

Element 3D User License Agreement

Video Copilot User License Agreement for Element 3D Plugin and Related Materials

PLEASE READ THIS CONTRACT CAREFULLY. BY USING THE ELEMENT 3D PLUG-IN OR ANY RELATED MATERIALS PROVIDED BY VIDEO COPILOT (INCLUDING WITHOUT LIMITATION THE MOTION DESIGN PACK, PRO SHADERS OR ANY PRO 3D MODEL PACK)(COLLECTIVELY, THE "PACKAGE")) YOU ACCEPT AND AGREE TO ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT. YOU AGREE THAT THIS AGREEMENT IS ENFORCEABLE JUST LIKE ANY WRITTEN AGREEMENT THAT YOU SIGNED. IF YOU DO NOT AGREE, DO NOT CONTINUE TO DOWNLOAD OR USE THIS SOFTWARE. IF YOU AGREE TO THE TERMS OF THIS AGREEMENT, PLEASE CLICK "**I ACCEPT**" AT THE BOTTOM OF THIS AGREEMENT.

1. DEFINITIONS. In this Agreement, "**Package**" includes the ELEMENT 3D PLUG-IN, MOTION DESIGN PACK, PRO SHADERS and all 3D MODEL PACKS (or any one of the listed products or other products offered by us for use with the Element 3D Plug-In). Each component of the Package offered for sale by us also may be referred to as a "**Product**." "**Video Copilot**," **we**," "**us**" or "**our**" refers to Video Copilot, Inc., 18277 Pasadena St., Suite 108, Lake Elsinore, CA 92530, and any affiliates of Video Copilot, Inc. "**You**" and "**Your**" refer to you, the user of the Package, and any person or entity accessing or using this Package. "**Software**" refers to the proprietary software of Video Copilot that is included in the Package and that enables You to create, render and modify images into Works (as defined in Section 2), and shall also encompass any help documentation. "**Content**" refers to the proprietary objects, images, presets and other digital files owned by Video Copilot and its licensors that are included in certain Products to facilitate Your creation of special effects, and may include various audiovisual content such as videos and clips, photographs, models, drawings, wire files, textures, motion files and music.

2. LICENSE. Video Copilot grants You a non-exclusive, nontransferable, royalty-free right and license to use the Product(s) in this Package, which contain our proprietary Software and Content for the purposes of internally developing Your own derivative works such as videos ("**Works**") for Your own use, and even for sale, subject to the restrictions set forth in this Agreement, especially Section 3. Your Works are subject to this Agreement to the extent that they incorporate any Software or Content from the Package or any Product. You may not sell, sublicense, rent, loan or lease the Package or any Product to any third party. You also agree not to reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the Software except to the extent You may be expressly permitted limited decompilation rights under applicable law, and only after You have first requested interoperability information from Video Copilot, if we have failed to provide it within a reasonable time after Your request. We have the right to impose reasonable conditions and to request a reasonable fee before providing such information. You may make a limited number of copies of the Product documentation to be used for internal development purposes and not for general

business purposes (except as otherwise set forth in Section 3) or for distribution by any means. Any employees who use any Product shall be subject to this Agreement; all employees who are users of the Package or Product require individual licenses. This is a single user license for You; You may install the Product on up to two (2) devices that You use, such as a computer at work and a laptop, so that You are able to use the Package at Your reasonable convenience. In addition, if an end user purchases a license to the Product in accordance with Section 3(a) below so that such end user can have Your Work rendered or modified, the end user can outsource its license to You or another party so that you or such other party can do the rendering for the end user (with the understanding that the end user really isn't using the Product, so that in effect it's still a single user license). In the event that the Package or any part of it is defective, or You lose Your access because of a computer crash or for some other reason, we will work with You to ensure that Your proper and honest use of the Package, or any Product that You have acquired, can continue without additional expenditure on Your part.

3. ADDITIONAL LICENSE RESTRICTIONS.

(a) Template/Pre-Render and Stock Media Restrictions. The Element 3D Plug-In and other Products enable You to render and create Your own Works. You cannot pre-render or flatten images created with the Product using Content or other media from any source for use as a template or stock media to offer for sale and/or use to third parties (except as otherwise indicated below). But You can create a project using the Software/Package so long as no Content/media from any source is pre-rendered, and offer or sell that to third parties. However, Your offer or sale of the project to others cannot include any Content; the purchaser of your project must own or acquire a license to such Content by purchasing the appropriate Product. Once the end user acquires the Product, that person can outsource to you the modification of your project, as indicated in Section 2. You have no right to resell our Content or media from any source, as rendered by the Software/Package, in any manner that we regard as being in competition with our Package, or to create a business of offering pre-rendered works or templates (whether offered free or for payment) that are renderings or modifications of our Content or media from any source, and which may in fact compete with the Package or the Products in our sole discretion. In this regard, no Package Content that You have rendered or any Work that You have created with the Products or media from any source can serve as any sort of stock footage, stock photography or stock media, as animated background or editable media files, or otherwise be offered to the public or compete with the Package or any Product, whether offered for free or payment. The exception to the foregoing is the case where you sell a finished, locked Work that you have rendered (provided that it is NOT your own offering of our Model Packs/Content that could compete with our Products, whether or not rendered, which is strictly prohibited) to a single end user; that is permitted because it will not be further modified or rendered (e.g., the trailer of a film, a film or a commercial). You are also granted the right to transfer a finished, locked Work to a finishing studio for the purpose of broadcast or film-out, provided the studio does not reuse any of your Work for any other production.

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

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

(d) Prohibited Uses. The Content that you adapt and modify for use in your own Works shall not be used in a Work that infringes the copyright or other intellectual property right of any third party, that is defamatory, libelous or obscene, or that is in any way unlawful. In addition, you will not attempt to violate any security mechanisms in the Content or Software, or to misrepresent who you are, or to engage in any other unlawful or undesirable conduct. In order to ensure your compliance, Video Copilot reserves the right to monitor your use of the Content, and to audit your installation and use of the Content at any time upon no more than one week's notice during customary business hours, either by itself or using an audit or accounting firm for this purpose.

4. SUPPORT. Video Copilot is not under any obligation to provide any support under this Agreement, including upgrades or future versions of the Products. Nonetheless, you should bring any concerns or problems you have to our attention at INFO@videocopilot.net. We want to make sure our users have a very positive experience with the Package, and we will use commercially reasonable efforts to address concerns that we believe, in our discretion, will improve the user experience.

5. CONFIDENTIAL INFORMATION. With respect to all Software provided as part of the Package and any other non-public information made accessible to You (collectively, "**Confidential Information**"), You agree to treat all Confidential Information with a high standard of care, and not share such information with any third party for the term of this Agreement, and ten (10) years after such term. Your obligations under this Section shall terminate when You can prove that (a) an item of Confidential Information is in the public domain through no fault of Yours, (b) an item of Confidential Information was developed by You or Your employees or agents independently of and without reference to any Confidential Information; or (c) Your disclosure of any item of Confidential Information was in response to a valid order by a court or other governmental body, was otherwise required by law, or was necessary to establish the rights of either party under

this Agreement (provided that we were given prior notice before any such disclosure and an opportunity to oppose the disclosure).

6. PROPRIETARY RIGHTS. You agree to respect and protect Video Copilot's copyright and other ownership interests in all Products in this Package that are accessible to You. You agree that all copies of items in this Package reproduced for any reason by You will contain the same copyright, trademark, and other proprietary notices as appropriate. We and our licensors retain title and ownership of the items in this Package, the media on which it is recorded, and all subsequent copies, regardless of the form or media in or on which the original and other copies may exist. Except as stated herein, this Agreement does not grant You any rights to patents, copyrights, trade secrets, trademarks, or any other rights in respect to the items in this Package.

7. TERM. This Agreement is in effect until terminated by either party. We have the right to terminate this Agreement immediately if You fail to comply with any of its terms or conditions. Upon any such termination, You must return all full and partial copies of the items in this Package immediately to us at the address set forth above. The following provisions survive any termination of this Agreement: Sections 3, and 5-13.

8. WARRANTY; DISCLAIMER. To the maximum extent permitted by applicable law, Video Copilot licenses the Products and Package, including without limitation the Software and Content, "AS IS" without any express warranties of any kind. With respect to the Software, we make no representation as to their adequacy for any particular purpose or to produce any particular result. We shall not be liable for loss or damage arising out of this Agreement or use of the Products, except as expressly indicated in this Agreement. VIDEO COPILOT AND ITS LICENSORS DO NOT WARRANT THE PERFORMANCE OR RESULTS YOU MAY OBTAIN BY USING THE PACKAGE. EXCEPT FOR ANY REPRESENTATION, WARRANTY OR CONDITION THAT CANNOT OR MAY NOT BE EXCLUDED OR LIMITED BY LAW THAT IS APPLICABLE TO YOU IN YOUR JURISDICTION, VIDEO COPILOT AND ITS LICENSORS MAKE NO REPRESENTATIONS, WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, CUSTOM, USAGE OR OTHERWISE, AS TO ANY OTHER MATTERS, INCLUDING BUT NOT LIMITED TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS. Some states or territories do not allow the exclusion of implied warranties so the above limitations may not apply to You. You may have rights which vary from jurisdiction to jurisdiction.

9. LIMITATION OF LIABILITY. IN NO EVENT WILL VIDEO COPILOT OR ITS LICENSORS BE LIABLE TO YOU FOR ANY DAMAGES, CLAIMS OR COSTS WHATSOEVER OR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL OR SPECIAL DAMAGES, OR ANY LOST PROFITS OR LOST DATA, EVEN IF WE OR ANY AGENT OF OURS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS, DAMAGES, CLAIMS OR COSTS. THESE LIMITATIONS AND EXCLUSIONS APPLY TO THE EXTENT PERMITTED BY APPLICABLE LAW. VIDEO COPILOT'S AGGREGATE LIABILITY AND THAT OF ITS LICENSORS IN CONNECTION WITH THIS

AGREEMENT SHALL BE LIMITED TO THE AMOUNT PAID BY YOU FOR THE PACKAGE OR ANY PRODUCT. NOTWITHSTANDING THE FOREGOING, VIDEO COPILOT EXPRESSLY DISCLAIMS ALL LIABILITY FOR ANY HARM TO A COMPUTER OR SYSTEM OR DEVICE ALLEGED TO HAVE BEEN CAUSED, OR CAUSED, BY ANY PRODUCT, SOFTWARE OR CONTENT. Nothing contained in this Agreement limits our liability to You if our gross negligence or willful misconduct or fraud has directly caused Your death or personal injury. Some states and territories do not allow the exclusion or limitation of incidental, consequential, or special damages, so the above limitation or exclusion may not apply to You.

10. INDEMNIFICATION.

(a) Indemnification by You. You agree to indemnify, defend (at Video Copilot's request) and hold Video Copilot and its officers, directors, employees and agents ("Indemnified Parties") harmless from and against any and all claims, liability, losses or legal proceedings, including attorneys' fees (collectively, "Claims"), that arise or result from Your use or distribution of the Package or any Product in violation of this Agreement, or your violation of the intellectual property rights of any third party. In the event that Video Copilot determines in its sole discretion that it is better positioned to defend itself against liability or equitable measures (such as an injunction) that You are, upon notice it will assume the defense directly but You shall be responsible for the cost of such defense.

(b) Indemnification by Video Copilot. Video Copilot will indemnify you against any damages finally awarded against you that arise from a third party Claim against you alleging that the Content (as received from Video Copilot in its unmodified form) infringes the U.S. intellectual property rights of such third party.

11. EXPORT REGULATIONS. You agree that none of the Products may be shipped, transferred, or exported into any country or used in any manner prohibited by the United States Export Administration Act or any other export laws, restrictions or regulations (collectively the "Export Laws"). In addition, if any part of the Package is identified as export controlled items under the Export Laws, You represent and warrant that You are not a citizen, or otherwise located within, an embargoed nation (including without limitation Iran, Syria, Sudan, Libya, Cuba and North Korea) and that You are not otherwise prohibited under the Export Laws from receiving the Product

12. GOVERNING LAW AND ARBITRATION. This Agreement shall be governed by and construed in accordance with the laws applicable in the State of California, excluding any conflict of law rules that might direct the selection of jurisdiction or venue other than in California. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by final and binding arbitration in Los Angeles County, California before a single arbitrator(s) with expertise in the technology

industry. The arbitration shall be administered by JAMS pursuant to its Streamlined Arbitration Rules and Procedures, and the arbitrator shall apply the laws applicable in the State of California. Judgment on the arbitral award may be entered in any court having jurisdiction thereof. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. The arbitrator shall, in the arbitral award, allocate all or part of the costs of the arbitration, including the fees of the arbitrator and the reasonable attorneys' fees (and accountant's fees) of the prevailing party, for payment by the non-prevailing party, and shall determine the prevailing party for this purpose.

13. GENERAL PROVISIONS. You may not assign Your rights or obligations under this Agreement without the prior written consent of Video Copilot. None of the provisions of this Agreement shall be deemed to have been waived by any act or failure to act by Video Copilot, its agents, or employees, except by an agreement in writing signed by an authorized signatory of Video Copilot. It is expressly agreed that a breach of Sections 2, 3 or 5 of this Agreement may cause irreparable harm to Video Copilot and that a remedy at law may be inadequate. Therefore, in addition to any other available remedies, Video Copilot will be entitled to seek an injunction or other equitable remedies in the event of any threatened or actual violation of such provisions. This Agreement governs in the event of any conflict between this Agreement and any other document or agreement that may affect Your rights in the Package. You acknowledge that You have read this Agreement, understand it, agree to be bound by it, and agree that it reflects a complete statement of Your agreement with Video Copilot which supersedes any prior agreement, oral or written, between Video Copilot and You with respect to the licensing to You of this Package or any Product. No modification of the terms of this Agreement will be enforceable against Video Copilot unless Video Copilot gives its express written consent. Video Copilot reserves the right to modify this Agreement at any time. You will be subject to any new or modified terms of which Video Copilot provides notice to You going forward, not retroactively. Should You reject the new or modified Terms, You may terminate this Agreement. Video Copilot and the Video Copilot logo are either trademarks or registered trademarks of Video Copilot in the United States and/or other countries.