

## Terms of Use

Version 1.0

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**PLEASE READ THIS TERMS OF USE AGREEMENT (THE "AGREEMENT") CAREFULLY. IT CONTAINS VERY IMPORTANT INFORMATION ABOUT YOUR RIGHTS AND OBLIGATIONS, AS WELL AS LIMITATIONS AND EXCLUSIONS THAT MAY APPLY TO YOU. AMONG OTHER PROVISIONS, THIS DOCUMENT CONTAINS A BINDING ARBITRATION AGREEMENT THAT WAIVES YOUR RIGHT TO A JURY TRIAL AND A CLASS ACTION WAIVER.**

BY ACCESSING OR USING FREEENCODING.COM OR ANY OTHER WEBSITES OF FOOTAGE FIRM, ITS AFFILIATES OR AGENTS ("**FOOTAGE FIRM**") WITH LINKS TO THIS AGREEMENT (COLLECTIVELY, THE "**WEBSITE**") IN ANY WAY, INCLUDING USING THE SERVICES AND RESOURCES AVAILABLE OR ENABLED VIA THE WEBSITE (EACH A "**SERVICE**" AND COLLECTIVELY, THE "**SERVICES**") BY FOOTAGE FIRM OR USERS OF THE SITE ("**USERS**"), COMPLETING THE REGISTRATION PROCESS, AND/OR MERELY BROWSING THE WEBSITE, YOU REPRESENT THAT (1) YOU HAVE READ, UNDERSTAND, AND AGREE TO BE BOUND BY THIS AGREEMENT, (2) YOU ARE OF LEGAL AGE TO FORM A BINDING CONTRACT WITH THE FOOTAGE FIRM, AND (3) YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT PERSONALLY OR ON BEHALF OF THE FOOTAGE FIRM YOU HAVE NAMED AS THE CUSTOMER, AND TO BIND THAT FOOTAGE FIRM TO THESE TERMS. THE TERM "YOU" REFERS TO THE INDIVIDUAL OR LEGAL ENTITY, AS APPLICABLE, IDENTIFIED AS THE CUSTOMER WHEN YOU REGISTERED ON THE WEBSITE. **IF YOU DO NOT AGREE TO BE BOUND BY THIS AGREEMENT, YOU MAY NOT ACCESS OR USE THIS WEBSITE OR THE SERVICES.**

Your use of, and participation in, certain Services may be subject to additional terms ("**Supplemental Terms**") and such Supplemental Terms will either be listed in these Terms of Use or will be presented to you for your acceptance when you sign up to use the supplemental Service. If these Terms of Use are inconsistent with such Supplemental Terms, the Supplemental Terms shall control with respect to such Service. These Terms of Use and any applicable Supplemental Terms are referred to herein as the "**Terms.**"

PLEASE NOTE THAT THE TERMS ARE SUBJECT TO CHANGE BY FOOTAGE FIRM IN ITS SOLE DISCRETION AT ANY TIME. When changes are made, Footage Firm will make a new copy of the Terms of Use available at the Website and any new Supplemental Terms will be made available from within, or through, the affected Service on the Website. We will also update the "Last Updated" date at the top of these Terms of Use. If we make any material changes, and you have registered to use the Services, we will also send an e-mail to you at the last e-mail address you provided to us pursuant to these Terms. Any changes to these Terms will be effective immediately for new Users of the Website or Services and will be effective thirty (30)

days after posting of notice of such changes on the Website for existing Users, provided that any material changes shall be effective for Users who have a registered account on the Website (each, a “**Registered User**”) upon the earlier of thirty (30) days after posting of notice of such changes on the Website or thirty (30) days after dispatch of an e-mail notice of such changes to Registered Users. Footage Firm may require you to provide consent to the updated Terms in a specified manner before further use of the Website or the Services is permitted. If you do not agree to any change(s) after receiving a notice of such change(s), you shall stop using the Website and/or the Services. Otherwise, your continued use of the Website and/or Services constitutes your acceptance of such change(s). PLEASE REGULARLY CHECK THE WEBSITE TO VIEW THE THEN-CURRENT TERMS.

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**1. Use of the Services and Footage Firm Materials.** The information and content available on the Website and in the Services (as these terms are defined below), other than Stock Files (collectively, the “**Footage Firm Materials**”) and the Stock Files are protected by copyright laws throughout the world. Subject to these Terms, Footage Firm grants you a limited license to reproduce portions of the Footage Firm Materials for the sole purpose of using the Services for your personal or non-commercial purposes. Unless otherwise specified by Footage Firm in a separate license, your right to use any Footage Firm Materials or Stock Materials that you access or download through the Website or the Services is subject to the Terms.

**1.1 Updates.** You understand that the Website and the Services are evolving. As a result, Footage Firm may require you to accept updates to the Website or the Services that you have installed on your computer or mobile device. You acknowledge and agree that Footage Firm may update the Website, and/or the Services with or without notifying you. You may need

to update third party software from time to time in order to receive the Services or use the Website.

**1.2 Certain Restrictions.** Except to the extent expressly permitted in any Supplemental Terms, the rights granted to you in these Terms are subject to the following restrictions: (a) you shall not license, sell, rent, lease, transfer, assign, reproduce, distribute, host or otherwise commercially exploit the Website or any portion of the Website, including any Footage Firm Materials, (b) you shall not frame or utilize framing techniques to enclose any trademark, logo, or other Footage Firm Materials (including images, text, page layout or form) of Footage Firm; (c) you shall not use any metatags or other “hidden text” using Footage Firm’s name or trademarks; (d) you shall not modify, translate, adapt, merge, make derivative works of, disassemble, decompile, reverse compile or reverse engineer any part of the Footage Firm Materials except to the extent the foregoing restrictions are expressly prohibited by applicable law; (e) you shall not use any manual or automated software, devices or other processes (including but not limited to spiders, robots, scrapers, crawlers, avatars, data mining tools or the like) to “scrape” or download data from any web pages contained in the Website; (f) access the Footage Firm Materials in order to build a similar or competitive website or service; (g) except as expressly stated herein, no part of the Footage Firm Materials may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means; and (h) you shall not remove or destroy any copyright notices or other proprietary markings contained on or in the Footage Firm Materials. Any future release, update or other addition to the Footage Firm Materials shall be subject to these Terms. Footage Firm, its suppliers and service providers reserve all rights not granted in the Terms. Any unauthorized use of the Website or the Services terminates the licenses granted by Footage Firm pursuant to the Terms.

**1.3 Third Party Materials.** As a part of the Footage Firm Materials, you may have access to materials that are hosted by another party. You agree that it is impossible for Footage Firm to monitor such materials and that you access these materials at your own risk.

## **2. Registration.**

**2.1 Registering your Account.** In order to access certain features of the Website, and the Services you may be required to become a Registered User. For purposes of these Terms, a “**Registered User**” is a User who has registered an account on the Website (“**Account**”).

**2.2 Registration Data.** In registering for the Services, you agree to (1) provide true, accurate, current and complete information about yourself as prompted by the Services’ registration form (the “**Registration Data**”); and (2) maintain and promptly update the Registration Data to keep it true, accurate, current and complete. You represent that you are (1) at least thirteen (18) years old; (2) of legal age to form a binding contract; and (3) not a person barred from using the Services under the laws of the United States, your place of residence or any other applicable jurisdiction. You agree that you shall monitor your Account to restrict use by minors, and you will accept full responsibility for any unauthorized use of the Footage Firm Materials or the Services by minors. If you provide any information that is untrue, inaccurate, not current or incomplete, or Footage Firm has reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, Footage Firm has the right to suspend or terminate your Account and refuse any and all current or future use of the Footage Firm Materials and/or the Services (or any portion thereof). You agree not to create an Account using

a false identity or information, or on behalf of someone other than yourself. Footage Firm reserves the right to remove or reclaim any usernames at any time and for any reason, including but not limited to, claims by a third party that a username violates the third party's rights. You agree not to create an Account or use the Footage Firm Materials and/or the Services if you have been previously removed by Footage Firm, or if you have been previously banned from the Services.

**2.3 Activities Under your Account.** You are responsible for all activities that occur under your Account. You may not share your Account or password with anyone, and you agree to (1) notify Footage Firm immediately of any unauthorized use of your password or any other breach of security; and (2) exit from your Account at the end of each session.

**2.4 Necessary Equipment and Software.** You must provide all equipment and software necessary to connect to the Footage Firm Materials and the Services, including but not limited to, a mobile device that is suitable to connect with and use the Footage Firm Materials and the Services, in cases where the Services offer a mobile component. You are solely responsible for any fees, including Internet connection or mobile fees, that you incur when accessing the Footage Firm Materials and the Services.

### **3. Responsibility for Content.**

**3.1 Types of Content.** You acknowledge that all information, data, text, software, music, sound, photographs, graphics, video, messages, tags and/or other materials accessible through the Website or the Services, whether publicly posted or privately transmitted, including the Footage Firm Materials ("**Content**"), are the sole responsibility of the party from whom such Content originated. This means that you, and not Footage Firm, are entirely responsible for all Content that you upload, post, e-mail, transmit or otherwise make available ("**Make Available**") through the Services or the Website ("**Your Content**"), and other Users of the Services, and not Footage Firm, are similarly responsible for all Content they Make Available through the Services or the Website ("**User Content**").

**3.2 No Obligation to Pre-Screen Content.** You acknowledge that Footage Firm has no obligation to pre-screen Content (including, but not limited to, Your Content and User Content), although Footage Firm reserves the right in its sole discretion to pre-screen, refuse or remove any Content. By entering into the Terms, you hereby provide your irrevocable consent to such monitoring and recording. You acknowledge and agree that you have no expectation of privacy concerning the transmission of Your Content, including without limitation chat, text, or voice communications. In the event that Footage Firm pre-screens, refuses or removes any Content, you acknowledge that Footage Firm will do so for Footage Firm's benefit, not yours. Without limiting the foregoing, Footage Firm shall have the right to remove any Content that violates the Terms or is otherwise objectionable.

**3.3 Storage.** Unless expressly agreed to by Footage Firm in writing elsewhere, Footage Firm has no obligation to store any of Your Content that you Make Available on the Website or via the Services. Footage Firm has no responsibility or liability for the deletion or accuracy of any Content, including Your Content; the failure to store, transmit or receive transmission of Content; or the security, privacy, storage, or transmission of other communications originating with or involving use of the Services. Certain Services may enable you to specify the level at which such Services restrict access to Your Content. You are solely responsible for applying the appropriate level of access to Your Content. If you do not choose, the system may default to its most permissive setting. You agree that Footage Firm retains the

right to create reasonable limits on Footage Firm's use and storage of the Content, including Your Content, such as limits on file size, storage space, processing capacity, and similar limits described in the web pages accompanying the Services and as otherwise determined by Footage Firm in its sole discretion.

#### **4. Ownership.**

**4.1 Footage Firm Materials.** Except with respect to Your Content and User Content, you agree that Footage Firm and its suppliers own all rights, title and interest in the Website, the Services, the Stock Files and the Footage Firm Materials. You will not remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the Website, the Services, or the Footage Firm Materials.

**4.2 Trademarks.** Footage Firm and other related graphics, logos, service marks and trade names used on the Website, in the Footage Firm Materials or in connection with the Services are the trademarks of Footage Firm and may not be used without permission in connection with any third party products or services. Other trademarks, service marks and trade names that may appear on the Website, in the Footage Firm Materials or in connection with the Services are the property of their respective owners.

**4.3 Other Content.** Except with respect to Your Content or the license rights granted in the Terms, you agree that you have no right or title in or to any Content that appears on or in the Website, or the Services.

**4.4 Your Content.** Footage Firm does not claim ownership of Your Content. However, when you as a User post or publish Your Content on or in the Website or the Services, you represent that you have a royalty-free, perpetual, irrevocable, worldwide, non-exclusive right (including any moral rights) and license to use, license, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, derive revenue or other remuneration from, and communicate to the public, perform and display Your Content (in whole or in part) worldwide and/or to incorporate it in other works in any form, media or technology now known or later developed, for the full term of any worldwide intellectual property right that may exist in Your Content.

**4.5 License to Your Content.** By submitting Your Content, which shall include your username, to any "public area" of the Website or the Services, you grant Footage Firm a fully paid, royalty-free, perpetual, irrevocable, worldwide, royalty-free, non-exclusive and fully sublicensable right (including any moral rights) and license to use, license, distribute, reproduce, modify, adapt, publicly perform, publicly display, derive revenue or other remuneration from, and communicate to the public, Your Content (in whole or in part) and/or to incorporate it in other works in any form, media or technology now known or later developed, for the full term of any worldwide intellectual property right, including moral rights, that may exist in Your Content. You also warrant that the holder of any worldwide intellectual property right, including moral rights, in Your Content, has completely and effectively waived all such rights and validly and irrevocably granted to you the right to grant the license stated above. You agree that you, not the Footage Firm, are responsible for all of Your Content that you Make Available on or in the Website, or the Services, whether publicly posted or privately transmitted.

**4.6 Username.** Notwithstanding anything contained herein to the contrary, by submitting Your Content to any forums, comments or any other area on the Website or the Services, you hereby expressly permit Footage Firm to identify you by your username (which

may be a pseudonym) as the contributor of Your Content in any publication in any form, media or technology now known or later developed in connection with Your Content.

**4.7 Your Account.** Notwithstanding anything to the contrary herein, you acknowledge and agree that you shall have no ownership or other property interest in your Account, and you further acknowledge and agree that all rights in and to your Account are and shall forever be owned by and inure to the benefit of Footage Firm.

**4.8 Feedback.** You agree that submission of any ideas, suggestions, documents, and/or proposals to Footage Firm through its suggestion, feedback, wiki, forum or similar pages ("**Feedback**") is at your own risk and that Footage Firm has no obligations (including without limitation obligations of confidentiality) with respect to such Feedback. You represent and warrant that you have all rights necessary to submit the Feedback. You hereby grant to Footage Firm a fully paid, royalty-free, perpetual, irrevocable, worldwide, non-exclusive, and fully sublicensable right and license to use, reproduce, perform, display, distribute, adapt, modify, re-format, create derivative works of, and otherwise commercially or non-commercially exploit in any manner, any and all Feedback, and to sublicense the foregoing rights, in connection with the operation and maintenance of the Website and the Services.

## **5. User Conduct.**

**5.1 Commercial Activities.** You agree that you will not, under any circumstances (except to the extent expressly authorized by these Terms):

(a) Reproduce, duplicate, copy, sell, trade, resell or exploit for any commercial purpose any portion of the Website, Services (including your Account), Footage Firm Materials, or access to or use of the Website, Services or Footage Firm Materials;

(b) Upload, post, e-mail, transmit or otherwise make available any unsolicited or unauthorized advertising, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation;

(c) Use the Website, Services, or Footage Firm Materials or any part thereof for any commercial purpose, including, but not limited to communicating or facilitating any commercial advertisement or solicitation;

(d) Engage in any chain letters, contests, junk email, pyramid schemes, spamming, surveys or other duplicative or unsolicited messages (commercial or otherwise); or

(e) Market any goods or services for any business purposes.

**5.2 Unauthorized Use or Access.** You agree that you will not, under any circumstances:

(a) Interfere or attempt to interfere with the proper functioning of the Website, Services or Footage Firm Materials or connect to or use the Website, Services or Footage Firm Materials in any way not expressly permitted by the Terms;

(b) Systematically retrieve data or other content from our Website, Services or Footage Firm Materials to create or compile, directly or indirectly, in single or multiple

downloads, a collection, compilation, database, directory or the like, whether by manual methods, through the use of bots, crawlers, or spiders, or otherwise;

**(c)** Use, display, mirror or frame the Website, Services or Footage Firm Materials, or any individual element within the Website, Services, or Footage Firm Materials, Footage Firm's name, any Footage Firm trademark, logo or other proprietary information, or the layout and design of any page or form contained on a page, without Footage Firm's express written consent;

**(d)** Intercept, examine or otherwise observe any proprietary communications protocol used by a client, a server or the Services, whether through the use of a network analyzer, packet sniffer or other device;

**(e)** Make any automated use of the Website, Services, or Footage Firm Materials, or take any action that imposes or may impose (in Footage Firm's sole discretion) an unreasonable or disproportionately large load on the infrastructure for the Website, Services or Footage Firm Materials;

**(f)** Bypass any robot exclusion headers or other measures Footage Firm takes to restrict access to the Website, Services or Footage Firm Materials or use any software, technology or device to send content or messages, scrape, spider or crawl the Website, Services or Footage Firm Materials or harvest or manipulate data;

**(g)** Use, facilitate, create, or maintain any unauthorized connection to the Website, Services or Footage Firm Materials, including, but not limited to: (a) any connection to any unauthorized server that emulates, or attempts to emulate, any part of the Website, Services or Footage Firm Materials; or (b) any connection using programs, tools or software not expressly approved by Footage Firm;

**(h)** Reverse engineer, decompile, disassemble, decipher or otherwise attempt to derive the source code for any underlying software or other intellectual property used to provide the Website, Services or Footage Firm Materials, or to obtain any information from the Website, Services or Footage Firm Materials;

**(i)** Forge headers or otherwise manipulate identifiers in order to disguise the origin of any Content transmitted through the Website or Services;

**(j)** Upload, post, e-mail, transmit or otherwise make available any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;

**(k)** Solicit or attempt to solicit personal information from other users of the Website, Services or Footage Firm Materials;

**(l)** Use our Website, Services or Footage Firm Materials to collect, harvest, transmit, distribute, post or submit any information concerning any other person or entity, including without limitation, photographs of others without their permission, personal contact information or credit, debit, calling card or account numbers;

**5.3 General.** In connection with your use of the Website, Services, and Footage Firm Materials, you shall not, except as expressly permitted in the Terms:

(a) Make Available any Content that (i) is unlawful, tortious, defamatory, vulgar, obscene, libelous, or racially, ethnically or otherwise objectionable; (ii) violates, or encourages any conduct that would violate, any applicable law or regulation or would give rise to civil liability; (iii) promotes discrimination, bigotry, racism, hatred, harassment or harm against any individual or group; (iv) is violent or threatening or promotes violence or actions that are threatening to any other person; or (v) promotes illegal or harmful activities;

(b) Harm minors in any way;

(c) Impersonate any person or entity, including, but not limited to, Footage Firm personnel, or falsely state or otherwise misrepresent your affiliation with a person or entity;

(d) Make available any Content that you do not have a right to Make Available under any law or under contractual or fiduciary relationships (such as inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under non-disclosure agreements);

(e) Make Available any Content that infringes the rights of any person or entity, including without limitation, any patent, trademark, trade secret, copyright, privacy, publicity or other proprietary or contractual rights;

(f) Intentionally or unintentionally violate any applicable local, state, national or international law or regulation, or any order of a court;

(g) Register for more than one Account or register for an Account on behalf of an individual other than yourself;

(h) Stalk or otherwise harass any other user of our Website, Services or Footage Firm Materials; or

(i) Advocate, encourage or assist any third party in doing any of the foregoing activities in this section.

**6. Investigations.** Footage Firm may, but is not obligated to, monitor or review the Services and Content at any time. Without limiting the foregoing, Footage Firm shall have the right, in its sole discretion, to remove any of Your Content for any reason (or no reason), including if such Content violates the Terms or any applicable law. Although Footage Firm does not generally monitor user activity occurring in connection with the Website, Services, Footage Firm Materials, or Content, if Footage Firm becomes aware of any possible violations by you of any provision of the Terms, Footage Firm reserves the right to investigate such violations, and Footage Firm may, at its sole discretion, immediately terminate your license to use the Website, Services, or Footage Firm Materials, or change, alter or remove Your Content, in whole or in part, without prior notice to you.

## **7. Interactions with Other Users.**

**7.1 User Responsibility.** You are solely responsible for your interactions with other Users of the Services and any other parties with whom you interact through the Services;



provided, however, that Footage Firm reserves the right, but has no obligation, to intercede in such disputes.

**7.2 Content Provided by Other Users.** The Website, Services, and Footage Firm Materials may contain User Content provided by other Users. Footage Firm is not responsible for and does not control User Content. Footage Firm has no obligation to review or monitor, and does not approve, endorse or make any representations or warranties with respect to User Content. You use all User Content and interact with other Users at your own risk. Your interactions with other Users are solely between you and the other User and we are under no obligation to become involved. You agree that Footage Firm will not be responsible for any liability incurred as the result of such interactions. YOU UNDERSTAND THAT FOOTAGE FIRM DOES NOT CURRENTLY CONDUCT CRIMINAL BACKGROUND CHECKS ON ITS USERS. FOOTAGE FIRM ALSO DOES NOT INQUIRE INTO THE BACKGROUNDS OF ITS REGISTERED USERS OR ATTEMPT TO VERIFY THE STATEMENTS OF ITS REGISTERED USERS. FOOTAGE FIRM MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THE CONDUCT OF REGISTERED USERS OR THEIR COMPATIBILITY WITH ANY CURRENT OR FUTURE REGISTERED USERS. FOOTAGE FIRM RESERVES THE RIGHT TO CONDUCT ANY CRIMINAL BACKGROUND CHECK OR OTHER SCREENINGS (SUCH AS SEX OFFENDER REGISTER SEARCHES), AT ANY TIME AND USING AVAILABLE PUBLIC RECORDS.

**7.3 Release.** If you have a dispute with one or more Users, you release Footage Firm and its parents, subsidiaries, affiliates, officers, employees, agents, partners and licensors (collectively, the “**Footage Firm Parties**”) from claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, arising out of or in any way connected with such disputes. If you are a California resident, you waive California Civil Code 1542, which says: “A general release does not extend to claims which the creditor does not now or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

**8. Third Party Services.** The Website, Services, and Footage Firm Materials may contain links to third-party websites (“**Third Party Websites**”) and advertisements for third parties (collectively, “**Third Party Websites & Ads**”). When you click on a link to a Third Party Website or Ad, we will not warn you that you have left our Website and are subject to the terms and conditions (including privacy policies) of another website or destination. Such Third Party Websites are not under the control of Footage Firm. Footage Firm is not responsible for any Third Party Websites & Ads. Footage Firm provides these Third Party Websites & Ads only as a convenience and does not review, approve, monitor, endorse, warrant, or make any representations with respect to Third Party Websites & Ads, or their products or services. You use all links in Third Party Websites & Ads at your own risk. When you leave our Website, our Terms and policies no longer govern. You should review applicable terms and policies, including privacy and data gathering practices, of any Third Party Websites, and should make whatever investigation you feel necessary or appropriate before proceeding with any transaction with any third party.

**9. Indemnification.** You agree to indemnify and hold Footage Firm Parties harmless from any losses, costs, liabilities and expenses (including reasonable attorneys’ fees) relating to or arising out of: (a) Your Content; (b) your use of, or inability to use, the Website or the Services; (c) your violation of the Terms; (d) your violation of any rights of another party, or (e) your violation of any applicable laws, rules or regulations. Footage Firm reserves the right, at its own

cost, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will fully cooperate with Footage Firm in asserting any available defenses. You agree that the provisions in this section will survive any termination of your Account or the Services.

## **10. Disclaimer of Warranties.**

**10.1 AS IS.** YOU EXPRESSLY UNDERSTAND AND AGREE THAT TO THE EXTENT PERMITTED BY APPLICABLE LAW, YOUR USE OF THE WEBSITE AND THE SERVICES IS AT YOUR SOLE RISK, AND THE WEBSITE AND THE SERVICES ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS, WITH ALL FAULTS. FOOTAGE FIRM PARTIES EXPRESSLY DISCLAIM ALL WARRANTIES, REPRESENTATIONS, AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

(a) THE FOOTAGE FIRM PARTIES MAKE NO WARRANTY, REPRESENTATION OR CONDITION THAT: (1) THE WEBSITE OR THE SERVICES WILL MEET YOUR REQUIREMENTS; (2) THE WEBSITE OR THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE; (3) THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE WEBSITE OR SERVICES WILL BE ACCURATE OR RELIABLE; OR (4) ANY ERRORS IN THE WEBSITE OR THE SERVICES WILL BE CORRECTED.

(b) ANY CONTENT OR FOOTAGE FIRM MATERIALS DOWNLOADED FROM OR OTHERWISE ACCESSED THROUGH THE WEBSITE OR THE SERVICES IS ACCESSED AT YOUR OWN RISK, AND YOU SHALL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR PROPERTY OR PERSON, INCLUDING, BUT NOT LIMITED TO, YOUR COMPUTER SYSTEM AND ANY DEVICE YOU USE TO ACCESS THE WEBSITE OR THE SERVICES, OR ANY OTHER LOSS THAT RESULTS FROM ACCESSING SUCH CONTENT.

(c) THE SERVICES MAY BE SUBJECT TO DELAYS, CANCELLATIONS AND OTHER DISRUPTIONS. FOOTAGE FIRM MAKES NO WARRANTY, REPRESENTATION OR CONDITION WITH RESPECT TO SERVICES, INCLUDING BUT NOT LIMITED TO, THE QUALITY, EFFECTIVENESS, REPUTATION AND OTHER CHARACTERISTICS OF SERVICES.

(d) NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM FOOTAGE FIRM OR THROUGH THE WEBSITE OR THE FOOTAGE FIRM MATERIALS WILL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN.

(e) FROM TIME TO TIME, FOOTAGE FIRM MAY OFFER NEW “BETA” FEATURES OR TOOLS WITH WHICH ITS USERS MAY EXPERIMENT. SUCH FEATURES OR TOOLS ARE OFFERED SOLELY FOR EXPERIMENTAL PURPOSES AND WITHOUT ANY WARRANTY OF ANY KIND, AND MAY BE MODIFIED OR DISCONTINUED AT FOOTAGE FIRM'S SOLE DISCRETION. THE PROVISIONS OF THIS SECTION APPLY WITH FULL FORCE TO SUCH FEATURES OR TOOLS.

**10.2 NO LIABILITY FOR CONDUCT OF THIRD PARTIES.** YOU ACKNOWLEDGE AND AGREE THAT THE FOOTAGE FIRM PARTIES ARE NOT LIABLE, AND YOU AGREE NOT TO SEEK TO HOLD THE FOOTAGE FIRM PARTIES LIABLE, FOR THE CONDUCT OF

THIRD PARTIES, INCLUDING OPERATORS OF EXTERNAL SITES, AND THAT THE RISK OF INJURY FROM SUCH THIRD PARTIES RESTS ENTIRELY WITH YOU. FOOTAGE FIRM MAKES NO WARRANTY THAT THE GOODS OR SERVICES PROVIDED BY THIRD PARTIES WILL MEET YOUR REQUIREMENTS OR BE AVAILABLE ON AN UNINTERRUPTED, SECURE, OR ERROR-FREE BASIS. FOOTAGE FIRM MAKES NO WARRANTY REGARDING THE QUALITY OF ANY SUCH GOODS OR SERVICES, OR THE ACCURACY, TIMELINESS, TRUTHFULNESS, COMPLETENESS OR RELIABILITY OF ANY USER CONTENT OBTAINED THROUGH THE WEBSITE OR THE SERVICES.

**10.3 NO LIABILITY FOR CONDUCT OF OTHER USERS.** YOU ARE SOLELY RESPONSIBLE FOR ALL OF YOUR COMMUNICATIONS AND INTERACTIONS WITH OTHER USERS OF THE WEBSITE AND THE SERVICES. YOU UNDERSTAND THAT FOOTAGE FIRM DOES NOT MAKE ANY ATTEMPT TO VERIFY THE STATEMENTS OF USERS OF THE WEBSITE OR THE SERVICES. FOOTAGE FIRM MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THE CONDUCT OF USERS OF THE WEBSITE OR THE SERVICES OR THEIR COMPATIBILITY WITH ANY CURRENT OR FUTURE USERS OF THE WEBSITE OR THE SERVICES. YOU AGREE TO TAKE REASONABLE PRECAUTIONS IN ALL COMMUNICATIONS AND INTERACTIONS WITH OTHER USERS OF THE WEBSITE OR THE SERVICES, PARTICULARLY IF YOU DECIDE TO MEET OFFLINE OR IN PERSON. YOU ACKNOWLEDGE AND AGREE THAT FOOTAGE FIRM DOES NOT CONDUCT BACKGROUND CHECKS ON ANY USER.

## **11. Limitation of Liability.**

**11.1 DISCLAIMER OF CERTAIN DAMAGES.** YOU UNDERSTAND AND AGREE THAT IN NO EVENT SHALL FOOTAGE FIRM PARTIES BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE WEBSITE , THE SERVICES OR THE SITE CONTENT, INCLUDING, WITHOUT LIMITATION, ANY DAMAGES RESULTING FROM LOSS OF USE, DATA, OR PROFITS, WHETHER OR NOT FOOTAGE FIRM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY DAMAGES FOR PERSONAL OR BODILY INJURY OR EMOTIONAL DISTRESS ARISING OUT OF OR IN CONNECTION WITH THESE TERMS, OR FROM ANY COMMUNICATIONS, INTERACTIONS OR MEETINGS WITH OTHER USERS OF THE WEBSITE OR THE SERVICES, ON ANY THEORY OF LIABILITY, RESULTING FROM: (1) THE USE OR INABILITY TO USE THE WEBSITE OR THE SERVICES; (2) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED FOR TRANSACTIONS ENTERED INTO THROUGH THE WEBSITE OR THE SERVICES; (3) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (4) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE WEBSITE OR THE SERVICES; OR (5) ANY OTHER MATTER RELATED TO THE WEBSITE OR THE SERVICES, WHETHER BASED ON WARRANTY, COPYRIGHT, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY.

**11.2 CAP ON LIABILITY.** UNDER NO CIRCUMSTANCES WILL THE FOOTAGE FIRM PARTIES BE LIABLE TO YOU FOR MORE THAN THE AMOUNT RECEIVED BY FOOTAGE FIRM AS A RESULT OF YOUR USE OF THE WEBSITE AND THE SERVICES IN THE SUBSCRIPTION PERIOD DURING WHICH YOU FIRST ASSERT CLAIM. IF YOU HAVE NOT PAID FOOTAGE FIRM ANY AMOUNTS IN THE SUBSCRIPTION PERIOD DURING

WHICH YOU FIRST ASSERT ANY SUCH CLAIM, FOOTAGE FIRM'S SOLE AND EXCLUSIVE LIABILITY SHALL BE LIMITED TO TEN DOLLARS (\$10).

**11.3 USER CONTENT.** THE FOOTAGE FIRM PARTIES ASSUME NO RESPONSIBILITY FOR THE TIMELINESS, DELETION, MIS-DELIVERY OR FAILURE TO STORE ANY CONTENT (INCLUDING, BUT NOT LIMITED TO, YOUR CONTENT AND USER CONTENT), USER COMMUNICATIONS OR PERSONALIZATION SETTINGS.

**11.4 Information Verification.** Footage Firm Parties may use various ways of verifying information that Users have provided. However, none of those ways are perfect, and you agree that Footage Firm and its suppliers will have no liability to you arising from any incorrectly verified information.

**11.5 BASIS OF THE BARGAIN.** THE LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN FOOTAGE FIRM AND YOU

**11.6 EXCLUSION OF DAMAGES.** CERTAIN JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MIGHT HAVE ADDITIONAL RIGHTS.

**12. Procedure for Making Claims of Copyright Infringement.** It is Footage Firm's policy to terminate membership privileges of any User who repeatedly infringes copyright upon prompt notification to Footage Firm by the copyright owner or the copyright owner's legal agent. Without limiting the foregoing, if you believe that your work has been copied and posted on the Website, or the Services in a way that constitutes copyright infringement, please provide our Copyright Agent with the following information: (1) an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest; (2) a description of the copyrighted work that you claim has been infringed; (3) a description of the location on the Website or Services of the material that you claim is infringing; (4) your address, telephone number and e-mail address; (5) a written statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent or the law; (6) a statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf. Contact information for Footage Firm's Copyright Agent for notice of claims of copyright infringement is as follows: Footage Firm Copyright Agent, copyright@footagefirm.com, 10780 Parkridge Blvd., Suite 70, Reston, VA 20191.

**13. Term and Termination.**

**13.1 Term.** These Terms commence on the date when you accept them (as described in the preamble above) and remain in full force and effect while you use the Website or any Services, unless terminated earlier in accordance with these Terms.

**13.2 Prior Use.** Notwithstanding the foregoing, if you used the Website or any Services prior to the date you accepted these Terms, you hereby acknowledge and agree that these Terms commenced on the date you first used the Website or the Services (whichever is earlier) and will remain in full force and effect while you use the Website or any other Services, unless earlier terminated in accordance with these terms.

**13.3 Termination of Services by You.** If you want to terminate any Services provided by Footage Firm, you may do so by (a) notifying Footage Firm at any time and (b) closing your Account for all of the Services that you use. Your notice should be sent, in writing, to Footage Firm's address set forth below.

**13.4 Effect of Termination.** Termination of any Service includes removal of access to such Service and barring of further use of the Service. Termination of all Services also includes deletion of your password and all related information, files and Content associated with or inside your Account (or any part thereof), including Your Content. Upon termination of any Service, your right to use such Service will automatically terminate immediately. You understand that any termination of Services may involve deletion of Your Content associated therewith from our live databases. Footage Firm will not have any liability whatsoever to you for any suspension or termination, including for deletion of Your Content. All provisions of these Terms which by their nature should survive, shall survive termination of Services, including without limitation, ownership provisions, warranty disclaimers, and limitation of liability. You may have rights relating to Stock Files that extend beyond such termination under the applicable Supplemental Terms.

## **14. Remedies.**

**14.1 Violations.** If Footage Firm becomes aware of any possible violations by you of the Terms, Footage Firm reserves the right to investigate such violations. If, as a result of the investigation, Footage Firm believes that criminal activity has occurred, Footage Firm reserves the right to refer the matter to, and to cooperate with, any and all applicable legal authorities. Footage Firm is entitled, except to the extent prohibited by applicable law, to disclose any information or materials on the Website or in the Services, including Your Content, in Footage Firm's possession in connection with your use of the Website or the Services, to (1) comply with applicable laws, legal process or governmental request; (2) enforce the Terms; (3) respond to any claims that Your Content violates the rights of third parties; (4) respond to your requests for customer service; or (5) protect the rights, property or personal safety of Footage Firm, its Users or the public, and all enforcement or other government officials, as Footage Firm in its sole discretion believes to be necessary or appropriate.

**14.2 Breach.** In the event that Footage Firm determines, in its sole discretion, that you have breached any portion of these Terms, or have otherwise demonstrated conduct inappropriate for the Website or the Services, Footage Firm reserves the right to:

(a) Warn you via e-mail (to any e-mail address you have provided to Footage Firm) that you have violated these Terms;

(b) Delete any of Your Content provided by you or your agent(s) to the Website or the Services;

(c) Discontinue your registration(s) with the Website and/or any Services or Footage Firm community;

(d) Discontinue your subscription to any Services;

(e) Notify and/or send Content to and/or fully cooperate with the proper law enforcement authorities for further action; and/or

- (f) Pursue any other action which Footage Firm deems to be appropriate.

**14.3 No Subsequent Registration.** If your registration(s) with or ability to access the Website or the Services, or any other Footage Firm community is discontinued by Footage Firm due to your violation of any portion of these Terms or for conduct otherwise inappropriate for the community, then you agree that you shall not attempt to re-register with or access the Website, the Services or any other Footage Firm community through use of a different member name or otherwise, and you acknowledge that you will not be entitled to receive a refund for fees related to those materials or Services to which your access has been terminated. In the event that you violate the immediately preceding sentence, Footage Firm reserves the right, in its sole discretion, to immediately take any or all of the actions set forth herein without any notice or warning to you.

## **15. International Users.**

This Website can be accessed from countries around the world and may contain references to services and Content that are not available in your country. These references do not imply that Footage Firm intends to announce such services or Content in your country. The Website and Services are controlled and offered by Footage Firm from its facilities in the United States of America. Footage Firm makes no representations that the Website or the Services are appropriate or available for use in other locations. Those who access or use the Website or the Services from other jurisdictions do so at their own volition and are responsible for compliance with local law.

## **16. General Provisions.**

**16.1 Electronic Communications.** The communications between you and Footage Firm use electronic means, whether you visit the Website or send Footage Firm e-mails, or whether Footage Firm posts notices on the Website or communicates with you via e-mail. For contractual purposes, you (1) consent to receive communications from Footage Firm in an electronic form; and (2) agree that all terms and conditions, agreements, notices, disclosures, and other communications that Footage Firm provides to you electronically satisfy any legal requirement that such communications would satisfy if it were to be in writing. The foregoing does not affect your statutory rights.

**16.2 Release.** You hereby release the Footage Firm Parties and their successors from claims, demands, any and all losses, damages, rights, and actions of any kind, including personal injuries, death, and property damage, that is either directly or indirectly related to or arises from any interactions with or conduct of other Website Users or third party websites of any kind arising in connection with or as a result of your these Terms or your use of the Website or the Services. If you are a California resident, you hereby waive California Civil Code Section 1542, which states, "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which, if known by him must have materially affected his settlement with the debtor."

**16.3 Assignment.** These Terms, and your rights and obligations hereunder, may not be assigned, subcontracted, delegated, or otherwise transferred by you without Footage Firm's prior written consent, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void.

**16.4 Force Majeure.** Footage Firm shall not be liable for any delay or failure to perform resulting from causes outside its reasonable control, including, but not limited to, acts of God, war, terrorism, riots, embargos, acts of civil or military authorities, fire, floods, accidents, strikes or shortages of transportation facilities, fuel, energy, labor or materials.

**16.5 Dispute Resolution.** If you believe that Footage Firm has not adhered to these Terms, please contact Footage Firm by emailing us at support@videoblocks.com. We will do our best to address your concerns. If you feel that your complaint has been addressed incompletely, we invite you to let us know for further investigation.

**16.6 Choice of Law and Venue.** This Agreement and any action related thereto will be governed and interpreted by and under the laws of the State of Delaware, without giving effect to any conflict of laws principles that require the application of the law of a different state, consistent with the Federal Arbitration Act. You hereby expressly consent to the personal jurisdiction and venue in the state and federal courts for the county in which Footage Firm's principal place of business is located for any lawsuit filed against you by Footage Firm arising from or related to this Agreement. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

**16.7 Limitations Period.** YOU AND FOOTAGE FIRM AGREE THAT ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THESE TERMS, THE WEBSITE, THE SERVICES OR THE CONTENT MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.

**16.8 ARBITRATION.** All controversies, disputes, demands, counts, claims, or causes of action between Footage Firm and you, including disputes arising out of, under, or related in any way to the Terms of Use, the Site, the Services, the Materials or the interpretation or validity of these Terms of Use, shall exclusively be settled through binding arbitration. Arbitration shall be subject to the Federal Arbitration Act and not state arbitration law. The arbitration shall be conducted before one commercial arbitrator with substantial experience in resolving similar disputes. The matter may be arbitrated either by JAMS or the American Arbitration Association ("AAA"), as mutually agreed upon by the parties or selected by the party filing the claim. As modified by these Terms of Use, unless agreed upon by the parties in writing, the conduct of the arbitration shall be subject to the then current rules of JAMS or AAA (whichever is arbitrating the dispute), for commercial arbitration and, if the arbitrator deems it appropriate, consumer disputes. You are thus **GIVING UP YOUR RIGHT TO GO TO COURT** to assert or defend your rights EXCEPT for matters that may be taken to small claims court. Your rights will be determined by a NEUTRAL ARBITRATOR and NOT a judge or jury. You are entitled to a **FAIR HEARING**, BUT the arbitration procedures are **SIMPLER AND MORE LIMITED** THAN RULES APPLICABLE IN COURT. Arbitrator decisions are as enforceable as any court order and are subject to **VERY LIMITED REVIEW** BY A COURT.

You and Footage Firm must abide by the following rules: (a) at your election, any in-person arbitration hearing may take place in the federal judicial district of your residence; (b) if your claim is for \$10,000 or less, instead of an in-person hearing, you may choose whether the arbitration will be conducted solely on the basis of documents or through a telephonic hearing; (c) the arbitrator's ruling is binding and not merely advisory; (d) ANY CLAIMS BROUGHT BY YOU OR FOOTAGE FIRM MUST BE BROUGHT IN THE PARTIES' INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF, PRIVATE ATTORNEY GENERAL OR CLASS MEMBER IN ANY

PURPORTED CLASS OR REPRESENTATIVE PROCEEDING; (e) THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE PERSON'S CLAIMS, AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A REPRESENTATIVE OR CLASS PROCEEDING, (f) THE ARBITRATOR SHALL NOT AWARD CLASS-WIDE RELIEF; (g) Footage Firm will pay the arbitration costs as required by the rules of JAMS or AAA (depending upon which is arbitrating the dispute), and in the event that you are able to demonstrate that the costs of arbitration will be prohibitive as compared to costs of litigation, Footage Firm will pay as much of your arbitration filing and hearing fees as the arbitrator deems is necessary to prevent the arbitration from being cost-prohibitive as compared to the cost of litigation, (h) the arbitrator may award any damages or other relief or remedies that are permitted by applicable law; and (i) each side pays his, her or its own attorneys' fees and costs unless the claim(s) at-issue permit the prevailing party to be paid its fees' and litigation costs, and in such instance any fees' and costs awarded by the arbitrator shall be determined by applicable law, statute, regulation, or case law.

Notwithstanding the foregoing, either you or Footage Firm may bring an individual action in small claims court. Further, claims of infringement or misappropriation of the other party's patent, copyright, trademark, or trade secret shall not be subject to this arbitration agreement. Such claims shall be exclusively brought in the state or federal courts located in the State of Delaware. With the exception of subparts (d) - (f) in the paragraph above (prohibiting arbitration on a class or collective basis), if any part of this arbitration provision is deemed to be invalid, unenforceable or illegal, then the balance of this arbitration provision shall remain in effect and shall be construed in accordance with its terms as if the invalid, unenforceable, or illegal provision were not contained. If, however, subparts (d) - (f) are found to be invalid, unenforceable or illegal, then the entirety of this arbitration provision shall be null and void, and neither you nor Footage Firm shall be entitled to arbitration. In the event this agreement to arbitrate is held unenforceable, or in the event both AAA and JAMS refuse to arbitrate the Dispute, all controversies, disputes, demands, counts, claims, or causes of action between Footage Firm and you shall be exclusively brought in the state or federal courts located in the State of Delaware.

For more information on AAA, its rules and procedures, and how to file an arbitration claim, you may call AAA at 800-778-7879 or visit the AAA website at <http://www.adr.org>. For more information on JAMS, its rules and procedures, and how to file an arbitration claim, you may call JAMS at 800.352.5267 or visit the JAMS website at <http://www.jamsadr.com>.

**16.9 Choice of Language.** It is the express wish of the parties that these Terms and all related documents have been drawn up in English. C'est la loi volone expresse des parties que la presente convention ainsi que les documents qui s'y rattachent soient rediges en anglais.

**16.10 Notice.** Where Footage Firm requires that you provide an e-mail address, you are responsible for providing Footage Firm with your most current e-mail address. In the event that the last e-mail address you provided to Footage Firm is not valid, or for any reason is not capable of delivering to you any notices required/ permitted by these Terms, Footage Firm's dispatch of the e-mail containing such notice will nonetheless constitute effective notice. You may give notice to Footage Firm at the following address: Footage Firm, Inc., 11160-C1 South Lakes Dr. Suite 262, Reston, VA, United States 20191. Such notice shall be deemed given when received by Footage Firm by letter delivered by nationally recognized overnight delivery service or first class postage prepaid mail at the above address.



**16.11 Waiver.** Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

**16.12 Severability.** Unless otherwise stated in this agreement, if any provision of these Terms is, for any reason, held to be invalid or unenforceable, the other provisions of these Terms will remain enforceable, and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law, unless otherwise stated in these Terms.

**16.13 Export Control.** You may not use, export, import, or transfer the Footage Firm Materials except as authorized by U.S. law, the laws of the jurisdiction in which you obtained the Footage Firm Materials, and any other applicable laws. In particular, but without limitation, the Footage Firm Materials may not be exported or re-exported (a) into any United States embargoed countries; or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce's Denied Person's List or Entity List. By using the Footage Firm Materials, you represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties. You also will not use the Footage Firm Materials for any purpose prohibited by U.S. law, including the development, design, manufacture or production of missiles, nuclear, chemical or biological weapons. You acknowledge and agree that products, services or technology provided by Footage Firm are subject to the export control laws and regulations of the United States. You shall comply with these laws and regulations and shall not, without prior U.S. government authorization, export, re-export, or transfer Footage Firm products, services or technology, either directly or indirectly, to any country in violation of such laws and regulations.

**16.14 Entire Agreement.** These Terms are the final, complete and exclusive agreement of the parties with respect to the subject matter hereof and supersedes and merges all prior discussions between the parties with respect to such subject matter.