

USER AGREEMENT – Terms and Conditions

PART II: *Customer*

1. Preliminary

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

Specifically, the following constitutes the **Customer Agreement** between you, as the **User** of the **OpenEye** website and as a **Customer** buying **Images** from **Contributors** 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 potential **Customer**, the **Contributors** to this website, as well as **OpenEye**, as the **platform provider (Website)**.

The registration pages for this website and the e-mail you receive(d) from **OpenEye** are an integral part of this **Agreement**. Due to the fact that confirming your registration entails legal consequences:-

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

This Agreement:

- contains all the contractual conditions you need to know about the usage of this website and the purchasing of **Images** via the **OpenEye** website.
- gives details of the current **Terms and Conditions** for the use of the website as well as the licensing conditions attached to **Images** purchased via this website, and specifically tells you:-
 - a. the nature of your contractual relationship with the **OpenEye** website and **Contributors/Users** of the website.
 - b. under what kind of licenses you will be using **Images** you purchased from Contributors via the **OpenEye** website;
 - c. tells you how you should pay for **Images** and our cancellation policy;
 - 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.

2. Contractual relationships

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 **Contributor** which applies to the browsing and purchase of **Images**.

3. *OpenEye* acting as sales platform

The **OpenEye** website provides you, the **Customer**, with a purchasing platform for **Images**. The contractual relationship with regard to the use of **Images** is therefore between you, the Customer and

the **Contributor**, and by confirming your account registration by clicking on the e-mail link sent to your account, you specifically acknowledge and agree that:-

3.1 you accept the licensing conditions for the use of **Images** as set out in the following under “**Section 5: License**“ and “**Section 6: Project-based conditions of use**” and “**Section 10: Permitted uses**”.

3.2 you accept the conditions for the use of this **Website** as set out in the following.

3.3 *you must cancel your account on this website without further delay if you do not accept this agreement as whole or in parts. The continuation of your registration on the **OpenEye Website** constitutes the tacit acceptance of this agreement.*

4. Dual-purpose account

Although you may have registered a **Customer** account on this website, your account features the same functionality as any other type of account (**Contributor, Family, Club**) and you may at any time also choose to also contribute **Images** to the **OpenEye** website. Due to the dual-purpose nature of accounts registered on the **OpenEye** website you herewith declare that you inseparably and integrally - as a whole -, accept **PART I (Contributor Agreement)** and **Part II (Customer Agreement)** prior to using this website and/or browsing, offering for sale or purchasing of any **Images**.

5. License

5.1 Through the **OpenEye** website you will be purchasing **Images** in 2 ways from **Contributors**:

- i. Direct purchase of individual **Images** from the **Contributors** under a **General Single Project Image License** (in the following: Single Image License).
- ii. Direct purchase of Subscription **Images** from the **Contributors** by purchasing one of the 4 Image subscription packages offered under a **General Single Project Image License** (see “**Section 6. Project-based conditions of use**” for further details.)

Exclusivity

5.2 Images made available by the **Contributors** on the **OpenEye** website are never available under an exclusive license. Exclusivity rights for images must be negotiated separately, and **Customers** must contact the administrators of **OpenEye** for the purpose of negotiating exclusive rights for images with it's **Contributors** at the following e-mail address: *webmaster@imabulary.com*

5.3 You acknowledge herewith and **OpenEye** warrants, that no other license types and conditions exist for the purchase and sale of **Images** through this website and that you shall not stipulate or request additional conditions in any way for the **Images** you purchase.

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

OpenEye understands that **Customers** usually work on a project basis, and may require the publishing of **Images** in various media (print, internet, other media, electronic publishing, etc.) in the context of a **Project**. **OpenEye** offers, in order to simplify pricing structures, the **Images** on it's website under a **General Single Project Image License/Single Image License**.

You therefore agree to the following:

6.1 Under the **General Single Project Image License** offered on the **OpenEye** website, you the **Customer**, have the right to use any purchased image under the following **Project-based conditions of use** (in the following: **General Single Project Image License/Single Image License**) in the context of a **Discrete Publishing Project**.

6.2 Unless stated otherwise hereunder, **OpenEye** grants **Customers** a non-exclusive, non-sublicensable and non-assignable right to reproduce **Images** solely in the manner and for the purposes set out under the conditions of the **General Single Project Image License** as described in this section. (also see “**Section 5: License**”)

6.3 “Discrete Publishing Project” - DEFINITION

6.4 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, the use of an image under a **General Single Project Image License**, as opposed to a **Royalty Free License**, is characterized in that the image is used for a project for a specific client, or for a specific purpose or intent, and the use is generally limited in scope (e.g. type of publishing media or print intent, print run, number of copies, etc), and by definition a discrete project **MUST** be characterized as being limited with respect to duration.

6.5 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:

EXAMPLES: “Discrete Publishing Projects”

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, etc. 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, etc. 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 as lead image for the website.

The above examples are only provided for the purpose of explanation and the description of what constitutes a particular **Publishing Projects** is very much dependent on individual circumstances. Should you have any doubts as to whether the use of an image is permissible under your specific **Publishing Project Definition** for a **Publishing Project** as implemented by you, you must write to the administrator of the **OpenEye** website for clarification under the following e-mail address: webmaster@imabulary.com

7. Subscription packages - Pricing

OpenEye currently offers the following **Subscription Packages** to it’s **Customers** as shown below. The **General Single Project Image License** conditions apply to the use of all **Subscription Images**.

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

8. Breach of license

- 8.1 **OpenEye** will make every reasonable effort to ensure that all licensing and usage conditions for the use of this website and for **Images** purchased from this website are adhered to by **Contributors and Customers**. However, should you as a **Customer** have been contacted or informed, or become aware of any additional stipulations attached by **Contributors** to their **Images** other than those defined under this **Agreement**, you shall WITHOUT DELAY inform **OpenEye** of any such instance by giving written notice to the following e-mail address: webmaster@imabulary.com
- 8.2 After you, as the buyer of **Images** from this website, have given **OpenEye** notice of a violation of licensing terms of a **Contributor** concerning **Images** purchased by you, you shall be free to use any **Images** purchased from the infringing **Contributor** via this website in accordance with the license stipulations as set forth under this agreement without giving further notice to the concerned **Contributor**.
- 8.3 In the event of any alleged breach of **Licensing Terms** by a **Contributor** or any other infringement of intellectual property rights or other rights in an Image as **indicated** by you, **OpenEye** may take action unilaterally against such **Contributor**.

9. Procurement of releases

- 9.1 **OpenEye** does **NOT** warrant for the availability or, if so provided by the contributor, for correctness and effectiveness of any releases. **Customers** shall publish **Images** obtained via the **OpenEye** website entirely at their own risk. **Customers** shall keep **OpenEye** as well as it's **Contributors** harmless with regard to any claims made against **OpenEye** as well as with regard to legal costs arising due to **OpenEye** having to defend against such claims.
- 9.2 **Customers** must ensure that all necessary releases are procured prior to publication and it is the sole responsibility of the **Customer** to ensure that all necessary releases have been obtained prior to the publication of **Images**.
- 9.3 **Customers** must satisfy themselves prior to the purchase of **Images** of the availability of any **Model Release** or **Property Releases** for an **Image**. The availability of **Releases** from the **Contributors'** side shall be indicated by any such **Release** having been made available with the pertaining **Images**. **OpenEye** has no obligation whatsoever to follow up or assist in the procurement of any **Releases**.
- 9.4 The **Customer** must ensure that no **Copyrights** or any other material or intellectual property rights are breached by the publication of any **Images** purchased from this website.
- 9.5 **OpenEye** makes no warranties as to the availability and correctness of obtainable **Releases** for any of the **Images** offered for sale on it's website and unless otherwise indicated or stated by the **Contributor**, no release is available nor shall the availability of any releases be implied for any particular **Images** due to information which might have been attached to an image, unless where explicitly stated otherwise.

10. Permitted uses

- 10.1 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 5: License**" of this **Agreement** for further details.
- 10.2 You 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.

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

10.4 A License to use **Images** on or in a product does not imply any right on your part to use the **Images** in any manner in the advertising or promotion of such product, which right must be separately negotiated.

11. Key-wording and captions, Other information provided with **Images**

11.1 **OpenEye** does not warrant and assumes no liability whatsoever for the accuracy of captioning, keywording, metadata or any other information associated with the **Images** on its website. Should any doubts arise with regard to the accuracy of information attached to any **Images**, it is the sole responsibility of the customer to verify such information prior to publication.

11.2 **Customers** shall keep **OpenEye** as well as its **Contributors** harmless with regard to any claims made against **OpenEye** as well as with regard to legal costs arising due to **OpenEye** having to defend against claims arising from false information attached to any **Images**.

12. Credits & Copyright

12.1 **Images** which are obtained from this website for editorial use (shall be credited with the following byline: **@OpenEye**)

12.2 **OpenEye** does not support the identification of individual **Contributors** of the **Images** available on its website, but plans to introduce such system at a later date.

13. Warranties and Disclaimer

OpenEye makes no other warranty, express or implied, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose of **Images** purchased from this website. Neither **OpenEye** nor its **Contributors** shall be liable to you or any other person or entity by reason of any representation (unless proven to be fraudulent) or any implied warranty, condition or other term, or any duty at common law, or under the express terms of this **Agreement** for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether or not caused by any potential negligence of **OpenEye**, its employees or agents or otherwise) which arises out of or in connection with this **Agreement**, even if **OpenEye** has been advised of the possibility of such damages, costs or losses, **OpenEye's** maximum liability arising out of or in connection with your use of or inability to use the Image(s) (whether in contract, tort or otherwise) shall, to the extent permitted by law, be limited to the purchase price paid by you for the relevant Image.

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. Payment and Invoices

15.1 **OpenEye** collects payments for **Images** from **Customers** via the **PayPal** service. The payment notice issued by the **PayPal** service shall serve as the customer's proof of purchase.

15.2 Should **Customers** require receipts for **Images** purchased via the **OpenEye** website, **Customers** shall submit invoices together with the **PayPal** Payment Information to **OpenEye**.

16. Delivery/availability of purchased **Images**

16.1 **Images** will be delivered via download link from the **OpenEye** website and will be available for a period of 1 week beginning with the time at which payment through **PayPal** was received.

16.2 **Customers** must download purchased **Images** at their earliest convenience via the e-mail link provided under the "**Download**" page of their accounts within the availability period of 7 days.

16.3 **OpenEye** makes no warranties with regard to the availability of **Images** after the expiry or the availability period of 7 days.

17. Amendment and variation

17.1 **OpenEye** may vary this **Agreement** and alter or delete any of its provisions or add new provisions by giving you 7 days notice prior to such alterations becoming effective.

17.2 Should you not accept the alterations to this agreement made at a later date, you are required to cancel your account with **OpenEye** with immediate effect. Failing to do so shall be considered as tacit acceptance. See "**Section 18: Termination**" for further details.

18. Termination

18.1 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 purchase or sale of **Images** from 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 Customer

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

18.2 immediately and at your own digression without providing prior notice by deleting your account with the **OpenEye** website.

18.3 by deleting your account with the **OpenEye** website in cases of breaches of any terms of this **Agreement** by any of the **Contributor** 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.

II. By **OpenEye**

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

18.4 with immediate effect upon providing notice to you at any time and 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.

18.5 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. (Section „**19. Notices & Customer Contact**” applies.)

III. By mutual agreement:-

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

18.7 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.

19. Notices & Customer contact

19.1 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.

19.2 **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.

19.3 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**”.

20. Assignment and parties

20.1 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**.

20.2 **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.

20.3 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**.

21. Participation

This **Agreement** exists between you, the **Customer** and the **Contributors** of images to this website and between you and **OpenEye**. 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**.

22. Entire understanding

22.1 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, as well as their executors, successors or assigns.

22.2 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.

23. 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.

24. 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 arises between you as the **Customer** and **OpenEye** in connection with this **Agreement** in parts or in its entirety, 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/Pixels	Height/Pixels	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.

Glossary

Agreement

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

Owners

Designates the owners of this website, i.e. OpenEye (See “Impressum”

Image/Images

means any digitized photograph, illustration or any other type of **Images** of whatever nature which you submit to **OpenEye** at any time during the term of validity of this **Agreement**.

Acceptance of **Images** by **OpenEye** shall be at **OpenEye's** sole discretion and **OpenEye** may at any time reject or delete **Images** in its absolute discretion. Any such objectionable material shall be deleted and will no longer be part of this **Agreement**.

Should you submit **Images** by CD or DVD **OpenEye** shall securely destroy the medium after uploading the **Images** onto the **System**. Where you submit **Images** by hard drive or any other means of electronic storage, **OpenEye** will return the hard drive or such other storage media to you at your expense after uploading the **Images** onto the System.

OpenEye

means **OpenEye** or its administrators, successors in business or any other person to whom it may license or assign its rights under this **Agreement**.

Contributor

means the **Copyright Owner** of any **Images** uploaded to the **OpenEye** website, or any duly authorized person, company or licensee if registration has been completed on the **Copyright Owner's** behalf. For the avoidance of doubt, if registration is completed by an authorized employee, company or licensee on behalf of a registered company, then that company shall be the legally liable **Contributor**. The term “**Contributor**” also includes the **Contributors' executors, administrators, heirs and assigns or successors in business.**

Copyright Owner

means the natural or legal person who owns or is represented as owning the **Copyright** in any Images uploaded by a **Contributor** to this website.

Customer

means any third party individual, partnership, corporation or other entity who may be intermediaries or end-users and to whom a License is granted or is proposed to be granted by **OpenEye**.

Payment provider

Payment for **Images** purchased via this website shall be exclusively made via the **PayPal** payment service.

Model release

means any written release signed by or on behalf of any living person or the estate of a deceased person or an infant whose likeness is incorporated in whole or in part in any Image.

Property release

means any written **Release** from the owner and/or occupier and/or or the administrators of the estate of a deceased person of any property whose permission may be necessary or desirable for **Images** incorporating in whole or in part that property to be published in any jurisdiction in the world.

Metadata

means Image information supplied to **OpenEye** by the **Contributor** by any means, including but not limited to License types, License restrictions, Release data, captions, keywords, descriptions, date taken, location and pseudonyms.

System

means the online System(s) operated by **OpenEye**, including the website under the URL: www.imabulary.com and any other internet based **System** which **OpenEye** may operate under the **OpenEye** brand.

General Single Project Image License

gives the **Customer** the right to use **Images** in the context of a **Discrete Publishing Project**, i.e. under observance of the **Project-based conditions of use**. (Also see **Royalty Free License**)

Project-based conditions of use

Means that the **Customer** has the right to use any purchased image under a **General Single Project Image License/Single Image License** in the context of a **Discrete Publishing Project**.

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**.

Minimum Extent and Conditions (for defining a Discrete Publishing Project)

means that 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**. The use of an image under a **General Single Project Image License** is characterized in that the image is used for a specific publishing project for a specific client, or for a specific purpose or specific intent, and the use is 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.

Royalty-free license

refers to the right to use Images without the need to pay royalties or license fees for each use or per image sold, or some time period of use or sales. This website does not grant **Royalty-free licenses**

Availability period

designates the time period during which a **Customer** can download purchased **Images** via a Download Link.

Notice

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.

