

Terms of Use:

Effective Date: March 11, 2020

1. Introduction and Overview.

These Terms of Use (“Terms”) set forth a legally binding agreement between you and Red Penguins Documentary LLC (“Red Penguins”, “we”, “our”, or “us”), and govern your use of any online service location that posts a link to these Terms, including our website www.redpenguinsmovie.com, and all features, content, and other services that we own, control and make available through such online service location (collectively, the “Service”).

In some instances, both these Terms and separate terms will apply to your use of the Service (“Additional Terms”). To the extent there is a conflict between these Terms and any applicable Additional Terms, the Additional Terms will control unless they expressly state otherwise.

By using the Service, you agree to these Terms, and consent to our collection, use and disclosure practices, and other activities as described in our Privacy Policy. If you do not agree and consent, discontinue use of the Service.

2. Service Use

A. Content.

The Service contains: (i) materials and other items relating to Red Penguins and its products and services, and similar items from our licensors and other third parties, including all layout, information, databases, articles, posts, text, data, files, images, scripts, designs, graphics, instructions, illustrations, photographs, sounds, pictures, videos, advertising copy, URLs, technology, software, interactive features, the “look and feel” of the Service, and the compilation, assembly, and arrangement of the materials of the Service and any and all copyrightable material; (ii) trademarks, logos, trade names, trade dress, service marks, and trade identities of various parties, including those of Red Penguins; and (iii) other forms of intellectual property (all of the foregoing, collectively “Content”). All right, title, and interest in and to the Service and the Content is the property of Red Penguins or our licensors or certain other third parties, and is protected by U.S. and international copyright, trademark, trade dress, patent and/or other intellectual property and unfair competition rights and laws to the fullest extent possible.

B. Limited License.

Subject to your strict compliance with these Terms and any applicable Additional Terms, Red Penguins grants you a limited, non-exclusive, revocable, non-assignable, personal, and non-transferable license to download, display, view, use, and play the Content on a personal computer, browser, laptop, tablet, mobile phone, or other internet-enabled device (each, a "Device") and/or print one copy of the Content as it is displayed to you, in each case for your personal, non-commercial use only. The foregoing limited license (i) does not give you any ownership of, or any other intellectual property interest in, any Content, and (ii) may be suspended or terminated for any reason, in Red Penguins' sole discretion, and without advance notice or liability. Your unauthorized use of the Content may violate copyright, trademark, privacy, publicity, communications, and other laws, and any such use may result in your personal liability, including potential criminal liability.

C. Accounts and Guest Checkout.

Certain features of the Service may require you to register an account or checkout as a guest. When registering an account or checking out as a guest, you agree to provide true, accurate, current, and complete information. When registering an account, you further agree to: (i) maintain and update the information in your account to keep it true, accurate, current, and complete; (ii) protect and prevent unauthorized access to your account; (iii) not transfer or share your account with any third party; and (iv) immediately notify us of any suspected or actual unauthorized use of your account or breach of security. Please note that you are solely responsible for all activities that occur under your account or during guest checkout, whether or not you authorized the activity, and we are not liable for any loss or damage to you or any third party arising from your failure to comply with any of the foregoing obligations.

D. Restrictions.

You may not use the Service unless you are at least eighteen (18) years old.

You may not: (i) use the Service or Content for any political or commercial purpose; (ii) engage in any activity in connection with the Service or Content that is unlawful, harmful, offensive, sexually explicit, obscene, violent, threatening, harassing, abusive, falsely representative of your persona, invasive of someone else's privacy, or otherwise objectionable to Red Penguins; (iii) harvest any information from the Service or Content; (iv) reverse engineer or modify the Service or Content; (v) interfere with the proper operation of or any security measure used by the Service or Content; (vi) infringe any intellectual property or other right of any third party; (vii) use the Service or Content in a manner that suggests an

unauthorized association or is beyond the scope of the limited license granted to you; or (viii) otherwise violate these Terms or any applicable Additional Terms.

You agree to comply with all local, state, federal, national, foreign, supranational, and international laws, statutes, ordinances, regulations, treaties, directives, and agreements that apply to your use of the Service and Content.

E. Availability.

Red Penguins may suspend or terminate the availability of the Service and Content, in whole or in part, to any individual user or all users, for any reason, in Red Penguins' sole discretion, and without advance notice or liability. Upon suspension or termination of your access to the Service, or upon notice from Red Penguins, all rights granted to you under these Terms or any applicable Additional Terms will cease immediately, and you agree that you will immediately discontinue use of the Service and Content.

F. Reservation of Rights.

All rights not expressly granted to you are reserved by Red Penguins and its licensors and other third parties. No right or license may be construed, under any legal theory, by implication, estoppel, industry custom, or otherwise. Any unauthorized use of the Content or Service for any purpose is prohibited.

3. Unsolicited Submissions.

When you submit any unsolicited ideas, feedback, opinions, techniques, images, sounds, videos, or other content to us through or relating to the Service ("Submissions"), you grant us a non-exclusive, unrestricted, unconditional, unlimited, worldwide, irrevocable, perpetual, transferable and cost-free right and license to host, store, use, display, reproduce, modify, adapt, edit, combine with other materials, publish, distribute, create derivative works from, promote, exhibit, broadcast, syndicate, sublicense (including, without limitation, to third party media channels, platforms, and distributors), publicly perform, publicly display, and otherwise use and exploit in any manner whatsoever, or grant third parties the right to do any of the foregoing, all or any portion of your Submissions, for any purpose whatsoever in all formats, on or through any means or medium now known or hereafter developed, and with any technology or devices now known or hereafter developed, and to advertise, market, and promote the same. You further irrevocably grant us the right, but not the obligation, to use your name in connection with your Submissions. You also agree to waive any right of approval for our use of the rights granted herein and agree to waive any moral rights that you may have in any Submissions, even if it is altered or

changed in a manner not agreeable to you. To the extent not waivable, you irrevocably agree not to exercise such rights in a manner that interferes with any exercise of the granted rights.

You understand that you will not receive any fees, sums, consideration, or remuneration for any of the rights granted in this Section. Our receipt of your Submissions is not an admission of their novelty, priority, or originality, and it does not impair our right to existing or future intellectual property rights relating to your Submissions.

You represent and warrant that you own or have the necessary rights, licenses, consents, and permissions to grant us the rights granted in this Section. You alone, though, retain whatever legally cognizable right, title, and interest that you have in your Submission and remain responsible for them.

4. Products.

We do our best to describe every product or service offered on our Service as accurately as possible. However, we are human, and therefore we do not warrant that product specifications, pricing, or other content on the Service is complete, accurate, reliable, current, or error-free. In the event of any errors relating to the pricing or specifications, Red Penguins shall have the right to refuse or cancel any orders in its sole discretion. If we charged your credit card or other account prior to our cancellation, we will issue a credit to your account in the amount of the charge. Additional Terms may apply. If a product or service you purchased from Red Penguins is not as described, your sole remedy is to cancel the purchase and receive a credit for the purchase price.

All physical products purchased from the Service are made pursuant to a shipment contract. This means that the risk of loss and title for such items pass to you upon delivery to the carrier.

5. Customer Support.

If you have any questions or comments, please send an e-mail to us [here](#). You acknowledge that the provision of support is at Red Penguins' sole discretion and that we have no obligation to provide you with customer support of any kind. When you communicate with us electronically, you consent to receive communications from us electronically. You agree that all agreements, notices, disclosures, and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing.

6. Third Party Services.

Our Service contains content from and hyperlinks to websites, locations, platforms, and services operated and owned by third parties (“Third Party Services”). We may also integrate third party technologies into our Service and host our content on Third Party Services. These Third Party Services are not owned, controlled, or operated by us, and you acknowledge and agree that we are not responsible or liable for the information, content, products, technologies, or services on or available from such Third Party Services, or for the results to be obtained from using them. If you choose to access, transact with, or otherwise interact with any such Third Party Services, you do so at your own risk. For more information on Third Party Services, see our Privacy Policy.

7. Service Features.

A. Wireless Features.

The Service may offer features that are available to you via your wireless Device including the ability to access the Service’s features (collectively, “Wireless Features”). By using the Service, you agree that Red Penguins may collect information related to your use of the Wireless Features as described in our Privacy Policy, and may change, alter, or modify the settings or configurations on your Device in order to allow for or optimize your use of the Service. Data rates and other carrier fees may apply.

B. Communications.

You can opt out of receiving certain promotional e-mails from us at any time by following the instructions as provided in e-mails to click on the unsubscribe link or by sending an e-mail to us [herewith](#) the word UNSUBSCRIBE in the subject field of the e-mail. Please note that your opt out is limited to the e-mail address used and will not affect subsequent subscriptions or non-promotional communications, such as those about your account, transactions, servicing, or Red Penguins’ ongoing business relations.

8. Agreement to Arbitrate Disputes and Choice of Law.

PLEASE READ THIS SECTION CAREFULLY – IT MAY SIGNIFICANTLY AFFECT YOUR LEGAL RIGHTS, INCLUDING YOUR RIGHT TO FILE A LAWSUIT IN COURT AND TO HAVE A JURY HEAR

YOUR CLAIMS. IT CONTAINS PROCEDURES FOR MANDATORY BINDING ARBITRATION AND A CLASS ACTION WAIVER.

A. We Both Agree to Arbitrate.

You and Red Penguins agree to resolve any claims relating to these Terms through final and binding arbitration, except that, to the extent you have in any manner violated or threatened to violate Red Penguins' intellectual property rights (for example, trademark, trade secret, copyright, or patent rights). Under such circumstances Red Penguins may bring a lawsuit solely for injunctive relief to stop unauthorized use or abuse of the Service, or intellectual property infringement (for example, trademark, trade secret, copyright, or patent rights) without first engaging in arbitration or the informal dispute-resolution process described above.

B. What is Arbitration.

Arbitration is more informal than a lawsuit in court and seeks to resolve disputes more quickly. Instead of a judge or a jury, the case will be decided by a neutral arbitrator who has the power to award the same damages and relief that a court can. If any provision of this arbitration agreement is found unenforceable, the unenforceable provision shall be severed, and the remaining arbitration terms shall be enforced.

C. Arbitration Procedures.

The Federal Arbitration Act governs the interpretation and enforcement of this dispute resolution provision. Arbitration shall be initiated through JAMS. Any dispute, controversy, or claim arising out of or relating to these Terms shall be referred to and finally determined by arbitration in accordance with the JAMS Streamlined Arbitration Rules and Procedures in front of one arbitrator. If there is a conflict between JAMS Rules and the rules set forth in these Terms, the rules set forth in this Terms will govern. The JAMS Rules and instructions for how to initiate an arbitration are available from JAMS at <http://www.jamsadr.com> or 1-800-352-5267. To initiate arbitration, you or Red Penguins must do the following things:

1. Write a demand for Arbitration. The demand must include a description of the Claim and the amount of damages sought to be recovered. You can find a copy of a demand for Arbitration at www.jamsadr.com.
2. Send three copies of the demand for Arbitration, plus the appropriate filing fee to: JAMS to your local JAMS office or to JAMS, Two Embarcadero Center, Suite 1500, San Francisco, CA 94111

3. Send one copy of the demand for Arbitration to the other party.

Payment of all filing, administration and arbitrator fees will be governed by the JAMS Rules. If travelling to New York is a burden, you may participate in the arbitration by phone or via document submission to the fullest extent allowable by the arbitrator. Each party will bear their own costs of arbitration unless the arbitrator directs that bearing such costs would be an undue burden and in that case, we will pay for your portion of the arbitration administrative costs (but not your attorneys' fees). Arbitration under this agreement shall be held in the United States in New York, NY under New York law without regard to its conflict of laws provisions. The arbitration may award on an individual basis the same damages and relief as a court (including injunctive relief). Any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

D. Authority of Arbitrator.

The arbitrator will decide the rights and liabilities, if any, of you and Red Penguins, and the dispute will not be consolidated with any other matters or joined with any other cases or parties. The arbitrator shall have the authority to grant motions dispositive of all or part of any claim. The arbitrator shall have the authority to award monetary damages and to grant any non-monetary remedy or relief available to an individual under applicable law, the Arbitration Rules, and the Terms. The arbitrator shall issue a written award and statement of decision describing the essential findings and conclusions on which the award is based, including the calculation of any damages awarded. The arbitrator has the same authority to award relief on an individual basis that a judge in a court of law would have. The award of the arbitrator is final and binding upon you and Red Penguins.

E. No Class Actions.

You may only resolve disputes with us on an individual basis, and may not bring a claim as a plaintiff or a class member in a class, consolidated, or representative action. Class arbitrations, class actions, private attorney general actions, and consolidation with other arbitrations are not allowed.

F. Waiver of Jury Trial.

THE PARTIES HEREBY WAIVE THEIR CONSTITUTIONAL AND STATUTORY RIGHTS TO GO TO COURT AND HAVE A TRIAL IN FRONT OF A JUDGE OR A JURY, instead electing that all claims and disputes shall be resolved by arbitration. Arbitration procedures are typically more limited, more efficient and less costly than rules applicable in court and are subject to very limited review by a court. In the event any litigation should arise between you and Red Penguins in any state or federal court in a suit to vacate or enforce an arbitration award or otherwise, YOU AND RED PENGUINS WAIVE ALL RIGHTS TO A

JURY TRIAL, instead electing that the dispute be resolved by a judge. YOU ACKNOWLEDGE THAT YOU HAVE BEEN ADVISED THAT YOU MAY CONSULT WITH AN ATTORNEY IN DECIDING TO ACCEPT THIS AGREEMENT TO ARBITRATE.

G. Choice of Law/Forum Selection.

In any circumstances where the Agreement to Arbitrate Disputes permits the parties to litigate in court, these Terms shall be governed by and construed in accordance with the laws of the State of New York, excluding its conflict of law rules. You further expressly consent and agree to submit to the exclusive jurisdiction and venue of a court of competent jurisdiction located in New York, NY.

9. Disclaimer of Representations and Warranties.

THE SERVICE IS PROVIDED TO YOU ON AN "AS IS," "AS AVAILABLE," AND "WITH ALL FAULTS" BASIS. NEITHER RED PENGUINS NOR ANY OF ITS OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES OR AGENTS (COLLECTIVELY, THE "RED PENGUINS PARTIES") MAKE ANY REPRESENTATIONS, WARRANTIES OR ENDORSEMENTS OF ANY KIND WHATSOEVER AS TO THE CONTENT OR OTHER SERVICES, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, OR ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE, INCLUDING THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT AND FREEDOM FROM COMPUTER VIRUS. BY ACCESSING OR USING THE SERVICE YOU REPRESENT AND WARRANT THAT YOUR ACTIVITIES ARE LAWFUL IN EVERY JURISDICTION WHERE YOU ACCESS OR USE THE SERVICE.

NOTWITHSTANDING THE FOREGOING, THESE DISCLAIMERS DO NOT EXCLUDE ANY PRODUCT LIABILITY CLAIMS, STATUTORY CONSUMER RIGHTS, DAMAGES ASSOCIATED WITH PERSONAL INJURY OR RESULTING FROM RED PENGUINS INTENTIONAL MISCONDUCT, RECKLESSNESS, FRAUD, OR GROSS NEGLIGENCE.

10. Limitations of Our Liability.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL THE RED PENGUINS PARTIES BE LIABLE TO YOU FOR ANY LOSS, DAMAGE OR INJURY OF ANY KIND INCLUDING ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE

LOSSES OR DAMAGES, OR DAMAGES FOR SYSTEM FAILURE OR MALFUNCTION OR LOSS OF PROFITS, DATA, USE, BUSINESS OR GOOD-WILL, ARISING OUT OF OR IN CONNECTION WITH (A) THE SERVICE, (B) THESE TERMS OR (C) YOUR MISUSE OF THE SERVICE OR ANY CONTENT AVAILABLE ON OR THROUGH THE SERVICE. THE LIMITATIONS SET FORTH IN THIS SECTION SHALL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER THE ASSERTED LIABILITY OR DAMAGES ARE BASED ON CONTRACT, INDEMNIFICATION, TORT, STRICT LIABILITY, STATUTE OR ANY OTHER LEGAL OR EQUITABLE THEORY.

NOTWITHSTANDING THE FOREGOING, THESE DISCLAIMERS HEREIN DO NOT EXCLUDE ANY PRODUCT LIABILITY CLAIMS, STATUTORY CONSUMER RIGHTS, DAMAGES ASSOCIATED WITH PERSONAL INJURY OR RESULTING FROM RED PENGUINS INTENTIONAL MISCONDUCT, RECKLESSNESS, FRAUD, OR GROSS NEGLIGENCE.

11. Indemnification.

You agree to defend, indemnify and hold harmless Red Penguins from and against any and all claims, liabilities, damages, losses, costs and expenses (including, reasonable attorneys' fees and costs) arising out of or in connection with any of the following: (i) your breach or alleged breach of these Terms; (ii) your Submissions; (iii) your misuse of the Service; (iv) your violation of any laws, rules, regulations, codes, statutes, ordinances or orders of any governmental or quasi-governmental authorities; (v) your violation of the rights of any third party, including any intellectual property right, publicity, confidentiality, property or privacy right; (vi) your use of a Third Party Service; or (vii) any misrepresentation made by you. Red Penguins reserves the right to assume, at your expense, the exclusive defense and control of any matter subject to indemnification by you. You agree to cooperate with Red Penguins' defense of any claim. You will not in any event settle any claim without the prior written consent of Red Penguins.

This provision does not require you to indemnify us for any unconscionable commercial practice by us or for our fraud, deception, false promise, misrepresentation or concealment, suppression or omission of any material fact in connection with the Service.

12. Waiver of Injunctive or other Equitable Relief.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, YOU AGREE THAT YOU WILL NOT BE PERMITTED TO OBTAIN AN INJUNCTION OR OTHER EQUITABLE RELIEF OF ANY KIND, SUCH AS ANY COURT OR OTHER ACTION THAT MAY INTERFERE WITH OR PREVENT THE DEVELOPMENT

OR EXPLOITATION OF ANY WEBSITE, APPLICATION, CONTENT, SUBMISSIONS, PRODUCT, SERVICE, OR INTELLECTUAL PROPERTY OWNED, LICENSED, USED OR CONTROLLED BY RED PENGUINS OR A LICENSOR OF RED PENGUINS.

13. Updates to Terms.

We reserve the right, at any time in our sole discretion, to modify or replace any part of these Terms and any applicable Additional Terms, without prior notice. You agree that we may notify you of any updated Terms and any applicable Additional Terms by posting them on the Service so that they are accessible via a link from the home page, and/or to send you an e-mail to the last e-mail address you provided to us. All such changes are effective immediately when we post them, or such later date as may be specified in the notice of updated Terms and any applicable Additional Terms. If you object to any such changes, your sole recourse is to cease using the Service.

14. General Provisions.

A. Consent or Approval.

No Red Penguins consent or approval may be deemed to have been granted by Red Penguins without being in writing and signed by an officer of Red Penguins.

B. Survival.

The provisions of these Terms and any applicable Additional Terms, which by their nature should survive termination of your use of the Service, including sections on Service Use (except for the limited license), Submissions, Products, Customer Support, Third Party Services, Service Features, Agreement to Arbitrate Disputes and Choice of Law, Disclaimer of Representations and Warranties, Limitations of Our Liability, Indemnification, Waiver of Injunctive or Other Equitable Relief, Updates to Terms, and General Provisions, will survive.

C. Severability; Interpretation; Assignment.

If any provision of these Terms, or any applicable Additional Terms, is for any reason deemed invalid, unlawful, void, or unenforceable, then that provision will be deemed severable from these Terms or the Additional Terms, and the invalidity of the provision will not affect the validity or enforceability of the

remainder of these Terms or the Additional Terms. You hereby waive any applicable statutory and common law that may permit a contract to be construed against its drafter. The summaries of provisions and section headings are provided for convenience only and shall not limit the full Terms. Red Penguins may assign its rights and obligations under these Terms and any applicable Additional Terms, in whole or in part, to any party at any time without any notice. These Terms and any applicable Additional Terms may not be assigned by you, and you may not delegate your duties under them, without the prior written consent of an officer of Red Penguins.

D. Complete Agreement; No Waiver.

These Terms, and any applicable Additional Terms, reflect our complete agreement regarding the Service and supersede any prior agreements, representations, warranties, assurances or discussion related to the Service. Except as expressly set forth in these Terms or any applicable Additional Terms, (i) no failure or delay by you or Red Penguins in exercising any of rights, powers, or remedies under will operate as a waiver of that or any other right, power, or remedy, and (ii) no waiver or modification of any term of these Terms or any applicable Additional Terms will be effective unless in writing and signed by the party against whom the waiver or modification is sought to be enforced.

E. International Issues.

Red Penguins controls and operates the Service from the U.S., and Red Penguins makes no representation that the Service is appropriate or available for use beyond the U.S. You agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to these Terms or to any sale of goods carried out as a result of your use of the Service. Software related to or made available by the Service may be subject to export controls of the U.S., and, except as authorized by law, you agree and warrant not to export or re-export the software to any country, or to any person, entity, or end-user subject to U.S. export controls or sanctions.

F. Investigations; Cooperation with Law Enforcement.

Red Penguins reserves the right to investigate and prosecute any suspected breaches of these Terms or the Service. Red Penguins may disclose any information as necessary to satisfy any law, regulation, legal process or governmental request.

G. California Consumer Rights and Notices.

Residents of California are entitled to the following specific consumer rights information: you may contact the Complaint Assistance Unit of the Division of Consumer Services of the Department of Consumer Affairs by mail at: 400 R St., Suite 1080, Sacramento, California, 95814, or by telephone at (916) 445-1254. Their website is located at: <http://www.dca.ca.gov>.

H. New Jersey Rights.

The sections on indemnity, limitation of liability, and disclaimer of warranties do not apply to New Jersey residents.

Privacy Policy: