

## EXCLUSIVE LICENSING CONTRACT

The following is a legal agreement (the "**Agreement**") between you or your employer or other entity on whose behalf you are entering into this **Agreement** ("**Licensee**") and Plumager, Inc., a New York State corporation. **Licensee** agrees to read, understand and comply with all terms set forth in **Agreement** prior to downloading artwork ("**Licensed Artwork**") from Plumager, Inc.

If **Licensee** is entering into this **Agreement** on behalf of an employer or other entity, **Licensee** warrants and represents that **Licensee** has the full right and authority to do so. In the event that **Licensee** does not have such authority, **Licensee** agrees to be personally liable to Plumager, Inc. for any breaches of the terms of this **Agreement**.

Plumager, Inc. reserves the right to change this **Agreement** at any time, and **Licensee** agrees to be bound by such changes. If and when changes are made, notification will be provided to **Licensee**. **Licensee** is responsible for accepting all changes. If **Licensee** does not agree to **Agreement**, as same may be amended from time to time, **Licensee** must refrain from downloading and using **Licensed Artwork**. If the use contemplated by **Licensee** is not permitted by this **Agreement**, **Licensee** must contact Plumager, Inc for an **Agreement** with negotiated terms.

### 1. GRANT OF LICENSE

In consideration of payment to Plumager, Inc. of the **License Fee**, **Licensee** is hereby granted an exclusive license to use the **Licensed Artwork** for the full period of copyright (in most cases, a minimum of 70 years), whether alone or incorporated in or in conjunction with other works worldwide and in all currently known media. **Licensee** is granted sole use of the exclusive **Licensed Artwork** on items, which include physical products for sale, such as apparel, homeware, stationery, accessories, posters, postcards, and commercial merchandise and items for resale including unlimited reproduction, which allows unlimited units, items, yards for resale. Plumager, Inc. agrees to refrain from licensing or transferring ownership of **Licensed Artwork** to any third party for the full period of copyright.

### 2. LIMITATION OF USE

#### LICENSEE MAY NOT:

Use **Licensed Artwork** in a manner that infringes upon any third party's trademark or other intellectual property, or would give rise to a claim of deceptive advertising or unfair competition.

Use any **Licensed Artwork** (in whole or in part) as a trademark, service mark, logo, or other indication of origin, or as part thereof.

Falsely represent, expressly or by way of reasonable implication, **Licensee** or a person other than Plumager, Inc. to be the creator or copyright holder of the **Licensed Artwork** or any derivative work created from the **Licensed Artwork**.

Resell the **Licensed Artwork** (or otherwise make it available) alone or as part of a package, in any manner that would enable a third party to download the **Licensed Artwork** as a separate file, or online in downloadable format.

Use or display **Licensed Artwork** on websites or in connection with any service designed to sell or induce sales of user-commissioned "**Print-on Demand**" products using or incorporating Image(s), including, by way of example only, postcards, mugs, tee shirts, posters, giclée prints, wallpaper, artwork, and other items. For the purposes of this **Agreement**, the term "**Print on Demand**" means, a printing technology and business process in which copies of a product are not printed until an order for the product has been received.

Use the **Licensed Artwork** in an editorial manner, or on any third party social media website or platform, without the following credit adjacent to the **Licensed Artwork** or in audio/visual production credits: "© Plumager, Inc."

"Non-Transferable" as used herein means that except as specifically provided in this **Agreement**, you may not sell, rent, load, give, sub-license, or otherwise transfer to anyone, **Licensed Artwork** or the right to use **Licensed Artwork**. You may however, transfer **Licensed Artwork** to a third party for the sole purpose of causing such third party to produce and/or manufacture goods for **Licensee** incorporating **Licensed Artwork** to the terms and conditions herein.

The work produced with **Licensed Artwork** must be used solely for **Licensee**, **Licensee's** direct employer, client, or customer, who must be the end user of your work. **Licensee** agrees to take all commercially reasonable steps to prevent third parties from duplicating any **Licensed Artwork**. If **Licensee** becomes aware of any unauthorized duplication of copyrighted material owned by Plumager, Inc., **Licensee** agrees to notify Plumager, Inc. via email at legal@plumager.com.

### 3. OWNERSHIP

**Licensee** acknowledges that, other than as expressly stated herein, **Licensee** does not obtain any **Intellectual Property Rights** whatsoever of the **Licensed Artwork** by virtue of this **Agreement** and that other than as expressly stated herein, all **Intellectual Property Rights** of the **Licensed Artwork** shall at all times be and remain the property of Plumager, Inc. This includes all copyright, patents, database rights, registered and unregistered design rights, typography right, trademarks and service marks and applications for any of the foregoing, together with all trade secrets, know-how, rights to confidence, and other intellectual and industrial property rights in all parts of the world.

#### 4. PAYMENT

Licensee acknowledges "License Fee" as that displayed on [www.plumager.com](http://www.plumager.com) at time of Agreement. Licensee shall pay the License Fee immediately to Plumager, Inc. in accordance with the methods of payment set out on [www.plumager.com](http://www.plumager.com) and, upon authorization of such payment, the Licensed Artwork shall be made available for download for 48 hours.

#### 5. CANCELLATION/REFUNDS

All sales/transactions are final. Plumager, Inc. shall be under no obligation to provide a refund or exchange after payment has been made and Licensed Artwork files transferred.

All Licensed Artwork is provided "as is" without warranty of any kind, either express or implied, including, but not limited to the implied warranties of non-infringement, merchantability, or fitness for a particular purpose.

#### 6. EXCLUSIVITY

This Agreement does not create an exclusive relationship between the parties. Licensee is free to engage others to perform services of the same or similar nature to those provided by Plumager, Inc., and Plumager, Inc. shall be entitled to offer and provide products and services to others, solicit other clients and otherwise advertise the products and services offered by Plumager, Inc.

Plumager, Inc. shall not be entitled to assign or license any rights granted to Licensee under this agreement to any third party without notice to Licensee. Licensee shall not be entitled to assign or sub-license rights to Licensed Artwork under this agreement.

The parties agree that neither Plumager, Inc. nor its employees or contract personnel are, or shall be deemed to be, employees of Licensee. No agency, partnership, joint venture, or employee-employer relationship is intended or created by this Agreement. Neither party is authorized to act as agent or bind the other party except as expressly stated in this Agreement. Plumager, Inc. and the Licensed Artwork or any other deliverables prepared by Plumager, Inc. shall not be deemed a work for hire for Licensee as defined under Copyright Law. All rights granted to Licensee are contractual in nature and are expressly defined by this Agreement.

#### 7. PROMOTIONAL USAGE

Licensee hereby grants Plumager, Inc. a worldwide, non-exclusive, limited license to use Licensee's trademarks in Plumager, Inc.'s promotional materials, including a public customer list. Plumager, Inc.'s use of Licensee's trademarks shall at all times conform to Licensee's then-current trademark use policies as made available to Plumager, Inc. and shall at all times inure to the benefit of Licensee. Plumager, Inc. further agrees that it will use commercially reasonable efforts to terminate any particular use of Licensee's trademark no later than thirty (30) days from the date of receipt by Plumager, Inc. of email request to [legal@plumager.com](mailto:legal@plumager.com).

#### 8. CONFIDENTIAL INFORMATION

Each party acknowledges that in connection with this Agreement it may receive certain confidential or proprietary technical and business information or materials of the other party, which relate to past, present, or future products including, but not limited to vendor lists, creative works, marketing strategies, and pending projects/proposals ("Confidential Information"). Each party, its agents and employees shall hold and maintain in strict confidence all Confidential Information, and all physical forms thereof, whether disclosed before this Agreement is signed or afterward, shall not disclose Confidential Information to any third party, and shall not use any Confidential Information except as may be necessary to perform its obligations under the Agreement or as may be required by a court or governmental authority. Notwithstanding the foregoing, Confidential Information shall not include any information that is in the public domain or becomes publicly known through no fault of the receiving party, or is otherwise properly received from a third party without an obligation of confidentiality.

#### 9. INDEMNIFICATION

Licensee will indemnify and defend Plumager, Inc. against all claims, liability, damages, costs, and expenses, including reasonable legal fees and expenses, arising out of the creation or any use of the Licensed Artwork or materials furnished by Licensee.

The Licensee agrees that Licensed Artwork has not been created to meet individual requirements and it is Licensee's sole responsibility to investigate prior to entering into this agreement that the Licensed Artwork is satisfactory. Plumager, Inc. makes no warranty or representation in that respect and no failure of any part or the whole of the Licensed Artwork to be suitable for Licensee's requirements shall entitle Licensee not to accept the same or give rise to any right or claim against Plumager, Inc.

Licensee further agrees to indemnify Plumager, Inc. for all costs and expenses that Plumager, Inc. incurs in the event that Licensee breaches any of the terms of this or any other agreement with Plumager, Inc.

Whilst Plumager, Inc. makes all reasonable attempts to exclude viruses from the Licensed Artwork, Plumager, Inc. cannot ensure such exclusion and no liability is accepted for viruses. Thus, upon receipt, Licensee agrees to thoroughly scan Licensed Artwork and insure against any associated risk.

## 10. ARBITRATION

Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by binding individual (not class) arbitration administered under the **Commercial Arbitration Rules of the American Arbitration Association** or of the **International Centre for Dispute Resolution** in effect on the date of the commencement of arbitration, rather than in court, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof or having jurisdiction over the relevant party or its assets. The place of arbitration shall be the state and county of **New York**. The language of the arbitration shall be **English**. There shall be one arbitrator to be mutually agreed by the parties. Both parties agree that the following claims are exceptions to the Arbitration Agreement and will be brought in a judicial proceeding in a court of competent jurisdiction: (i) any claim related to actual or threatened infringement, misappropriation or violation of a party's copyrights, trademarks, trade secrets, patents, or other intellectual property rights; (ii) any claim seeking emergency injunctive relief based on exigent circumstances (e.g., imminent danger or commission of a crime, hacking, cyber-attack) (iii) any claim arising solely from Licensee's alleged failure to pay fees due to Plumager, Inc. This arbitration provision will survive termination of this Agreement.

If a court decides that applicable law precludes enforcement of any of the limitations in this Agreement as to a particular claim for relief, then that claim (and only that claim) must be severed from the arbitration and may be brought in court.

This Agreement shall be construed neither against nor in favor of any party, but rather in accordance with the fair meaning of the language hereof. This Agreement is governed by and shall be construed in accordance with the laws of the State of New York, without respect to its conflict of laws principles.

Neither Plumager, Inc. nor any of its officers, employees, managers, members, shareholders, directors, or suppliers shall be liable to Licensee or to any other person or entity for any general, punitive, special, indirect, consequential or incidental damages, or lost profits or any other damages, costs or losses arising out of Licensee's use of the Licensed Artwork, Plumager, Inc.'s breach of this agreement, or otherwise, unless expressly provided for herein, even if Plumager, Inc. has been advised of the possibility of such damages, costs or losses.

## 11. SEVERABILITY

If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

## 12. WAIVER

No action of either party, other than in writing agreed to by the parties, may be construed to waive any provision of this Agreement and a single or partial exercise by either party of any such action will not preclude further exercise of other rights or remedies in this Agreement.

## 13. ADDITIONAL TERMS

This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations, and understandings between them, whether written or oral, relating to its subject matter. Licensee acknowledges to have read and understood this Agreement and agrees to be bound thereby.