

## **Competition Terms and Conditions**

**Last Modified August 8, 2018**

PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY. BY ENTERING A COMPETITION AND SUBMITTING YOUR FILM FOR CONSIDERATION, YOU ARE GRANTING CERTAIN RIGHTS IN YOUR FILM TO FILMAKA LLC AS SPECIFICALLY SET FORTH IN THESE TERMS AND CONDITIONS.

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### **1. Definitions**

Capitalized words used herein have the following meanings:

“Acceptance” means Filmaka’s acceptance of a Film meeting the requirements of Paragraph 2.

“App” means Filmaka’s online entertainment application for devices.

“Competitions” means Periodic Competitions, Final Competitions, and Web Series Competitions collectively.

“Competition Terms and Conditions” means these Terms and Conditions.

“Delivery Rules” means the delivery rules for Films that are submitted for a Competition. [Click here for the Delivery Rules.](#)

“Film” or “Films” means a Short, Shorts or any other filmed content competition entry as designated by Filmaka from time to time.

“Filmaka” means Filmaka LLC.

“Final Competitions” means the Final Competitions run by Filmaka pursuant to Paragraphs 4 and 6.

“Jury” means a panel of jurors appointed by Filmaka for each Competition from a pool of industry professionals selected by Filmaka from time to time.

“Member” means an individual who has validly joined the membership of Filmaka as determined by Filmaka in its sole discretion.

“Periodic Competitions” means the Periodic Competitions run by Filmaka pursuant to Paragraphs 3 and 5.

“Pitch” means a concise written presentation of an original idea for the production of a Film, as more specified by Filmaka in the applicable Competition, which depending on the Competition, may or may not be based on a topic of genre provided by Filmaka.

“Registered User” means a user who has a registered account for the Site.

“Rights” has the meaning set forth in Paragraph 9.

“Script” means a concise written original story containing movement, actions, expressions and dialogue of the characters in the story, which depending on the Competition, may or may not be based on a topic of genre provided by Filmaka.

“Short” or “Shorts” means one or more short films (between three (3) minutes and five (5) minutes in length) for entry into a Competition or a short film (between three (3) minutes and five (5) minutes in length) uploaded to the Site but not entered into a Competition. For the

purposes of these Competition Terms and Conditions, the term Short or Shorts apply to Competition entries.

“Site” means Filmaka’s online entertainment service website.

“Web Series Competitions” means the Web Series Competitions run by Filmaka pursuant to Paragraph 7 below.

## **2. Submission Requirements**

In order to validly submit a Film, Pitch or Script for any Competition, it must meet all of the following conditions for Acceptance, as determined by Filmaka in its sole and absolute discretion:

You must be a Member.

If the Film is a Short, Pitch or Script, it must be based on the theme or topic designated by Filmaka for that Competition.

The Film must not contain any content that would be rated more restrictively than “R”.

You must submit your correct name and email address.

You must accept these Terms and Conditions.

You must enter a valid electronic signature.

You must meet the Delivery Rules which are deemed to be a part of these Terms and Conditions and are incorporated herein by reference.

You must be of legal age in the jurisdiction in which you live.

You must provide appropriate banking documentation, as determined by Filmaka.

## **3. Shorts Periodic Competitions and Prizes**

Filmaka will periodically provide a narrative competition theme or topic, for example, “Stuck in Traffic”.

The Member creates a Short about that topic and uploads it to the Site within the timeframe specified by Filmaka.

Up to thirteen (13) Shorts will be selected per Periodic Competition cycle as follows: Up to six (6) Shorts by Members who submitted Shorts and voted for Shorts in the applicable Periodic Competition, up to two (2) Shorts by Members who did not submit Shorts but voted for Shorts in the applicable Periodic Competition, up to two (2) Shorts by Registered Users who voted for Shorts in the applicable Periodic Competition, and up to three (3) Shorts by executives of Filmaka.

The final selected Shorts based on the above selection process will be sent to the Jury who will select the three (3) top winners of the applicable Periodic Competition.

The First place prize is Two Thousand Five Hundred Dollars (\$2,500).

The Second place prize is One Thousand Five Hundred Dollars (\$1,500).

The Third place prize is Seven Hundred Fifty Dollars (\$750).

All three (3) prize winners of each Periodic Competition (thirty-six [36] prize winners total) shall have the right to enter a new Short into a Final Competition pursuant to Paragraph 4 below, along with no more than eight (8) other entries selected by executives of Filmaka.

#### **4. Shorts Final Competitions and Prizes**

At the end of twelve (12) Periodic Competitions, three (3) prize winners of each Periodic Competition (thirty-six [36] prize winners total) shall have the right to enter a new narrative Short into a Final Competition, along with no more than eight (8) other Short entries, selected by executives of Filmaka.

For each Final Competition, Filmaka provides a competition topic or theme, for example, "The Affair."

The prize winners of the Periodic Competitions and the Short competition entries that were selected by executives of Filmaka, will each create a Short about that topic and upload it within the timeframe specified by Filmaka.

One (1) grand prize winner of the applicable Final Competition will be chosen by all Members who submitted a Short in the Periodic Competitions occurring during the previous twelve (12) competitions (excluding any Members who submitted a Short for the applicable Final Competition) the Jury, and Filmaka executives, to make a feature film produced by Filmaka in conjunction with Riverstone Pictures Ltd.

## **5. Documentary Periodic Competitions and Prizes for Films**

The Member creates a Short about any topic in the documentary genre and uploads it to the Site within the timeframe specified by Filmaka.

Up to three (3) winners will be selected by vote of Members, Registered Users and Filmaka executives. The top three (3) documentary Shorts will win first, second and third place based on the number of votes each documentary Short receives.

The First place prize is Seven Hundred Fifty Dollars (\$750).

The Second place prize is Five Hundred Dollars (\$500).

The Third place prize is Two Hundred Fifty Dollars (\$250).

All three (3) prize winners of each Periodic Competition (up thirty-six [36] prize winners total) shall have the right to enter a new Short into a Final Competition pursuant to Paragraph 6 below.

## **6. Documentary Final Competitions and Prizes for Films**

At the end of twelve (12) documentary Periodic Competitions, three (3) prize winners of each Periodic Competition (thirty-six [36] prize winners total) shall have the right to enter a new documentary Short into a documentary Final Competition, along with no more than eight (8) other documentary Short entries, selected by executives of Filmaka.

For each documentary Final Competition, entrants submit a new documentary Short about the topic that they want to make their full-length documentary about. The new documentary Short can be about the same topic as their previous documentary Short or it can be about a new topic.

From the thirty-six (36) to forty-four entries (44) one (1) grand prize winner will be selected by Filmaka executives to make a full-length documentary produced by Filmaka.

## **7. Web Series Competitions and Prizes for Pitches and Scripts**

Members are invited from time to time to submit a Pitch for a three (3) to five (5) minute original pilot for a web series. Up to four (4) finalists will be selected by Filmaka executives and awarded a prize of Five Thousand Dollars (\$5,000) each to produce a Short based on their Pitch and write nine (9) three (3) to five (5) minute Scripts. , The finalists will be required to submit their produced Short and the nine (9) written Scripts to Filmaka to compete for a chance to win the grand prize of \$25,000 to produce a web series based on their submission. The grand prize winner will be selected by Filmaka executives.

The Pitch and/or the Scripts should be as detailed as possible so that Filmaka executives have a clear vision of the web series the Member wants to create. Character lists, an overall summary of the web series, storyboards and scene sketches may be included as part of the Member's submission. While there is no limit to the number of pages for the Pitch or Scripts, it is important to remember that the produced version of the Pitch or Script will only be three (3) to five (5) minutes in length.

## **8. Voting Rules**

Only Members and Registered Users are eligible to vote for Shorts in Periodic Competitions and Final Competitions as specified hereunder.

Voting begins two (2) days after the Periodic Competition closes and stays open for seven (7) days. Votes can be changed before the seven (7) day period expires; after this period all votes are final.

For each Short which a Member submits in a Competition, a Member is permitted to cast five (5) votes in a five (5) star ranking system in such Competition either on the Site or through the App, with five (5) stars awarded to the Member's first choice and one (1) star awarded to the Member's fifth choice. A Member may not vote for Shorts the Member has submitted. IN ADDITION, IF THE MEMBER DOES NOT VOTE FOR FIVE (5) SHORTS DURING THE SEVEN (7) DAY PERIOD, THE MEMBER'S SUBMITTED SHORT WILL BE DISQUALIFIED.

A Member who does not submit a Short in a Competition is permitted to cast three (3) votes in a five (5) star ranking system in such Competition either on the Site or through the App, with five (5) stars awarded to the Member's first choice and one (1) star awarded to the Member's third choice.

A Registered User is permitted to cast one (1) vote through the App only.

## **9. Grant of Rights**

By uploading a Short for any Competition and in consideration of Filmaka posting the Short on the Site for you hereby grant to Filmaka the following rights (the "Rights"), subject to a reversion to you upon notification from Filmaka via e-mail that Filmaka no longer requires exploitation of the Rights:

All rights in the Short and all underlying material thereto (i.e. the Pitch, Script or any other material upon which the Short is based), including, without limitation, the exclusive, worldwide right to exploit, sublicense, and assign the Short and all ancillary and derivative rights thereto in all media now known or hereafter devised in any and all languages including the right to permit such Short to be posted and viewed by third parties on the Site or elsewhere

The right in perpetuity to use your name, address, voice, statements, biography, photograph, image and other likenesses without any further consideration, in any medium, including, without limitation, in still photos, film, video, television, radio and the internet, and in any publicity carried out by Filmaka or any of its related entities, insurers, promotions companies and service providers, unless prohibited by law.

The right to change, add to, take from, translate, reformat or reprocess the Short in any manner Filmaka may in its sole discretion determine. To the fullest extent allowable under any applicable law, you hereby irrevocably waive or assign to Filmaka your so-called “moral rights” or “droit moral.” If under any applicable law the above waiver or assignment of “moral rights” or “droit moral” is not effective, you agree to exercise such rights reasonably and in a way that will not have a material adverse effect upon any other individual or upon Filmaka’s exploitation of the Short.

For the avoidance of doubt, the grant of Rights shall not apply to any Pitches or Scripts unless one or other or both are used as underlying material for a Short or otherwise agreed upon in writing by the Member and Filmaka. However, ANY PITCH OR SCRIPT THAT IS NOT USED AS UNDERLYING MATERIAL FOR A SHORT IS USER GENERATED CONTENT AS DEFINED IN FILMAKA’S TERMS OF USE, WHICH INCLUDES A GRANT OF CERTAIN RIGHTS TO FILMAKA. PLEASE READ THE TERMS OF USE CAREFULLY.

## **10. Royalty**

If your submitted Short does not win a Competition, in the event that Filmaka receives any revenue in connection with your submitted Short pursuant to Paragraph 2 and your grant of Rights pursuant to Paragraph 9, Filmaka shall pay you a royalty equal to fifty percent (50%) of “Gross Receipts” (defined below) from such Rights minus the sum of:

All expenses paid by Filmaka relating to the acquisition, development, production, or distribution of such Rights.

Interest at six percent (6%) on the amount of such expenses from the date incurred to the date of recoupment, and a distribution fee to Filmaka equal to thirty five percent (35%) of Gross Receipts.

“Gross Receipts” means all nonrefundable cash revenues actually received by Filmaka (if any) attributable to the Rights, except that:

Only twenty two percent (22%) of all video/DVD/VOD or similar revenue received by Filmaka shall be included in Gross Receipts, and the manufacturing and shipping costs relating to such revenue shall not be deducted.

All membership fees shall be excluded.

The revenue Filmaka receives from advertising shall not be included in Gross Receipts unless such advertising revenue is specifically related to and generated by our exploitation of the Rights.

In the event that multiple Shorts are distributed as part of a compilation (e.g. Filmaka puts ten (10) Shorts on a DVD and sells it to the public), the twenty two percent (22%) royalty included in Gross Receipts shall be pro-rated among those submitting such Shorts.

All payments shall be made sixty (60) days after the end of each calendar quarter (accompanied by an accounting statement setting forth the calculation thereof), unless the total revenues due to a Member are less than Five Hundred Dollars (\$500), in which case payments shall be made on an annual basis.

If your submitted Short wins a Competition, any prize awarded to you is a complete “buy-out” and no royalties shall be payable to you in connection therewith. However, in the event Filmaka receives any revenue in connection with any subsequent productions or derivative works of such Short, Filmaka will pay you a royalty based on the then current standard industry royalty rates for the applicable subsequent production or derivative work.

For the avoidance of doubt, this Paragraph 10 shall not apply in the event of a sale of Filmaka LLC and/or its library of Films, Pitches and/or Scripts to a third party.

## **11. Invalid Submissions**

If a submission of a Film is invalid for any reason, Filmaka will have the right, in its sole discretion, to implement one or more of any of the following sanctions: forfeiture of the submission fee or prize money for that submission; rejection or rescission of Acceptance and of the Film’s status as a prize winner of any Competition (in which case the remaining Film shall move up one place); or refusal to accept future submissions.

## **12. Competition Restrictions**

Filmaka reserves the right to cancel a Competition in the event that Filmaka determines, in its sole discretion, that there are an insufficient number of entries submitted for a Competition.

Filmaka reserves the right to restrict the right to vote in a Competition to those entering the Competition.

WITH RESPECT TO A WINNING FILM, NO PRIZE OR AWARD MONEY WILL BE AWARDED WITHOUT SUBMISSION OF A TECHNICALLY ACCEPTABLE MASTER, DELIVERY MATERIALS, AND APPROPRIATE TAX AND BANKING DOCUMENTATION AS DETERMINED BY FILMAKA IN ITS SOLE DISCRETION.



### **13. Your Representations and Warranties**

You represent and warrant that you have the full right and authority to grant the Rights and that the exploitation of the Rights will not violate any rights of any persons.

### **14. Indemnity**

You hereby indemnify and hold us harmless if Filmaka incurs any loss, cost, or expense (including attorneys' fees), due to any claim by you or any other parties relating to any exploitation of the Rights.

### **15. No Downloading or Copying**

You agree not to download or copy any Films, and you will indemnify Filmaka for any loss, cost, or expense (including attorneys' fees) if you breach this provision.

### **16. Notices**

All notices shall be in writing and shall be delivered by e-mail to each party's last known email address.

### **17. Entire Agreement**

These Terms and Conditions and the other items referred to herein represent the complete agreement of the parties relating to the subject matter hereof.

### **18. Amendment**

Filmaka reserves the right to amend these Terms and Conditions at any time by posting notice thereof on the Site.

### **19. Governing Law**

These Terms and Conditions are governed by the laws of California (i.e., without regard to its conflict of law principles). The exclusive location for any litigation relating to these Terms and Conditions shall be the courts located in Los Angeles, California and you expressly consent to the jurisdiction of such courts.

## **20. Taxes**

By law, Filmaka is required to withhold (i) thirty percent (30%) of all prize and award money and remit it to the U.S. IRS unless the Member is a U.S. citizen or resident and submits to Filmaka a signed Form W-9 with the Member's social security number and (ii) seven percent (7%) of all prize and award money and remit it to the California Franchise Tax Board. All Members should check with their local tax advisors as to whether any withheld taxes are available as a credit against local taxes. If the Member does not submit to Filmaka a signed Form W-9, it must submit to Filmaka, prior to payment of the prize and award money, the appropriate W-8 to confirm the Member's foreign tax status.

## **21. Disclaimer**

It is possible that Films posted to the Site may be downloaded or copied by third parties without our permission, and you waive any claim against Filmaka for such actions.

Filmaka is not responsible for telecommunications, network, electronic, technical or computer failures of any kind or for lost, stolen, misdirected, mutilated, damaged, garbled, delayed, misdirected, incorrectly addressed, undeliverable, destroyed, late, incomplete or illegible submissions, including: any hardware or software failures of any kind; lost or unavailable network connections; failed, incomplete or garbled computer, telephone or satellite transmissions; incorrect, inaccurate transcription or loss of submission information; typographical or system errors; any viruses transmitted to computers of Members via the internet; problems or technical malfunctions of any telephone network or lines, computer online systems, servers, providers or computer equipment; or technical problems or traffic congestion on the internet or any combination thereof; or for any technical or human errors associated with the Competition.

Entries that are generated by a script, macro or other automated means and/or otherwise not in compliance with these rules will be disqualified. Filmaka shall have the sole and absolute discretion to determine if a submission is in compliance with these Terms and Conditions.

Filmaka is not responsible for typographical or other errors in the offering or administration of this Competition, including but not limited to errors in advertising, the Terms and Conditions, the Delivery Rules, the selection and announcement of winners or the distribution of any prize.

Filmaka shall not be responsible for any injury or damage to a Member's or any other person's computer related to or resulting from participating in the Competition, or downloading any material for the Competition which may limit a Member's ability to participate.

Filmaka may disqualify anyone from participating in the Competition or winning a prize, if in its sole discretion, it determines that such person is attempting to undermine the legitimate

operation of the Competition by cheating, hacking, deception or other unfair practices or intending to annoy, abuse, threaten or harass any other Members or Filmaka's representatives.

Filmaka reserves the right, in its sole discretion, to cancel, terminate, modify or suspend the Competition at any time should virus, bugs, unauthorized human intervention, or other causes beyond the control of Filmaka corrupt or adversely affect the administration, security, fairness, integrity or proper operation of the Competition.

CAUTION: ANY ATTEMPT BY A MEMBER TO DELIBERATELY DAMAGE THE SITE FILMAKA OR UNDERMINE THE LEGITIMATE OPERATION OF THE COMPETITION MAY BE IN VIOLATION OF CRIMINAL AND CIVIL LAWS AND SHOULD SUCH AN ATTEMPT BE MADE, FILMAKA RESERVES THE RIGHT TO SEEK REMEDIES AND DAMAGES (INCLUDING ATTORNEYS' FEES) FROM ANY SUCH MEMBER TO THE FULLEST EXTENT OF THE LAW, INCLUDING CRIMINAL PROSECUTION.

Filmaka shall have the sole right to disqualify anyone for violation of these Terms and Conditions or any applicable laws relating to the Competition, or tampering with any element of this Competition, and to resolve all disputes in its sole discretion.

The Terms and Conditions, as set forth herein, are not subject to amendment or counter-offer, except as set forth herein. In no event shall Filmaka, its parents, partners, and affiliated companies, their respective agents, employees, directors, officers and legal advisors and any other companies or entities participating in the design, administration or fulfillment of this Competition, be liable for personal injuries, damages, expenses or costs or losses of any kind resulting from participation or inability to participate in this Competition or acceptance of or use or inability to use a prize or parts thereof, including, without limitation, claims, suits, injuries, losses and damages related to personal injuries, damage to or destruction of property, rights of publicity or privacy, defamation or portrayal in a false light (whether intentional or unintentional), whether under a theory of contract, tort (including negligence), warranty, or other theory.

## **22. Further Actions**

Member agrees to execute any and all documents and take any other actions reasonably required to effectuate the purposes of these Terms and Conditions. You appoint us attorney-in-fact for such purposes (it being acknowledged that such appointment is irrevocable and coupled with an interest) with full power of substitution and delegation if you fail to do so within five (5) business days of our written request.

## **23. Disqualification**

ALL COMPETITIONS ARE VOID WHERE PROHIBITED BY LAW. Persons included in either of the following categories are not eligible to participate or win a prize:

Persons who are employees or agents of Filmaka or its parent companies, affiliates, subsidiaries, advertising or promotion agencies, and their immediate families (spouse, parents, children and siblings and their respective spouses) and individuals living in the same household of such persons; and

Persons who are engaged in the development of, production of, distribution of materials of, or selection of Members for, and/or the winners for, any Competition.

## **24. Execution**

By clicking the appropriate "I Accept" button below, you are "signing" these Terms and Conditions for all purposes under applicable law, including the United States Copyright Act and the Electronic Signatures and Global and National Commerce Acts.