

USER AGREEMENT – Terms & Conditions

PART I: *Contributor*

Preliminary: Important!

This contract exists between the **Users** of this website with respect to the purchase of **Images** and between the **Users** (i.e. **Customer** and **Contributors**) of this website and the **Owners** (**OpenEye**) of this website with respect to the use of this website.

By using the **OpenEye** website you enter into two separate legal relationships:

- i. with **OpenEye**, acting as a sales and purchasing platform for **Images** provided by it's contributors, and
- ii. with the **Customer**, which applies to the offering and sale of **Images**.

The following constitutes the **Contributor Agreement** between you, the **User** of the **OpenEye** website as a **Contributor** selling **Images** to **Customers** via the **OpenEye** website.

This **Agreement** shall become immediately effective after you confirmed your registration by clicking on the link which was sent to you by e-mail after registering with your details on the **OpenEye** website. By clicking on the confirmation link sent to your registration e-mail address you accept the stipulations under this **Agreement**, and that you enter into a legally binding contract (**Agreement**) between you in your capacity as a **Contributor** and potential **Customers**, of this website, as well as **OpenEye**, as the **Platform Provider (Website)**.

The registration pages for this website and the e-mail from **OpenEye** are an integral part of this **Agreement**. Because your registration entails legal consequences, you must:

- a) you must have given accurate contact information during the time of registration, and if you have not done so
- b) you must provide accurate information to contact you or a person of your choice by filling in the relevant fields of the **Profile** page under the **User Center** of your account when you first log in.
- c) you must have read this agreement **BEFORE** you begin using this website. The continuation of your registration on this website is considered as tacit consent to all conditions under this **Agreement (Part I and Part II)** as set out below.

OpenEye reserves the right to suspend or delete any registration or account in non-compliance with letters **a)** and **b)** without giving further notice.

Your Agreement with OpenEye:

- contains all the contractual conditions you need to know about working with this website.
- gives details of the current commission model, which tells you:-
 - a. under what kind of licenses you are selling your **Images**;
 - b. lists the details of the terms of use which **Customers** must observe when using your **Images**;
 - c. tells you how much, when and how you get paid;
 - d. gives all financial information in **US Dollars (US\$)**.

Any amendments to this **Agreement** shall take **7 days** to come into effect after posting a notice of change to your registered e-mail address with us.

1. Licensors and Licensees

OpenEye not acting as Licensor

Although **OpenEye** reserves the right to license **Images** (or **Content**) provided by you under future novel-use license schemes, **OpenEye** is currently *not marketing to license its Contributors' Images*

under such novel-use licenses, and you will be informed prior to the implementation of any licensing schemes or licensing agreements pertaining to such novel use licenses or licensing schemes.

2. OpenEye acting as Sales Platform

The **OpenEye** website provides you, the **Contributor**, with a global sales and marketing platform, which enables you to upload, store, market and sell your **Images** in various ways and under different licensing schemes to end-users as described in the following. The contractual relationship with respect to the sales and licensing of your **Images** is therefore between you and the purchaser (**Customer**) of the rights in your **Images** as agreed hereunder by you, the **Contributor** and the Purchaser. **Images** offered for sale by you on this platform are provided for global use and in any market, but subject to the restrictions as set out under “**Section 6: License**”, “**Section 10: Project-based conditions of use**” and **Section 17: Permitted Uses**”

3. Commission, Markup

3.1 **OpenEye** adds a **Markup** to the price of your images as its commission for acting as a sales platform for the sale of your **Images**:

Commission charged as Markup under the current licensing schemes are

Individual Image	Subscription Image				
	Base Price US\$35				
Markup/image	Package	20 Images	40 Images	80 Images	100 Images
30%	Markup	30 %	25%	20%	10%

3.2 **OpenEye** currently does not charge any additional fees for the services provided by the **OpenEye** website in addition to the **Markup** withheld and as stipulated under this **Agreement**, but reserves the right to charge such fees in the future.

4. Direct Image Sales to end users

This website provides you with a platform to market and sell your **Images** in the following ways and under the **License** as stipulated in this **Agreement**:

5. Self-marketing and use of E-mail facility

You may create project galleries from the image pool uploaded by you to the **OpenEye** website for the purpose of marketing **Images** yourself directly to potential clients and buyers.

For the purpose of self-marketing your images on this website, you may maintain e-mail lists for sending e-mail links through the mail system maintained by the **OpenEye** website which are pointing to your project galleries.

5.1 You herewith agree that you use this facility only for the purpose of sending targeted advertisements for your images stored on this website and that you will not be conducting mass mailing campaigns for other purposes or to random recipients.

5.2 **OpenEye** warrants that information you store on its system for self-marketing by e-mail links will not be accessed for use by **OpenEye** except for the purposes as stated under this agreement.

6. License

6.1 Through the **OpenEye** website you will be selling **Images** under the following 2 licensing schemes:

- a) Direct sale of **Images** to registered **Customers** under a **General Single Project Image License** (in the following: Single Image License). For pricing structures available with respect to this license type see “**Appendix I: Site Global Base Price Table**” or “**Section 9. Controlling pricing of your Images**”.
- b) Direct sales of **Images** as **Subscription Images** to registered **Customers** via 4 subscription packages under the **General Single Project Image License**. For pricing structures available with respect to this license type see “**Appendix II: Subscription Packages**”.

6.2 You acknowledge herewith and **OpenEye warrants**, that no other license types exist for the sale of **Images** through this website and that you shall not stipulate additional conditions in the data fields provided for your **Images**.

6.3 You herewith agree that the licensing conditions pertaining to the sale of your **Images** through this website as described in this **Agreement** are the only licensing conditions applying to your **Images** and that you will not be entitled extend or restrict such conditions as set out hereunder in the data fields provided for your **Images**.

Exclusivity

6.4 Images made available by you, *the Contributor* on the **OpenEye** website are never available under an exclusive license. Exclusivity rights for images must be negotiated separately, and **Customers** will contact the administrators of **OpenEye** for the purpose of negotiating exclusive rights for images with its **Contributors**.

7. Marketing of the OpenEye website

OpenEye will also undertake to market the **OpenEye** website directly for the purpose of promoting the sale of all **Images** released for sale by **Contributors**.

You therefore agree to the following:-

that you wish to appoint OpenEye to:

7.1 provide support for the exploit throughout the world and in all media of all rights in the **Images** stored on the **OpenEye** server;

7.2 to add the **Contributor’s Images** and thumbnail images of such **Images** for the purpose of promoting the **OpenEye** website to one or more of its databases;

7.3 to promote the sale of **Images** stored on its servers to **Customers** through the **OpenEye** website either by **Direct Image Sales** or the sale of **Subscription Packages** or any other licensing scheme subject to later inclusion under this **Agreement** and as agreed to by its **Contributors**.

8. Image Submission – Rights and Obligations

You therefore agree as below and under this **Agreement** (subject to restrictions as stated in this **Agreement**) **OpenEye** grants you the following **Rights** and you assume the following **Obligations**:

8.1 You must control the visibility of all your submitted **Images**, *both* to visitors of the home page of **OpenEye** and/or registered **Customers** and **Contributors** for the purpose of sale under a **Single Image License**, and:-

8.2 You must specify whether such **Images** are free for sale under a **Subscription Image License**.

8.3 You have the right to delete any **Images** provided by you without giving further notice.

- a. upon deletion of **Images** by you, **OpenEye** will immediately cease to sell any such deleted **Images** as well as cease to grant any further Licenses for the **Images** so deleted (but without

prejudice to any Licenses which have subsequently been granted for **Images** already purchased by **Customers**).

- b. **Images** already sold under this **Agreement** will continue to be available to **Customers** according to the stipulations under this **Agreement** (currently for a period of 7 days) upon deletion of your images, the **Images** already purchased may be used by **Customers** according to the conditions of use as set out under the terms of this **Agreement**. (see: Effects of Image Deletion)

8.4 You are providing your **Images** under a global, non-exclusive license, and you may therefore sell your **Images** in any other way or in any other market, regardless whether you are offering any such **Images** for sale on the **OpenEye** website.

8.5 You therefore agree to exempt **OpenEye** from any obligation to respond to infringement claims brought forward by other parties to whom you may be additionally licensing your **Images** under an exclusive **Agreement**, and you will indemnify **OpenEye** for any and all expenses which may be arising from any and all such claims brought forward by third parties.

8.6 You may terminate this **Agreement** by giving notice 7 days in advance of termination in accordance with the stipulations under this **Agreement** by sending an e-mail to the following address: webmaster@imabulary.com. Any prior rights existing and resulting from the previous sales of your **Images** through the **OpenEye** website shall not be affected.

Under this Agreement you must furthermore declare and agree as follows, that:-

8.7 You, *the Contributor*, are the original **Copyright Owner** for the **Images** uploaded by you, and/or you must be able to produce on demand by any party which holds a legitimate interest in any image concerned, the written authority provided by you or the original **Copyright Owner** to display, offer, market, license and sell any **Images** uploaded by you onto the **OpenEye** website.

8.8 You grant the **Customers** the right to use and alter your **Images** in any way, provided such alteration(s) is(are) not pornographic, defamatory or otherwise unlawful in nature;

8.9 You undertake that the person (i.e. you or the original creator of the image) who actually created the **Image** and that you waive all moral rights in respect of the use of any image by **Customers** or any other third parties doing so on behalf of the **Customer**;

8.10 You will ensure all meta data and other information pertaining to the **Images** uploaded and provided by you is/are correct with regard to circumstances, facts and persons concerned, and you oblige to keep any and all such information and meta data up-to-date at all times.

8.11 You will indicate the availability of model or property releases and you agree to make such release(s) available to **OpenEye** or the **Customer** by uploading the pertaining model and/or property release using the facility provided by the **OpenEye** website under your account, or otherwise, if so requested.

9. Controlling pricing of your Images on OpenEye

OpenEye is implementing 3 methods by which you can control the pricing of your images; these are:

- Photographer Image Base Price
- Individual Image Price
- Price Labels

OpenEye Site Global Base Price

OpenEye implements a **Site Global Base Price Policy** for **Images** made available by you, the **Contributor** on the site. The **Site Global Base Price** applies to all **Images** where the **Contributor** does not specify individual image pricing by making use of the provided pricing tools.

9.1 You herewith expressly and irrevocably agree that the **Site Global Image Base Price** applies to the sale of all **Images** for which you have not specified any other pricing regime as described below.

9.2 **OpenEye** herewith reserves the right to modify its **Site Base Price Policy** without further notice. (Please refer to the currently applicable **Site Base Price Table** under “**Appendix I**” attached to this **Agreement**.)

9.3 **Photographer Image Base Price**

You can also control the base price of your images yourself which will be applicable to all your images if you have not applied an **Image Price Profile** or defined an **Individual Image Price** to your image. If you wish to specify your own **Image Base Price** for all your images, you must use the settings table provided under “**Settings**” in your User Center. The settings facility will also show you the **Site Image Base Prices** for your reference.

9.4 **Individual Image Price**

You can assign an **Individual Image Price** to your images using the settings facility provided on the ‘Edit’ page for your image.

9.5 **Price Labels**

You may define **Price Labels** and attach these **Price Labels** to your images. Please refer to the section Price Label under the **User Center** of your account to create and edit price profiles.

9.6 In case you have simultaneously applied price settings for more than one of the above described image price control methods (*i.e.* **Photographer Base Price**, **Individual Image Price**, **Price Labels**), the method yielding the highest price will prevail for charging the customer.

9.7 **Contributors** can opt to release individual **Images** for sale under a **Subscription Image License** by marking the respective check box “**Subscription Image**” on the image management pages under their accounts.

10. **Project-based conditions of use under the “General Single Project Image License/Single Image License”**

Customers usually work on a project basis, and may require the publishing of an image in various media (print, internet, other media like social networking, electronic publishing, etc.) in the context of a project. **OpenEye** offers, in order to simplify pricing structures, the **Images** on its website under a **General Single Project Image License/Single Image License**.

You therefore agree to the following:

10.1 Under this **Agreement** you grant the **Customer** the right of use of your image under the following project-based conditions of use (in the following: **General Single Project Image License/Single Image License**):

10.2 Under the **General Single Project Image License** offered on the **OpenEye** website, you grant the **Customer** the use of any purchased image in the context of a **Discrete Publishing Project**.

Definition: “Discrete Publishing Project”

A **Discrete Publishing Project** is defined by specific limitations which either **alone or in combination** are sufficient to establish the **Minimum Extent and Conditions** for the characterization of a **Discrete Publishing Project**. Therefore, a **General Single Project Image License**, as opposed to a **Royalty Free License**, is characterized in being executed for a specific client, for a specific purpose or intent, and/or being generally limited in scope (e.g. type of publishing media or print intent,

etc), and by definition a discrete project is and must be always characterized as being limited with respect to duration.

In order to determine the **Minimum Extent and Conditions** for defining a **Discrete Publishing Project**, one or a combination of any of the above principal characteristics (client, purpose or intent, scope, duration, etc., but not limited to any of these specific parameters) are applicable:

“Discrete Publishing Projects” - Examples

Advertising campaign - characterized by client, specific product or service and duration. Publication of a purchased image can extend over different media types (internet, print, public video displays, TV, etc.) but **Images** must not be re-used for repeat campaigns even if for the same client, product or service.

Print publications – characterized by Title, Issue, Article. Publication of a purchased image can extend over different media (internet, print, public video displays, TV, etc.), but must not be used for follow up issues with different articles or products or authors.

Websites – Projects characterized by title, client, subject, product or service. Publication of a purchased image can extend over different sections and pages under one website, but **Images** may not be re-used for different clients or products or services if the website functions as a platform, or in cases where major editorial changes are subsequently implemented, except where the image used is a lead image for the website.

11. Subscription Images - Pricing Structure:

Subscription Image refers to **Images** sold under a subscription scheme on the **OpenEye** website, whereby the **Customer** purchases a certain number of discounted **Images** in a resolution of 3600 pixels for the long dimension of the image. **OpenEye** currently offers 4 ‘Subscription **Packages**’. The **General Single Project Image License Agreement** as defined under **Section 10: Project-based conditions of use**” applies to **Images** sold under a **Subscription Package**.

You therefore agree to the following:

Subscription image price

11.1 The price of a subscription image is determined by the **Global Site Image Base Price** set by the **OpenEye** administrators for the image dimension bracket with 3600 pixels for the long side of the image.

11.2 Currently the **Global Site Image Base Price** set for the 3600 pixels bracket is US\$35.00. Payment for **Subscription Images** will be credited for every instance an image marked for sale under the **OpenEye** subscription scheme is downloaded by a **Customer**.

Please Refer to **Appendix II** for the pricing structure of the 4 **Subscription Image** packages offered on the **OpenEye** Website.

11.3 The **General Single Project Image License** conditions apply to the use of all **Subscription Images**.

12. Submission and deletion of Images

Submission of Images and release for sale

12.1 You herewith agree that **Images** are released for sale under the site minimum pricing scheme as soon as you have set the appropriate visibility options for your individual **Images**.

- 12.2 You must provide **Custom Pricing** (by assigning an **Image Price Profile** or by setting an **Individual Image Price** for your image) at the time of releasing your image for sale by setting the appropriate visibility options.
- 12.3 If you do not provide **Custom Pricing** for your **Images** at the time of making the appropriate **Visibility Settings**, you herewith agree that your **Images** are for sale under the **Site Minimum Base Price Scheme as set out in the Site Minimum Base Price Table. (See Appendix I.)**
- 12.4 You must expressly release **Images** for sale under **Subscription Packages** by setting the appropriate permission for each individual image on the image administration pages under your account.
- 12.5 By releasing your image for sale under **Subscription Packages** at the time of setting the appropriate permission for each individual image you declare and accept that you understand the implications with respect to the sales price at which your image will be sold. **(see Appendix II)**

Submission of identical or very similar Images

- 12.6 You should not submit large numbers of identical or very similar **Images** to the **OpenEye** website. In your and **OpenEye's** interest, **OpenEye** reserves the right to modify your rights management permissions or visibility options set by you for such **Images**, and in cases where you upload identical or extremely similar **Images**, we reserve the right to delete any such **Images** without further notice.

File names, image keywords, image captions, descriptions and meta data

- 12.7 You must keep all the above information provided under the listed management functions as well as any other supplementary information (if provided) up to date at all times by editing the pertaining permissions and data fields provided by the **System. OpenEye** reserves the right to update obviously and blatantly erroneous or false information pertaining to any of the **Images** provided by you without further notice. (e.g. wrong naming of persons, locations, processes, etc...)

Deletion of Images

- 12.8 You may delete any of the **Images** provided by you at any time without further notice. Upon image deletion by you, **OpenEye** will cease to grant licenses for the image so deleted (but without prejudice to any licenses which may subsequently or already have been granted for **Images** already purchased or downloaded). This is in addition to your rights to terminate this entire **Agreement** as set out below.

Effects of deletion

- 12.9 If an Image is deleted, whether by you or by **OpenEye**, then any previously granted and existing licenses and **Conditions of Use** shall persist until their contractual expiry as set out for the specific license types and periods defined under this **Agreement**.
- 12.10 You undertake for yourself and for the **Copyright Owner** that following termination neither of you will enter into any license or disposal which conflicts with any license which has subsequently already been granted by **OpenEye** under this **Agreement**.

13. Warranties

You **warrant** that:-

- 13.1 you have given full and accurate information at the time of registering your account with **OpenEye**, including your full legal name and address (or that you will update this information

truthfully and accurately as soon as possible following the approval of your account by **OpenEye** and that you will provide accurate banking information upon request by **OpenEye** for the purpose of receiving payments if prompted by the administrators of the site.

OpenEye shall not accept liability for mis-sent funds due to erroneous banking information provided by you.

- 13.2 you, or the **Copyright Owner** you represent, are the sole owner(s) of the entire copy rights in the **Images** you provide, and that your **Images** are free from any third party rights in the entire **Copyright** and all other intellectual property rights throughout the World, except for any **Prior Rights** (if any);
"**Prior Rights**" means any previous license or other rights granted for the use of that Image. Where an Image has previously been licensed by **OpenEye** and then deleted from the **System**, **Prior Rights** include those previous licenses by **OpenEye** as stipulated under this **Agreement**.
- 13.3 where the **Agreement** is entered into by an agent on behalf of the **Copyright Owner**, the agent has been properly assigned to enter into this **Agreement**.
- 13.4 you hold the rights to grant, market, license, sell or assign all rights in the **Images** provided by you, including but not limited to the rights to grant reproduction rights in such **Images** for print, motion picture, television, video, cable, computer, radio, cartoon, merchandising and/or Internet, to make the **Images** available on electronic equipment, CD-ROM, DVD and other similar media or via the Internet, and to include your **Images** in any catalog, on internet sites or marketing efforts in any form; except for the **Prior Rights** (if any) there is not and will not, during the term of this **Agreement**, be any restriction/fetter on **OpenEye's** licensing of **Images** to a **Customer** to the fullest extent possible under this **Agreement**.
- 13.5 you hold all permissions needed for the exploitation by third parties of the rights, including without limitation, from subjects or owners of products or property depicted in the **Images** and/or original clients for whom the **Images** may have been created. Any exercise by **OpenEye** of the Rights shall not violate the rights of any third party (including, without limitation, the rights of the subject of the **Images**), in particular with regard to laws relating to trade mark, copyright, indecency and obscenity, privacy, publicity and defamation worldwide.
- 13.6 where you have indicated that a **Model Release, Property Release** or any other release of a third party right including without limitation, any copyright, trade mark or other intellectual property right, is available, the release must:-
- (a) be legally binding, and
 - (b) (except as otherwise notified to **OpenEye** via the website or, with the **Agreement** of **OpenEye**, via email) authorize all uses of the **Images** anywhere in the world including without limitation for use in relation to sensitive issues; you must make the release(s) available to **OpenEye** if so requested.
- 13.7 you fully accept the specific licenses as stipulated in this document and that no other licensing stipulations exist. **OpenEye** does not recognize licensing restrictions other than those set out herein. If so set out by you in any data entry fields, which are **NOT** provided expressly for the purpose of detailing such licensing restrictions or informing **OpenEye** about any existing **Prior Rights** applicable to any image any such restrictions or stipulations shall be void.
- 13.8 you grant to the **Customer** the right to alter the **Images** including any cropping, manipulation, combining, digital alteration and creation of derivative **Images** providing such alteration is not pornographic or defamatory in nature or otherwise unlawful.
- 13.9 You undertake that the person who created the **Images** has waived all moral rights in respect of the use of the Image pursuant to this **Agreement** by **OpenEye**, its **Customers** or any third parties.
- 13.10 there are and will be no claims by any other party in connection with the use or reproduction of any of the **Images** provided by you;

- 13.11 you will ensure that all information contained in file names, key wording, captions, descriptions, permissions or other information pertaining to any and all your **Images** will be kept and remain accurate and that any and all such information provided by you does not infringe the copyright or other rights of any third party, and that such information is not pornographic, defamatory, fraudulent, lewd, obscene, maliciously deceptive or otherwise illegal, including but not limited to infringing any third party intellectual property or privacy rights, whether directly or in context or by juxtaposition with other materials.
- 13.12 any information supplied for display with any **Image**, including captions, keywords, pseudonyms, agency names and descriptions only includes information that is pertaining to the specific Image itself, and does not include contact details, web addresses, URL's (Uniform Resource Locator's) and copyright and rights management information;
- 13.13 where **OpenEye** has licensed an image to one of its **Customers**, You agree that you will not contact the **Customer** for any reason pertaining to this sale.
- 13.14 where your Image(s) are included in search engine listings and/or promotions, pursuant to "**Section 7: Marketing of the OpenEye website**", no claim will be made by you for breach of copyright in respect of the **Images** displayed.

14. Indemnity

You will indemnify, defend (at the request of **OpenEye**) and hold **OpenEye** and its sub-licensees and assigns (if any) harmless against any prejudice, damage, liability or costs (including reasonable lawyers' fees) which any of the indemnified parties incur, arising from or in respect of any claim that there has been a breach of your representations, obligations and warranties under this **Agreement**. This paragraph will remain in force after the termination of this **Agreement**.

15. Statements and Payment

For the purposes of this clause:

- 15.1 "**Net Revenue**" means the gross income derived from the sales of **Images** provided to this site. **OpenEye** charges its commission as a markup on the image prices pre-defined by the website globally or by individual assignment as made by you. Any amounts designated and transferred are exclusively in **US Dollar (US\$)**, less: -
- OpenEye** commission, charges or fees (if any)
 - sales tax (if applicable)
 - bank fees (if applicable)
- 15.2 A list of Image sold and purchased, i.e. available for your download are accessible via your "**Orders**" and "**Download**" pages under the "**User Center**" of your account. For payment records please refer to your **PayPal** or credit card statements.
- 15.3 You may claim quarterly settlement of any full amount exceeding US\$300 accrued during the sales quarter as a result from sales of your **Images**. Payment claims can be made by invoice (via email: webmaster@imabulary.com) on or after the following dates: March 31, June 30, September 30, December 31. Payments shall be made in net amounts as indicated on the statement page under your account, and **OpenEye** shall be entitled to deduct transaction fees, as well as any agreed sums for commission, VAT, withholding taxes (if applicable), credit card fees, or any similar statutory fees or taxes payable on revenue or income accrued from the sales of your **Images**.
- 15.4 The payment due for each quarter shown in the statement shall be paid to you in the currency specified by **OpenEye**.

15.5 If the amount shown on the statement page under your account is less than US\$300.00, any such amount shall will be carried forward to the following quarter.

15.6 If any amount due to you includes a fraction of one cent we may round the fraction either up or down to the whole cent.

15.7 Amounts due to you where you are not paid in **US Dollars** shall be converted from US Dollars to the specified currency for payment at the rate provided by **OpenEye** or **OpenEye's** Payment provider as advised on the date of payment.

15.8 **OpenEye** may recover by debiting a **Contributor's** account or otherwise any sum incorrectly or inadvertently credited to your account.

15.9 All costs and handling charges incurred by **OpenEye** but properly payable by you including without limitation, charges from your bank recharged to **OpenEye's** payment provider.

15.10 All other amounts or sums due to **OpenEye** from you, including where **OpenEye** is entitled to be indemnified by you in the circumstances set out under this agreement and representing the likely total amount of such indemnity.

15.11 If any remittances made to you by **OpenEye** can not be received into your account in any 1 year period due to closure of your bank account and in the event that no accurate substitute banking information was provided by you, **OpenEye** may remit the balance stated in your **Contributor** account to a charity of **OpenEye's** choice

16. Copyright Notices, Captions and Credits

16.1 **Customers** of **OpenEye** will be instructed to credit **OpenEye**. **OpenEye** currently does not provide the facility to instruct clients to attach **Personal Credits** in the form of your name or a pseudonym, but is planning the introduction of such a facility in the future.

16.2 **OpenEye** shall have the right, including in advertising and publicity in any media, to use your name to advertise and to promote the platform and/or the **OpenEye** brand.

16.3 Provided you acknowledge **OpenEye's** rights, you may use **OpenEye's** name in any lawful promotion or publicity without **OpenEye's** prior written consent. Pornographic, defamatory or other unlawful use, including use in unsolicited electronic communications, is not permitted. **OpenEye** shall be entitled to revoke this permission if it becomes aware of any use of its name which it deems inappropriate.

17. Permitted uses

Customers are permitted to use your images under adherence to the following conditions and restrictions:

17.1. The use of the **Images** is strictly limited to the use, medium, period of time, print run, placement, territory and any other limitations applicable under the **General Single Project Image License** as defined under this **Agreement**. Please refer to "**Section 6: Licensing Schemes**" and "**Section 10: Project-based conditions of use**" of this agreement for further details.

17.2 **Customers** are prohibited to use or modify **Images** in a pornographic, defamatory, fraudulent, lewd, obscene, maliciously deceptive or otherwise illegal manner, including but not limited to infringing any third party intellectual property or privacy rights, whether directly or in context or by juxtaposition with other materials.

17.3 **Customers** must not incorporate **Images** (or any part of them) into a logo, trade mark or service mark. Such use must be negotiated separately. Customers must contact **OpenEye** in this case under the following contact e-mail address: webmaster@imabulary.com. **OpenEye** will

subsequently approach you, the contributor of the images in question for the purpose of negotiating custom licenses for the images concerned.

18. OpenEye's obligations and exclusion of liability

- 18.1 **OpenEye** agrees to use its reasonable endeavors to ensure that the terms of **Licenses** as granted under this **Agreement** are adhered to by **Customers** of this website. However, should you become aware of any use by a **Customer** of your **Images** credited to **OpenEye** which is not permissible under this **Agreement**, you shall commence legal action upon your own digression if the **Images** concerned are provided by you.
- 18.2 Where you are the agent for the **Copyright Owner** of any **Images**, **OpenEye's** agreement is with you only and **OpenEye** shall not be liable for any compensation claims made by third parties with respect to sales made under your account.
- 18.3 **OpenEye** shall oblige to remove any contested **Images** from its image database at its earliest convenience and reserves the right to preemptively suspend any user accounts indefinitely and/or without prior notice should they become subject to reasonably justified claims by third parties.

19. Advertising and promotion

- 19.1 You agree that your **Images** may be used at **OpenEye's** option without charge and without prior consent or approval by you in promotional/marketing materials designed to promote the sales of **Images** and/or to enhance awareness of the **OpenEye** name/brand. (see "**Section 7: Marketing of the OpenEye website**"),
- 19.2 You agree that any such promotional items for which your **Images** were used may be distributed by **OpenEye** worldwide for a period of up to 2 years, notwithstanding the earlier termination of the **Agreement** for any reason.
- 19.3 In order to avoid doubts regarding the definition of "Promotional/Marketing Materials" you agree that this also includes search engine listings and promotions including, but not limited to '**Google Images**'.
- 19.4 Where **Images** are used to promote the **OpenEye** name/brand in general, **OpenEye** will make reasonable efforts to provide a photo credit in your name, but you herewith acknowledge that **OpenEye** cannot guarantee a photo credit to you and will not be held liable if one is not made or is made in a different format from that requested by **OpenEye**.

20. Breaches of licenses and default/bankruptcy by Customers

- 20.1 You recognize that **OpenEye** shall have no obligation to conduct any usage verification of **Images** or checks of the character, standing or financial position of any **Customer**.
- 20.2 Each party to this **Agreement** shall promptly inform the other of any actual or suspected infringement of copy rights, loss of **Images**, breach of moral rights or other matters giving rise to the threat of proceedings or claims or demands in respect of any of the **Images** available for sale on the **OpenEye** website.
- 20.3 In the event of any alleged breach of any **Licensing Terms** by a **Customer** or any other infringement of intellectual property or other rights in an **Image**, **OpenEye** may either take action unilaterally against the **Customer** or alternatively inform you that it will not be taking action and you may then do so at your option.
- 20.4 Should **OpenEye** initiate legal action, we may (but shall not be obliged to):
- a) make such claims and take such action as may be necessary in the opinion of **OpenEye**.

- b) retain fifty percent (50%) of all amounts recovered by **OpenEye** in connection with such claims or actions (after first deducting collection fees and reasonable legal expenses incurred by **OpenEye**).
- c) should you, the **Contributor** initiate legal action, then **OpenEye's** sole obligations shall be at your request and at your own cost as follows:
 - i. to supply you with the information on its database relating to the **Customer** concerned;
 - ii. to provide testimony by verifying the terms of this **Agreement** in any action which may be brought on by you;
 - iii. prior to giving this assistance **OpenEye** may require you to have indemnified **OpenEye** for all of the costs and expenses of any such action including, at **OpenEye's** discretion, providing and securing the costs of **OpenEye's** legal and other advisers.

20.5 You agree that where **OpenEye** incurs legal and/or other specific costs relating to an outstanding amount owed by a **Customer** then these costs will be recouped by **OpenEye** first before accounting to you. For the avoidance of doubt, should a debt be only partially cleared by a **Customer**, **OpenEye** will recoup its specific costs first and then divide the remaining amount between you and **OpenEye** in line with the commission schedule in force at the time when the debt was invoiced. **OpenEye** shall not be obliged to pursue payment of debts owed by **Customers** if, in **OpenEye's** opinion, the prospects of recovery are insufficient to justify the likely collection costs.

21. Loss of uploaded **Images**, failure of system hardware or software

OpenEye will make every effort to implement and maintain a double-backup policy for its system and server; however:-

21.1 due to the nature of server provision, downtime and lost transmissions may occur. In recognition of this it is agreed that **OpenEye** shall have no liability whatsoever to any **Contributor** or **Copyright Owner** for:

- a) the loss of any image files or provided data, or for any deterioration or damage to any Image on the **System**; or
- b) any failure of the **System** which results in lost license fees.

21.4 **Contributors** shall be responsible for maintaining original, digital back-up copies of all **Images** submitted to **OpenEye** and shall provide replacement digital copies to **OpenEye** on request at any time.

21.5 Where **Contributors** make a submission by disc or any physical medium, **OpenEye** shall be under no obligation to return such disc or other property. Any such discs or other media shall be duly destroyed upon transfer onto the **system**.

21.6 **OpenEye** is entitled to amend the **System** or remove an online upload facility at any time.

22. Amendment and Variation

OpenEye may vary this **Agreement**, alter or delete any of its provisions or add new provisions by giving you 7 days prior notice at any time.

23. Termination

23.1 Any **Prior Rights and Obligations** as well as statutory or stipulated periods pertaining to such existing **Prior Rights and Obligations** resulting from the use of this website and the offering for or sale of **Images** on the **OpenEye** website, as well as any otherwise existing claims which the parties may or may not have already brought forward at the time of **Termination** of the **Agreement** shall not be affected.

I. By the Contributor:

23.2 immediately and at your own digression without providing prior **Notice** by deleting your account with the **OpenEye** website. The stipulations with regard to **Prior Rights and Obligations** (Section 23.1) apply.

II. By OpenEye

OpenEye may terminate this **Agreement** with immediate effect under the following conditions:-

23.3 with immediate effect upon providing **Notice** to you at any time in writing to your registration e-mail address if you are in breach of any terms of this **Agreement** pertaining to the use of this website and where any such breach is not capable of effective remedy.

23.4 with immediate effect upon providing **Notice** to you at any time in writing to your registration e-mail address if you are in breach of any term of this **Agreement** with regard to the **License Conditions** under which images are for sale on this website, and where any such breach is not capable of effective remedy.

III. By mutual agreement:-

23.5 within **7 days** upon providing notice to you at any time in writing to your registration e-mail address should **OpenEye** decide to terminate its operation of the **System**.

23.6 within **7 days** upon providing notice to you at any time and in writing to your registration e-mail address should **OpenEye** enter into insolvent liquidation.

Upon effective termination OpenEye shall;

23.7 delete from its website every and all images provided by you in respect of a terminated **Agreement** not later than 7 days upon cancellation of your account with **OpenEye**.

23.8 continue to account to you in respect of licenses granted before termination; continue to service **Customers** with respect to any prior rights resulting from purchases of your **Images** from this website for the period specified under the licensing terms of this **Agreement**.

23.9 not be obliged in any way return to you any data, storage media of whatever kind, or any **Image** itself.

Furthermore:

23.10 Termination shall not prejudice any **Prior Rights** or licenses then existing or any negotiations which **OpenEye** has properly entered into with any third party prior to the date of termination or the grant of **Licenses** for **Images** already downloaded by a **Customer** prior to termination.

23.11 You undertake for yourself and/or the **Copyright Owner** that following termination neither of you will enter into any **License** or disposal which conflicts with any **License** granted by **OpenEye** during the period of this **Agreement** and you shall exempt the Customers of **OpenEye** from any claims that might be brought forward due to you having entered into any such subsequent License agreements.

24. Notices

24.1 Any notice under this **Agreement** may be sent electronically by the parties to their notified e-mail addresses. Notices shall be deemed to have been duly served upon successful dispatch regardless whether such notice is actually received or acknowledged, and under this agreement the responsibility to ensure that your contact e-mail address is valid rests entirely with you.

24.2 **OpenEye** may also serve notice on you by a display on its website in a reasonably prominent position to which the attention of the users of the website is drawn.

24.3 Please note that **OpenEye** may contact you at the e-mail address, postal address or on the telephone numbers given when you register on this website the e-mail addresses, postal addresses telephone numbers supplied at a later date under the administration link “**My OpenEye**”.

25. Marketing

OpenEye reserves the right to circulate the details of you to other companies within the **OpenEye** Group, and **OpenEye** and such companies may contact you by email or otherwise about other services.

26. Assignment and parties

26.1 This **Agreement** will continue for the benefit of and be binding upon **OpenEye** and you and your respective successors in title and assignees. You may only assign the **Agreement** with the prior written consent of **OpenEye**.

26.2 **OpenEye** may assign this **Agreement** to any member of the **OpenEye** group or any third party and if it does so, references herein to **OpenEye** shall thereafter be to such third party or any **OpenEye** group company and references herein to the **OpenEye** group shall be to any subsidiary of such third party or **OpenEye** group company, or the holding company of such third party or **OpenEye** group company or any subsidiary of such holding company or **OpenEye** group company.

26.3 No person, legal or natural not party to this **Agreement** (including any third-party **Copyright Owners**) may enforce any term or condition under this **Agreement**.

27. Entire understanding

27.1 This **Agreement** supersedes any previous **Agreement** between the parties relating to the **Images**, it constitutes the entire understanding between the parties and is binding upon them, your executors, successors or assigns.

27.2 If any provision or provisions of this **Agreement** shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

28. Salvatorial clause

Should any of the original stipulations under this **Agreement** be null and void or become invalid, **OpenEye** shall at its own digression replace the invalid stipulation with a valid stipulation which comes closest in intent, purpose and effect to the original stipulation.

29. Disputes and governing law

This **Agreement** shall be governed by and interpreted in all respects in accordance with the Laws of Hong Kong. If any dispute shall arise between you and **OpenEye** in connection with or in relation to this **Agreement** the matter shall be resolved under the Laws and by the Courts of Hong Kong.

THE END

Appendix I: Site Global Base Price Table

Site Global Base Price			
Size	Width/Pixel	Height/Pixel	Site Global Price
maximum	32000	32000	\$600.00
jumbo	20000	20000	\$400.00
super	12000	12000	\$250.00
very large	6000	6000	\$120.00
large	4800	4800	\$50.00
medium	3600	3600	\$35.00
small	2400	2400	\$20.00
basic	1800	1800	\$10.00
screen	1024	1024	\$3.00
preview	800	800	\$0.00
thumbnail	180	180	\$0.00

* General Single Project Image License conditions apply.

Appendix II: Subscription Packages – Pricing

Package 1		Package 2		Package 3		Package 4	
US\$910		US\$1750		US\$3360		US\$3850	
Quantity	20	Quantity	40	Quantity	80	Quantity	100
Unit price	35.00	Unit price	35.00	Unit price	35.00	Unit price	35.00
Markup	30%	Markup	25%	Markup	20%	Markup	10%
Resolution	3600px	Resolution	3600px	Resolution	3600px	Resolution	3600px

* General Single Project Image License conditions apply.

