMNIFICATION.**

(A) Indemnification by You. You agree to indemnify, defend (at Video Copilot's request) and hold Video Copilot and its officers, directors, employees and agents ("**Indemnified Parties**") harmless from

and against any and all claims, liability, losses or legal proceedings, including attorneys' fees (collectively, “**Claims**”), that arise or result from Your use or distribution of any Software or Content or Production in violation of this Agreement, or your violation of the intellectual property rights of any third party. In the event that Video Copilot determines in its sole discretion that it is better positioned to defend itself against liability or equitable measures (such as an injunction) than You are, upon notice it will assume the defense directly but You shall be responsible for the cost of such defense including attorney’s fees.

(B) Indemnification by Video Copilot. Video Copilot will indemnify You against any damages finally awarded against You that arise from a third-party Claim against You alleging that the Software or Content (as received from Video Copilot in its unmodified form), and used in accordance with this Agreement and pursuant to any written documentation or instructions provided by Video Copilot, infringes the U.S. intellectual property rights of such third party.

**11. LIMITATION OF LIABILITY.** IN NO EVENT SHALL VIDEO COPILOT OR ITS LICENSORS BE LIABLE TO YOU FOR ANY DAMAGES WHATSOEVER ARISING OUT OF YOUR USE OF, OR INABILITY TO USE, THE SOFTWARE OR ANY OTHER VIDEO COPILOT PRODUCT. IN NO EVENT SHALL VIDEO COPILOT OR ITS LICENSORS BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, OR DAMAGES ARISING FROM LOSS OF DATA, LOST PROFITS, OR LOST BUSINESS OPPORTUNITIES, REGARDLESS OF THE LEGAL THEORY UNDER WHICH SUCH DAMAGES ARE SOUGHT, AND EVEN IF ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES. AS SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. IN THE LATTER EVENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AGGREGATE DAMAGES SHALL NOT EXCEED AMOUNTS PAID BY YOU TO VIDEO COPILOT DURING THE 12-MONTH PERIOD PRECEDING THE CLAIM HAVING ARISEN. IN ADDITION, IN NO EVENT SHALL YOU BE ENTITLED TO OBTAIN ANY INJUNCTIVE RELIEF OR OTHERWISE ENJOIN, RESTRAIN, OR OTHERWISE INTERFERE WITH VIDEO COPILOT OR WITH THE DISTRIBUTION, OPERATION, DEVELOPMENT, OR PERFORMANCE OF ANY PRODUCTS.

**12. WARRANTY AND DISCLAIMER.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, VIDEO COPILOT EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AS WELL AS ANY WARRANTIES ALLEGED TO HAVE ARISEN FROM CUSTOM, USAGE, OR THE COURSE OF DEALING BETWEEN THE PARTIES. VIDEO COPILOT DOES NOT WARRANT THAT THE SOFTWARE OR OTHER PRODUCTS WILL MEET YOUR REQUIREMENTS OR THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE. IN ADDITION, VIDEO COPILOT DOES NOT WARRANT OR GUARANTEE THAT YOU WILL BE ABLE TO ACCESS THE SOFTWARE AT ALL TIMES. Some jurisdictions do not allow the exclusion of implied warranties so the above limitations may not apply to You. You may have rights which vary from jurisdiction to jurisdiction.

**13. GOVERNING LAW; ARBITRATION; NO TRIAL BY JURY.** This Agreement shall in all respects be governed by and be construed in accordance with the laws applicable in the State of California, without regard to its provisions on conflicts or choice of law. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by final and binding arbitration in Riverside, California before one arbitrator(s). The arbitration shall be administered by JAMS pursuant to its Streamlined Arbitration Rules and Procedures, and the arbitrator shall apply the laws applicable in the State of California. Judgment on the arbitral award may be entered in any court having jurisdiction thereof. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. The arbitrator shall, in the arbitral award, allocate all or part of the costs of the arbitration, including the fees of the arbitrator and the reasonable attorneys' fees (and accountant's fees) of the prevailing party, for payment by the non-prevailing party, and shall determine the prevailing party for this purpose. Both parties hereby waive any right to a trial by jury.

**14. MODIFICATION.** Video Copilot reserves the right to modify and update this Agreement upon notice as necessary to reflect changes in the law, changes in our Products and evolving trends and business practices. Such changes will be reflected in the online license agreement that we post on the Video Copilot website, [www.videocopilot.net](http://www.videocopilot.net). You should review the latest license agreement applicable to You from time to time, and each time that You purchase a Product from us. We will post the effective date and version number at the top of each online license, so You will have notice that changes have occurred.

**15. FORCE MAJEURE.** If the performance of VIDEO COPILOT under this Agreement is prevented, hindered, or otherwise made impractical by reason of flood, strike, war, acts of government, or any other casualty or cause beyond the control of Video Copilot, then Video Copilot shall be excused from its performance to the extent and so long as it is prevented, hindered, or delayed by such event(s).

**16. SEVERABILITY.** If any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, then to the maximum extent permitted by law, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement.

**17. NO ASSIGNMENT.** Unless otherwise indicated herein may not assign this Agreement or any of the rights granted by VIDEO COPILOT hereunder, in whole or in part, without the prior written consent of VIDEO COPILOT, and any attempt to do so shall be void. This Agreement is binding on and shall inure to the benefit of the parties and their respective successors and permitted assigns.

**18. EXPORT CONTROL.** You agree that none of the Products may be shipped, transferred, or exported into any country or used in any manner prohibited by the export laws of the United States, including countries subject to US embargo.

**19. ACKNOWLEDGEMENT.** YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS. YOU FURTHER AGREE THAT IT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN YOU AND VIDEO COPILOT, AND THAT IT SUPERSEDES ANY PROPOSAL, PRIOR OR CONTEMPORANEOUS AGREEMENT, OR UNDERSTANDING, ORAL OR WRITTEN, AND ANY OTHER COMMUNICATION BETWEEN YOU AND VIDEO PILOT RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT.