

## **CINEMAGRAPH PRO FOR MAC LICENSE AGREEMENT**

This Agreement is a legal agreement between you (either an individual or legal entity) and Flixel Photos Inc. (hereinafter, “**Flixel**”) for the use of the Cinemagraph Pro for Mac application.

The Cinemagraph Pro for Mac application, together with all materials included in or distributed through it (hereinafter, collectively “**Cinemagraph Pro**”), is licensed, not sold, to you by Flixel. Flixel reserves all rights not expressly granted to you within this Agreement.

By downloading, installing, copying or otherwise using all or any portion of Cinemagraph Pro you agree to be bound by the terms of this Agreement. If you do not agree to this Agreement, please do not use Cinemagraph Pro.

### **1.**

#### **LICENSE GRANTS**

Flixel may, in its sole discretion, grant you a Trial License, a Commercial License or an App Store License, all as further set out below.

If you have not purchased or otherwise rightfully obtained a Commercial License or an App Store License, the Trial License Terms below are applicable to your use of Cinemagraph Pro. The Trial License Terms are also applicable to any usage of Cinemagraph Pro by you that is not covered under any other licenses you may have.

You have obtained a Commercial App Store License if you purchased Cinemagraph Pro from the Mac App Store, or if you have otherwise legally obtained a copy of Cinemagraph Pro from the Mac App Store.

The Commercial License Terms below are applicable if you have a Commercial License. The App Store License Terms below are applicable if you have an App Store License.

The General Terms are applicable in all cases.

#### **1.1. Trial License Terms**

Flixel grants you a non-exclusive, non-transferable, limited, revocable license to use Cinemagraph Pro for evaluation, promotional and/or review purposes, only in accordance with the terms and conditions set forth herein. You agree not to transfer, assign, rent, lease, sublicense, or lend Cinemagraph Pro to any other person or entity, except as expressly provided herein, and that any attempt to do so in any other way shall render the license null and void. You may download and save a copy of Cinemagraph Pro onto one computer but you agree that your limited license does not allow you to network or otherwise share a copy of the software. You understand and agree that any Cinemagraph images created using your Trial copy of Cinemagraph Pro will contain watermarks.

If you wish to use Cinemagraph Pro for other than the stated purposes, you need to purchase a Commercial License to use Cinemagraph Pro.

Copies of Cinemagraph Pro that were downloaded from the Mac App Store are incapable of being used under these terms. To use Cinemagraph Pro under these terms you will need to obtain a copy from the Cinemagraph Pro website.

## **1.2. Commercial License Terms**

Flixel grants you a non-exclusive, limited, revocable license to use Cinemagraph Pro, only in accordance with the terms and conditions set forth herein. You agree not to transfer, assign, rent, lease, sublicense, or lend Cinemagraph Pro to any other person or entity, except as expressly provided herein, and that any attempt to do so in any other way shall render the license null and void.

### **(a) Scope**

This License grants you the right to activate and use Cinemagraph Pro on either (a) one computer used by multiple people, or (b) several computers, within reasonable limits, used by one and the same person. Flixel may in its sole discretion define and adjust what said reasonable limits amount to. This License does not allow multiple users to use Cinemagraph Pro on multiple computers.

### **(b) Transfer**

You may not transfer, in whole or in part, your Cinemagraph Pro license rights to another person or legal entity.

## **1.3. App Store License Terms**

Flixel grants you a non-exclusive, limited, revocable license to use Cinemagraph Pro, only in accordance with the terms and conditions set forth herein. You agree not to transfer, assign, rent, lease, sublicense, or lend Cinemagraph Pro to any other person or entity, except as expressly provided herein, and that any attempt to do so in any other way shall render the license null and void.

### **(a) Scope**

This License grants you the right to use Cinemagraph Pro on all Mac Products that are owned and/or controlled by you and as permitted by the Usage Rules set forth in the terms of service applicable to the Mac App Store.

### **(b) Transfer**

You may not transfer, in whole or in part, your Cinemagraph Pro license rights to another person or legal entity.

**(c) Third Party Rights**

Apple, Inc. and/or its subsidiaries (hereinafter, collectively, “**Apple**”) are not responsible for Cinemagraph Pro in any form or matter. This limitation of responsibility includes but is not limited to: the content of Cinemagraph Pro, the furnishing of any maintenance and support services; any representations, warranties or conditions, whether express or implied by law; any claims, losses, liabilities, damages, costs or expenses pertaining to any such warranties; any action, settlement or discharge pertaining to any intellectual property infringement claims pertaining to Cinemagraph Pro.

**(d) Third Party Mediation**

In the event Cinemagraph Pro fails in any way to conform to any applicable representation, warranty, or condition, whether express or implied by law, you may notify Apple, and Apple will refund the purchase price for Cinemagraph Pro to you. Apple is a third party beneficiary to this Agreement. Upon your acceptance of this Agreement, Apple will have the right to enforce it as in said role.

**2.**

**GENERAL TERMS**

**2.1. Copyright And Restrictions**

Copyright and other intellectual, industrial and/or proprietary rights to Cinemagraph Pro and to any whole or partial copies that you make are owned by Flixel or its licensors. You agree not to modify, adapt, translate, reverse engineer, decompile, disassemble, or otherwise attempt to reveal the inner workings or modify the functionality of Cinemagraph Pro except where explicitly allowed in the terms of this Agreement. You agree not to remove any label or notice indicating that Cinemagraph Pro is the subject of copyright and other intellectual, industrial or proprietary rights of Flixel and/or third parties. You may not redistribute Cinemagraph Pro or any part thereof. You agree not to purchase Cinemagraph Pro licenses for the purpose of reselling and/or distributing them, unless prior written agreement from Flixel is granted.

**2.2. Limitation Of License Validity**

Any license to use Cinemagraph Pro granted to you under this Agreement is limited to the current major release of Cinemagraph Pro exclusively. Flixel will, in its sole discretion, decide when a version of Cinemagraph Pro will be considered a new major release. Flixel reserves the right to change the terms of this Agreement in any future major or minor release of Cinemagraph Pro.

**2.3. Additional Services**

Fees may apply for additional services and products offered by Flixel and others, including, but not limited to, services that integrate with Cinemagraph Pro or extend the functionality of Cinemagraph Pro.

#### **2.4. Warranties**

Flixel does not represent or warrant that Cinemagraph Pro operates on the computer that you intend Cinemagraph Pro to be used on and you shall be solely responsible for obtaining a computer compatible with Cinemagraph Pro. You acknowledge and agree that Flixel is providing you Cinemagraph Pro on an ‘as-is’, ‘as-available’ basis. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT AS EXPRESSLY PROVIDED HEREIN, FLIXEL MAKES NO REPRESENTATION, WARRANTY, CONDITION, TERM, UNDERTAKING OR GUARANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE REGARDING CINEMAGRAPH PRO. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, FLIXEL HEREBY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, CONDITIONS, TERMS, REPRESENTATIONS, UNDERTAKINGS AND GUARANTIES, INCLUDING, WITHOUT LIMITATION, ANY WITH RESPECT TO TITLE, MERCHANTABILITY, SATISFACTORY QUALITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE REGARDING CINEMAGRAPH PRO. Flixel does not and cannot warrant the performance or results that you may obtain using Cinemagraph Pro, or that Cinemagraph Pro operates error free.

#### **2.5. Health Warning**

If you or anyone in your family has experienced symptoms linked to an epileptic condition (e.g. a seizure or loss of awareness), please immediately consult your physician before using Cinemagraph Pro. If you experience dizziness, altered vision, eye or muscle twitching, involuntary movements, loss of awareness, disorientation, and/or convulsions, please stop using Cinemagraph Pro immediately and consult your physician.

#### **2.6. Limitation Of Liability**

To the maximum extent permitted by applicable law, Flixel is not liable to you or to any third party for any damages, either direct, indirect, incidental, consequential or otherwise – including in each case, but not limited to damages rising from inability to use Cinemagraph Pro or access data, loss of data, loss of business, loss of profits, business interruptions or the like – arising out of your use or inability to use Cinemagraph Pro even if Flixel has been advised of the possibility of such damages. Notwithstanding the above, or anything else contained in this Agreement, neither party’s liability for death or personal injury resulting from its own negligence shall be limited. Some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so the above limitations or exclusions may not apply to you.

#### **2.7. Indemnity**

You agree at all times to indemnify, defend and hold harmless Flixel, its employees, contractors, agents, officers, directors, successors and assigns (the “**Indemnified Parties**”) from and against any claims, losses, judgements, actions, proceedings, damages, costs and expenses (including without limitation, reasonable legal and other fees and disbursements) incurred by any of the

foregoing parties due to or resulting from your use or misuse of Cinemagraph Pro or from your violation of this Agreement.

## **2.8. Infringement**

If Cinemagraph Pro is, or in Flixel's opinion is likely to become, the subject of a claim of infringement, Flixel shall have the right, without obligation and in its sole discretion, to: (i) procure for you the right to continue to use Cinemagraph Pro; (ii) replace or modify Cinemagraph Pro in such a way as to make the modified Cinemagraph Pro non-infringing; or (iii) terminate this Agreement. The foregoing states Flixel's and its subsidiaries' entire liability and obligation to you and your sole remedy with respect to any actual or alleged infringement of intellectual property rights of any kind.

## **2.9. Technical And Related Information**

Flixel and its subsidiaries may collect and use technical and related information, including but not limited to technical information concerning your computer, system and application software as described in Flixel's Privacy Policy. Flixel does not collect (a) any information that identifies your work, (b) any file names or file contents of anything you work on using Cinemagraph Pro. Flixel and its subsidiaries shall use the collected information as described in its Privacy Policy.

## **2.10. Personal Information**

This article is not applicable under the App Store License terms.

Flixel may render this License Agreement null and void if it finds that the personal information that you submitted during online activation or when buying Cinemagraph Pro is incorrect, inaccurate or outdated. It is your sole responsibility to keep Flixel informed of any changes in your personal information at all times under this Agreement and when you are using Cinemagraph Pro. To do so, please contact Flixel through the appropriate sections of [www.flixel.com/support/](http://www.flixel.com/support/) or, where possible, from within Cinemagraph Pro itself. Flixel may require you to verify any changes to personal information.

Flixel shall collect, use and disclose your personal information in accordance with its [Privacy Policy](#).

## **2.11. Privacy**

Flixel will not sell or in any way license usage of your personal information to third parties.

## **2.12. Online Activation**

This article is not applicable under the App Store License terms.

The Cinemagraph Pro Software requires online activation in order to use it under the Commercial, Site and/or Trial License Terms. If you do not activate your copy of Cinemagraph Pro, all of or part of the functionality of your copy of Cinemagraph Pro is disabled. Flixel may in

its sole discretion decide to adjust the exact technical conditions under which unactivated Cinemagraph Pro copies cease to work.

You are required to submit personal information during online activation. You need an active, functional internet connection to activate your copy of Cinemagraph Pro. Your licensed use of Cinemagraph Pro is bound to the computer(s) you used to complete activation. You may need to reactivate your copy of Cinemagraph Pro after replacing the logic board or otherwise changing the hardware configuration of your computer. You may need to contact Flixel to complete reactivation.

### **2.13. Third Party Software Licenses**

Cinemagraph Pro may make use of certain third party software. Notwithstanding the foregoing, use of some third party materials included in Cinemagraph Pro Software may be subject to other license and other terms and conditions. The official copyright notices and specific license conditions of this third party software are to be found via the “About” window of Cinemagraph Pro or can be emailed to you upon request. You hereby agree to the terms and conditions of such third party software.

### **2.14. Term And Termination**

This Agreement is effective until terminated. Without prejudice to any other rights, Flixel may immediately terminate this Agreement if you fail to comply with any of the terms and conditions set out in this Agreement. In such event you must promptly cease all use of Cinemagraph Pro and delete all copies of Cinemagraph Pro that are in your possession no later than fifteen (15) days after notification.

### **2.15. Entire Agreement**

This Agreement is the entire agreement between you and Flixel regarding Cinemagraph Pro and supersedes all prior oral or written communications and representation with respect to Cinemagraph Pro or any other subject matter covered by this Agreement.

### **2.16. Severance**

If any of the provisions of this Agreement is held to be void, unenforceable or illegal, the other provisions shall continue in full force and effect. The affected provision will be construed as limited to the extent necessary to be consistent with and fully enforceable under the applicable law.

### **2.17. Export Controls**

You agree not to export, reexport or use Cinemagraph Pro except as explicitly authorized by Canadian law and the laws of the jurisdiction in which you obtained your Cinemagraph Pro license. You also agree that you will not use Cinemagraph Pro for any purposes prohibited by Canadian law.

## **2.18. Applicable Law**

This Agreement is governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein, excluding any conflicts of laws principles. The parties expressly disclaim the application of the UN Convention on Contracts for the International Sale of Goods. You agree that Flixel, in its sole discretion, may elect to bring legal action regarding any dispute arising from or in connection with this Agreement before the courts of Toronto, Ontario, or in any court in any country which may have jurisdiction and you herewith irrevocably and unconditionally submit to the exclusive jurisdiction of the courts chosen by Flixel.

## **2.19. Assignment**

Except as expressly permitted herein, you acknowledge and agree that you may not transfer or assign any of your rights or obligations hereunder, whether by operation of law or otherwise, without the prior express written consent of Flixel.

## **2.20. Construction.**

The titles of the sections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement. Unless the context of this Agreement clearly requires otherwise: (i) references to the plural include the singular, the singular the plural, and the part the whole, (ii) “or” has the inclusive meaning frequently identified with the phrase “and/or,” (iii) “including” has the inclusive meaning frequently identified with the phrase “including but not limited to” or “including without limitation,” and (iv) references to “hereunder,” “herein” or “hereof” relate to this Agreement as a whole. Any reference in this Agreement to any statute, rule, regulation or agreement, including this Agreement, shall be deemed to include such statute, rule, regulation or agreement as it may be modified, varied, amended or supplemented from time to time. The parties agree that this Agreement shall be fairly interpreted in accordance with its terms without any strict construction in favour of or against either party and that ambiguities shall not be interpreted against the drafting party.

## **2.21. No Waiver**

Flixel will not be considered to have waived any of its rights or remedies described in this Agreement unless the waiver is in writing and signed by Flixel. No delay or omission by Flixel in exercising its rights or remedies will impair or be construed as a waiver. Any single or partial exercise of a right or remedy will not preclude further exercise of any other right or remedy. Flixel’s failure to enforce the strict performance of any provision of this Agreement will not constitute a waiver of Flixel’s right to subsequently enforce such provision or any other provisions of this Agreement.

## **2.22. Questions**

If you have any questions concerning this Agreement, or questions, complaints or claims regarding Cinemagraph Pro, please contact Flixel through the appropriate sections of [www.flixel.com/support/](http://www.flixel.com/support/).