



ProSoundEffects®

### **60-DAY LIBRARY TRIAL LICENSE AGREEMENT**

This Agreement governs Your usage rights and payment terms for the License of the royalty-free sounds and/or sound effect libraries that Pro Sound Effects (PSE) grants you access and a 14-day limited usage license. Individuals and multi-user entities (companies, schools) may enter into this Agreement to use Licensed Material. **All Licensed Material comes with a perpetual, royalty-free synch license for You, the end user, within the 60-day Trial Period, commencing.**

#### **Principal Terms:**

- PSE is granting You 60 days of unlimited, royalty-free, non-commercial usage of a PSE Library (the “Licensed Material”), for your evaluation and contemplation of entering into a future licensing agreement.
- Your 60-day Trial License shall commence upon written (email) communication from a PSE Licensing Representative, stating in the affirmative that your trial has begun (the “Effective Date”).
- After 60 days, should You choose not to enter into a licensing agreement with PSE for royalty-free non-commercial synchronization usage of the PSE Library, then You must either return the Licensed Material to PSE or delete the PSE Library and all related files from the Your hard drive(s) and any other storage media, physical or otherwise. Copies of the Licensed Material and any related files, in whole or in part, may not be retained by You. In addition, any accounts or online access granted to you by PSE will be terminated.

Questions? Email [licensing@prosoundeffects.com](mailto:licensing@prosoundeffects.com) or call 646-706-7728 x10

**IMPORTANT – READ CAREFULLY:** THIS IS A LEGAL AGREEMENT (THE “AGREEMENT”) BETWEEN YOU AND PRO SOUND EFFECTS (“PSE”). THIS AGREEMENT APPLIES TO LICENSES PURCHASED BY YOU AND IS APPLICABLE TO ONLINE, DIGITAL AND ANALOG (PHYSICAL) DELIVERY OF LICENSED MATERIAL. BY ORDERING A LICENSE, YOU AND, IF APPLICABLE, PURCHASER, ENTER(S) INTO THIS AGREEMENT WITH PSE AND CONFIRM(S) THAT YOU AND/OR IT, AS THE CASE MAY BE, HAVE AND/OR HAS, AS THE CASE MAY BE, THE POWER AND AUTHORITY TO DO SO.

**Copyright infringement is a serious offense. Copyright laws and international treaty provisions protect PSE. PSE protects its copyrights by all necessary means, including legal action.**

The intent of this Agreement is to govern the terms and conditions under which You use Licensed Material to enhance Your Works.

## **1. Definitions**

- 1.1. “Audio Products” means any product in any format or media now known or hereafter devised, embodying the Licensed Material alone, including, without limitation, hard drives, compact discs (CDs), cassettes, phonograph records, and digital downloads.
- 1.2. “Broadcast” means to cause or permit others to cause the performance, telecast, broadcast, transmission, streaming, exhibition or distribution of the Work.
- 1.3. “Claims” has the meaning set forth in Section 7.1.
- 1.4. “Copy” means to duplicate or otherwise make (i) copies of the Licensed Material to be stored in Your digital library, network configuration or similar arrangement or (ii) copies of the Work solely for the purpose of Broadcasting the Work.
- 1.5. “DVD” has the meaning set forth in Section 2.4.
- 1.6. “Edit” means use by You of less than an entire Master, including the editing, looping, enhancing or modifying of the Licensed Material.
- 1.7. “Effective Date” has the meaning set forth in the Principal Terms above.
- 1.8. “Trial License Fee” has the meaning set forth in Article 3, which shall be \$0.00. For purposed of clarity, there shall be no Trial License Fee during the 30 day Trial License Period.
- 1.9. “Licensed Material” means the (i) sound recordings (the “Masters”), (ii) musical compositions, including but not limited to lyrics, sound elements and sound effects embodied on the Masters (the “Compositions”), and (iii) any printed, online or downloadable documentation, database information or other electronic documentation (the “Documentation”) offered for licensing by PSE and selected for use by You (such Masters, Compositions and Documentation so selected, collectively the “Licensed Material”). Any

reference in this Agreement to the Licensed Material shall be to each part of the Licensed Material and also to the Licensed Material as a whole.

- 1.10. "You" means the person or entity contemplating purchasing a license hereunder and, if specifically identified during the purchase process or set forth in the invoice, also means the person or entity on whose behalf the license is purchased.
- 1.11. "Work" means the production or program embodying the Synchronized Licensed Material.
- 1.12. "PSE Online Library" has the meaning set forth in Section 2.4.
- 1.13. "Purchaser" means an entity purchasing the license hereunder on behalf of a third party You.
- 1.14. "Synchronize" means to couple and/or synchronize, arrange, record, re-record, transcribe, modify or edit the Licensed Material solely in timed relation with the intended use(s) specified herein.
- 1.15. "Synchronized Licensed Material" means Licensed Material that has been coupled and/or synchronized, arranged, recorded, re-recorded, transcribed, modified or edited solely in timed relation with the intended use(s) specified herein.
- 1.16. "Term" has the meaning set forth in Section 2.5.
- 1.17. "User" means You who: (i) downloads, manipulates, edits, modifies or saves the digital file containing the Licensed Material; (ii) is otherwise directly involved in the creative process utilizing the Licensed Material; or (iii) incorporates the Licensed Material within any derivative work. In the event that You breach any material term of this Agreement are are provided with notice by PSE, all Licensed Material obtained under this agreement, including any incomplete product which in any way incorporates Licensed Material, must be deleted from the former User's hard drive(s) and any other storage media, physical or otherwise. Copies of Licensed Material, in whole or in part, may not be retained by persons who no longer qualify as Users under this license.

## **2. License Terms**

- 2.1. **The Term of this Agreement is Sixty (60) Days. PSE grants to You a 60-day non-exclusive, non-sublicensable and non-transferable worldwide right to use, Edit and Synchronize the Licensed Material, and to Copy and Broadcast the Work via any medium now known or hereafter devised.** The right to Broadcast Work may be exercised by Your client(s), provided that any such client agrees in writing to abide by the terms of this Agreement. The Licensed Material, in stand-alone form, may not be Broadcast.
- 2.2. Licensed Material may be copied in standalone form by You only for the purpose of storing the Licensed Material in a digital library, network configuration or similar arrangement to allow the Licensed Material to be viewed by employees of You. You may not electronically transfer the Licensed Material other than in accordance with this Section 2.2.
- 2.3. Use of the Licensed Material is strictly limited to the use, media, term of use, trial period, territory and any other restrictions specified in this Agreement. You may use the Licensed Material in any production process provided such use is a synchronized use. Use of the Licensed Material shall be limited to use in a synchronized manner. Any use of the Licensed Material in an asynchronous or non-synchronized format without receiving proper consent and license by virtue of obtaining the necessary Custom Application License issued by Pro Sound

Effects is strictly prohibited. Further, the Licensed Material may not be used in products that are not produced by You. The You is also prohibited from using Licensed Material in any product that is Substantially nature audio. Substantially, for the purposes of this agreement, is defined as containing pure nature sounds (without voice, music, human or machine sounds or other non-natural sounds) for 50% or greater of the total elapsed time of the Works. Examples of prohibited Works would be environmental soundscape albums, internet radio programming consisting substantially of nature sounds, nature videos without narration, some mobile applications, and ringtones. Upon written request that details a potential use by You, PSE will furnish a safe-harbor letter within 30 days allowing or disallowing use for the described Work(s).

- 2.4. You may not license, distribute, sell, rent, lease, sublicense, assign, and/or otherwise transfer ownership of any Licensee Work or the Licensed Material or Synchronized Licensed Material contained therein as part of the distribution process. At no point in time shall any ownership right in the Licensed Material or any copy of the Licensed Material vest in You. **Licensee Works are to be for educational / non-commercial purposes only. Licensee Works may be posted to university websites (e.g. ), and non-commercial student websites only.** Licensee Works may be included in production reels, student and personal websites, and submitted to student film festivals and competitions, pursuant to and in accordance with Sections 2.1 through 2.14 of this Agreement.
- 2.5. You may use the Synchronized Licensed Material as part of the Work to advertise or promote the Work, provided that the Licensed Material is not separated from the original Work. Any use of Licensed Material apart from the Work requires a separate license.
- 2.6. While efforts have been made to correctly caption the subject matter of, and to provide other information (including metadata) related to, the Licensed Material, PSE does not warrant the accuracy of such information.
- 2.7. You shall not provide any person or entity with any directions or instructions as to how the Licensed Work may be extracted from a Work or Synchronized License Material, or with any invitation, suggestion or authorization that the Licensed Work may be extracted from a Licensed Work or Synchronized License Material. Other than as part of the production of a Work pursuant to the terms herein, You may not modify, adapt, translate, reverse engineer, decompile, disassemble, or create derivative works based on the Licensed Material. You shall not alter or delete any "watermark" or other ordinarily imperceptible identifier embedded within the Licensed Material.
- 2.8. You shall not disclose access codes or passwords used in accessing any area of the Pro Sound Effects website to any other party and will maintain such codes or passwords as confidential.
- 2.9. Nothing contained in this Agreement shall be deemed to grant You the right to manufacture, distribute or sell Audio Products.
- 2.10. You shall not make the Licensed Material available in a manner intended to allow or invite a third party to download, extract, redistribute or access the Licensed Material as a standalone file, and You shall exercise due diligence and maintain strict safeguards in order to ensure that

no third party is able to do so. If You becomes aware that any third party has downloaded, extracted, redistributed or accessed the Licensed Material, You shall immediately notify PSE.

- 2.11. Defamatory or otherwise unlawful use of Licensed Material is strictly prohibited, whether directly or in context or juxtaposition with other material or subject matter. You shall also comply with any applicable regulations and/or industry codes.
- 2.12. You may not falsely represent, expressly or impliedly, that You is the original creator of a work that derives a substantial part of its artistic components from the Licensed Material.
- 2.13. If You Copies or Broadcasts the Work on its website(s), You shall not make any of the Licensed Material on its website(s) available as a standalone file pursuant to the license granted to You hereunder. In order to make any of the Licensed Material on Your website(s) available as a standalone file, a separate license is required.
- 2.14. If Works are included on any social media platform or other third party website, (y) in the event that any such social media platform or other third party website seeks to exploit purported rights to the Licensed Material contrary to the terms of this Agreement, You must notify PSE immediately and (z) in such event, upon PSE's request, You shall remove any Licensed Material from such platform or website.

### **3. Trial License Fee.**

**For the avoidance of doubt, no payment is required to be paid by You to PSE in consideration for the Trial License and other rights granted to You.**

### **4. Termination.**

- 4.1. **PSE may terminate this Agreement immediately upon notice if You do not enter into a formal paid Licensing Agreement after your 30 day trial** or if You breach any material term or condition of the Agreement and, if capable of remedy, fails to remedy such breach within thirty (30) days after being given notice thereof by the PSE. Either party may terminate this Agreement immediately upon notice if the other becomes insolvent or suffers any act of insolvency.
- 4.2. **Upon termination of this Agreement, all digitally-stored Licensed Material must be removed from Your digital library**, network configuration and/or similar arrangement and all DVDs, hard drives and/or any other equipment, including any connection cable or other peripherals provided to You under this Agreement, must be returned to PSE within thirty (30) days so that You does not retain any copies of the Licensed Material whatsoever.

### **5. Music Credit.**

If Licensed Material is used in an audio/visual production where credits are accorded to other providers of licensed material, credit shall be accorded, where technically feasible, in equal

size and comparable placement to such credit(s), substantially in the following form: “[Artist’s Name]/[Sound Effects Collection reference, if any]/PSE” or as otherwise notified by PSE.

## **6. Warranty and Limitation of Liability.**

- 6.1. PSE warrants that: (i) the Licensed Material will be free from defects in material and workmanship for thirty (30) days from delivery (Your sole and exclusive remedy for a breach of this warranty being a refund or credit); (ii) it has all necessary rights and authority to enter into and perform this Agreement; and (iii) Your use of the Licensed Material in its original form, and when used in accordance with this Agreement, will not infringe upon the rights of any third party, including copyrights and rights of privacy or publicity.
- 6.2. You warrant that You have has all necessary rights and authority to enter into and perform this Agreement.
- 6.3. Where Purchaser is licensing Licensed Material on behalf of a You, Purchaser hereby represents and warrants that: (i) Purchaser is authorized to act as an agent on behalf of You and has full power and authority to bind You to this Agreement; and (ii) if You subsequently disputes such power or authority, Purchaser shall be liable for any failure of You to comply with the terms of this Agreement. Nothing in this Section 6.3 shall excuse Purchaser’s obligation to make payment to PSE of the License Fee.
- 6.4. EXCEPT FOR THE LIMITED WARRANTY PROVIDED ABOVE, THE LICENSED MATERIAL IS PROVIDED “AS IS.” PSE DOES NOT MAKE ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE LICENSED MATERIAL OR ITS DISCOVERY AND/OR DELIVERY SYSTEMS (SUCH AS ANY AND ALL SOFTWARE AND/OR WEB APPLICATIONS USED BY PSE’S WEBSITE IN CONNECTION WITH THE DISCOVERY AND/OR DELIVERY OF THE LICENSED MATERIAL, FOR WHICH PSE SHALL HAVE NO LIABILITY IN THE CASE SUCH SOFTWARE AND/OR WEB APPLICATIONS DO NOT FUNCTION PROPERLY AT ANY GIVEN TIME), INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. PSE SHALL NOT BE LIABLE TO YOU OR ANY OTHER PERSON OR ENTITY FOR ANY PUNITIVE, SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR OTHER SIMILAR DAMAGES, COSTS OR LOSSES ARISING OUT OF THIS AGREEMENT, EVEN IF PSE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, COSTS OR LOSSES. SOME JURISDICTIONS DO NOT PERMIT THE EXCLUSION OR LIMITATION OF IMPLIED WARRANTIES OR LIABILITY FOR CERTAIN CATEGORIES OF DAMAGES. PSE SHALL NOT BE LIABLE FOR ANY DAMAGES, COSTS OR LOSSES ARISING OUT OF OR AS A RESULT OF MODIFICATIONS MADE TO THE LICENSED MATERIAL BY YOU OR THE CONTEXT IN WHICH LICENSED MATERIAL IS USED IN AN END USER WORK. IN NO EVENT WILL PSE’S CUMULATIVE LIABILITY WITH RESPECT TO ANY CLAIM MADE IN RELATION TO

OR ARISING OUT OF THIS AGREEMENT ON ANY THEORY OR BASIS EXCEED THE LICENSE FEE PAID BY YOU OR PURCHASER FOR THE LICENSED MATERIAL.

## **7. Indemnification.**

- 7.1. Provided Licensed Material is only used in accordance with this Agreement and You is not otherwise in breach of this Agreement, and as Your sole and exclusive remedy for any actual breach of the representations and warranties set forth in Section 6.1(ii)-(iii) above, PSE shall, subject to the terms of Section 6.4 above and Section 7.3 below, defend, indemnify, and hold harmless You and Your parent, subsidiaries and commonly owned or controlled affiliates and their respective members, officers, directors and employees from all damages, liabilities and expenses (including reasonable attorneys' fees) arising out of or as a result of claims by third parties ("Claims") relating to any actual breach by PSE of its warranties set forth in Section 6.1(ii)-(iii) above. PSE shall have no obligation under this Section 7.1 for any Claims that arise out of or are a result of: (i) Your modification of the Licensed Material, where the Claim would not have arisen but for the modification made by You; (ii) the context in which Licensed Material is used in an Work, where the Claim would not have arisen but for such context; (iii) Your failure to comply with the terms of this Agreement; or (iv) Your continued use of Licensed Material following notice from PSE, or upon Your knowledge, that Licensed Material is subject to a claim of infringement of another's right. The foregoing states PSE's entire indemnification obligation under this Agreement.
- 7.2. You shall, subject to the terms of Section 7.3 below, defend, indemnify and hold harmless PSE and its parent, subsidiaries and commonly owned or controlled affiliates and their respective members, officers, directors and employees from all damages, liabilities and expenses (including reasonable attorneys' fees) arising out of or as a result of claims by third parties relating to: (i) Your use of any Licensed Material outside the scope of this Agreement; or (ii) any other actual or alleged breach by You of this Agreement.
- 7.3. The party seeking indemnification pursuant to this Article 7 shall promptly notify the other party of such claim. At indemnifying party's option, indemnifying party may assume the handling, settlement or defense of any claim or litigation, in which event indemnified party shall cooperate in the defense of any such claim or litigation as may reasonably be requested by indemnifying party. Indemnified party shall have the right to participate in such litigation, at its expense, through counsel selected by indemnified party, provided that such counsel shall not be "counsel of record." Indemnifying party will not be liable for legal fees and other costs incurred prior to the other party giving notice of the claim for which indemnity is sought.

## **8. Condition of Licensed Material.**

You should examine all Licensed Material for possible defects (whether digital or otherwise). Without prejudice to Section 6.1(i) above, PSE shall not be liable for any loss or damage suffered by You or any third party, whether directly or indirectly, arising from any alleged or actual defect in any Licensed Material or its caption. You may return a defective product within thirty (30) days from delivery and shall receive a refund or credit for the License Fee paid for such

product, which may be used for a future purchase. PSE has no obligation to accept any returns for any other reason.

## **9. Reservation of Rights.**

All rights, which are not expressly granted by PSE to You pursuant to this Agreement, including all promotional materials or any other property owned or controlled by PSE, are specifically reserved by PSE. Except as expressly set forth in this Agreement, nothing contained herein shall be deemed to convey or transfer to You any ownership interest, including copyright, in or to the Licensed Material or any copy of the Licensed Material.

## **10. Miscellaneous Terms.**

- 10.1. Unauthorized Use. Any use of Licensed Material in a manner not expressly authorized by this Agreement or in breach of a term of this Agreement constitutes copyright infringement, entitling PSE to exercise all rights and remedies available to it under copyright laws around the world. In addition, and without prejudice to PSE's other remedies under this Agreement, PSE reserves the right to charge and You agrees to pay a liquidated damages fee equal to fifteen (15) times PSE's standard license fee for the unauthorized use of Licensed Material.
- 10.2. Withdrawal. Upon notice from PSE, or upon Your knowledge that any Licensed Material may be subject to a claim of another's right for which PSE may be liable, PSE may require You to immediately and at its own expense (i) stop using the Licensed Material; (ii) delete or remove the Licensed Material from its premises, network, computer systems and/or storage (electronic and physical); and (iii) ensure that its clients do likewise. PSE shall provide You with comparable Licensed Material (which comparability will be determined by PSE in its reasonable commercial judgment), free of charge, but subject to the other terms and conditions of this Agreement.
- 10.3. Governing Law/Arbitration. This Agreement will be governed in all respects by the substantive laws of the State of New York, U.S.A., without regard to its conflict of law provisions. Any disputes arising from or related to this Agreement or its enforceability, or the business relationship between the parties, shall be finally settled by binding, confidential arbitration held in New York, NY, U.S.A, using the rules and procedures of the Commercial Rules of the American Arbitration Association. The arbitration proceedings shall be conducted in English and all documentation shall be presented and filed in English. The decision of the arbitrator(s) shall be final and binding on the parties, and judgment may be entered on the arbitration award and enforced by any court of competent jurisdiction. The prevailing party shall be entitled to recover its reasonable legal costs relating to the aspect of its claim or defense on which it prevails, and any opposing costs awards shall be offset. The United Nations Convention on Contracts for the International Sale of Goods does not govern this Agreement. Notwithstanding the foregoing, PSE shall have the right to commence and prosecute an action or proceeding before any court of competent jurisdiction to obtain injunctive or other equitable



relief against You in the event that, in the opinion of PSE, such action is necessary or desirable to prevent actual or threatened infringement of Licensed Material.

- 10.4. **Further Assurances.** Each party will, and will use its reasonable efforts to cause any third party to, execute and perform such further acts, deeds and documents as may from time to time be required to give full legal and practical effect to the Agreement.
- 10.5. **Severability.** If one or more of the provisions contained in this Agreement is found to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not be affected, and, if permitted, the court or arbitrator(s) shall apply any "blue pencil" rule that may be applicable, so as to enforce the lawful intent of the parties, as found by such court or arbitrator(s).
- 10.6. **Waiver.** No action of either party, other than express written waiver, may be construed as a waiver of any provision of this Agreement. A delay on the part of either party in the exercise of its rights or remedies will not operate as a waiver of such rights or remedies, and a single or partial exercise by either party of any such rights or remedies will not preclude other or further exercise of that right or remedy. A waiver of a right or remedy on one occasion will not be construed as a bar to or waiver of rights or remedies on any other occasion.
- 10.7. **Entire Agreement.** This Agreement is intended for end user clients of PSE and contains all the terms of the license agreement. No terms or conditions may be added or deleted unless agreed to in a writing signed by both parties. In the event of any inconsistency between the terms contained herein and the terms contained on any purchase order or invoice in connection with Licensed Material governed by this Agreement, the terms of this Agreement shall govern.
- 10.8. **Assignment.** You may not assign its rights or obligations under this Agreement without the prior approval of PSE, which will not be unreasonably withheld and shall never be withheld in the case of an assignment to an entity or to a trust controlled by You or for the sole benefit of You or Your immediate family, it being understood that any such assignee shall become subject to all terms, conditions and obligations of this Agreement by executing a joinder. PSE may assign its rights, obligations and duties under this Agreement, in whole or in part, to any entity controlling, controlled by, or under common control with PSE as part of a merger, reorganization or sale of assets by PSE.
- 10.9. **Taxes.** All License Fees are exclusive of any applicable sales, use, withholding or other transactional taxes (if any), which are the sole responsibility of You or Purchaser.
- 10.10. **Binding Effect.** Except as otherwise provided herein to the contrary, this Agreement shall be binding upon and inure to the benefit of the parties, their legal representatives, heirs, successors and permitted assigns.
- 10.11. **Third Party Beneficiaries.** Nothing contained in this Agreement is intended to benefit any third parties not specifically herein enumerated, and no person or entity is entitled to any benefits as a third party beneficiary hereunder on account of any obligation of the parties hereto; it being expressly understood that the benefits, duties and obligations of any of the parties hereunder are solely and exclusively the rights and obligations of said parties and are not intended to benefit any third parties unless expressly stated to the contrary herein.
- 10.12. **Survival.** The termination of this Agreement will not affect the accrued rights and obligations of the parties existing at the date of termination. Sections 4.2 and 6.4 and Article XII will survive termination of the Agreement, as will any matter arising under the Agreement

either expressly or that by its nature is required to be performed or apply after the term of the Agreement.

10.13. **Notices.** Parties shall provide all notices in writing via mail to the address set forth above, via email to [licensing@prosoundeffects.com](mailto:licensing@prosoundeffects.com), and/or via fax to 646-706-7728 if to PSE, and to You via the the contact information you have provided to PSE. Notice shall be deemed to have been given on the earlier to occur of (a) the date of the actual delivery, (b) if sent with a nationally recognized overnight courier services, fees prepaid, the first business day following receipt of the notice by the courier service for delivery (three business days in the case of international courier delivery), or (c) if by email or fax, on the day that such email or fax is sent (provided, however, that the sender sends a copy of such notice by another method provided in this Section 11.14 to the respective address of the party or at such other address of which such party shall have given written notice to the other as provided in this Agreement). Legal counsel for a party may provide notice on behalf of such party.

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