

## JUPITERIMAGES ROYALTY FREE LICENSE AGREEMENT

THIS IS A LEGAL AGREEMENT BETWEEN YOU, YOUR COMPANY, YOUR EMPLOYER AND/OR YOUR CLIENT (in the case you are an agent acting for a single client), AS THE CASE MAY BE (COLLECTIVELY "YOU"), AND JUPITERIMAGES CORPORATION. "JUPITERIMAGES" WHEN USED HEREIN SHALL MEAN JUPITERIMAGES CORPORATION, OR ITS WHOLLY OWNED SUBSIDIARIES INCLUDING, WITHOUT LIMITATION, DYNAMIC GRAPHICS, INC., PICTUREREQUEST LLC, PICTUREARTS CORPORATION, CREATAS LLC, HEMERA TECHNOLOGIES, INC., GOODSHOOT, AND EACH OF ITS SUBSIDIARIES, AFFILIATES AND/OR DISTRIBUTORS, AS THE CASE MAY BE. THIS LICENSE AGREEMENT APPLIES, WITHOUT LIMITATION, TO THE WEBSITES CURRENTLY LOCATED AT: ablestock.com, animations.com, botanica.com, brandxpictures.com, clipart.com, comstock.com, comstock1700.com, creatas.com, creatas.com.au, creatas.de, creatas.co.uk, foodpix.com, goodshoot.com, liquidlibrary.com, nonstock.com, photoobjects.net, photos.com, picturearts.com, picturerequest.com, thinkstock.com, and thinkstockfootage.com, ANY INTERNATIONAL OR OTHER VERSIONS OF THE FOREGOING, FUTURE WEBSITES AND/OR ANY IMAGES DELIVERED VIA ANY STORAGE MEDIA.

PLEASE READ THE FOLLOWING TERMS AND CONDITIONS. YOUR ACCEPTANCE OF THESE TERMS IS AN ABSOLUTE CONDITION TO YOUR ACCESS TO AND USE OF ANY IMAGE(S). DOWNLOADING AND/OR USING ANY IMAGE(S) FROM JUPITERIMAGES CONFIRMS YOUR ACCEPTANCE OF THESE TERMS AND FORMS A LEGAL CONTRACT BETWEEN YOU AND JUPITERIMAGES. JUPITERIMAGES reserves the right to change any of the terms of this Agreement at any time, and you agree to be bound by such changes. If you do not agree to the following terms, as may be amended, do not download or use any Image(s).

### 1. LICENSE

#### A. Definitions:

"Comp Usage" is defined as the creation of a temporary test use, rough layout or comprehensive rendering of a proposed work for client review, internal company review or testing. **The Image may not be used in any materials distributed or accessible to the public or in any final product or use**, including, without limitation, any online or other electronic distribution system (except you may transmit comps digitally or electronically for their review) and may not be sold or sublicensed alone or as part of any product.

"Image(s)" shall mean animations, clipart, composites, digital footage, digital video, film footage, fonts, graphics, illustrations, images, motion sequences, photographs or any other visual representation regardless of whether the Image(s) are obtained via download from any JUPITERIMAGES Web site, delivered via any storage media (CD, DVD, disk, etc.) that is now known or may become known in the future, or obtained from a JUPITERIMAGES' authorized distributor, together with all accompanying metadata and other material.

"Storage Media" shall mean CD-ROM, digital video disc (DVD), floppy disk, or any other storage device or media now known, or hereafter created.

"User" shall mean the individual, legal entity or agent entering into this license agreement or any employee or contractor of such individual, legal entity or agent that edits, manipulates or modifies the Images or are otherwise directly involved in the creative process including, but not limited to, photo editors, photo researchers, photographers, art directors or designers. All Users shall only use the Images in accordance with the terms of this Agreement.

"You" shall mean a single: (i) individual, (ii) legal entity (corporation, partnership, LLC, sole proprietorship, etc.), or (iii) agent acting on behalf of a single individual or entity.

#### B. Copyright:

The Image(s) are copyrighted and protected under the various laws of the United States, International treaties and other applicable laws. The Image(s) shall remain the sole and exclusive property of JUPITERIMAGES, or its licensors. Use of the Images is licensed, not sold, pursuant to the terms of this License Agreement. Use of the Images without agreeing to this License Agreement, or a breach of these License Agreement terms, is copyright infringement.

#### C. Grant:

##### (I) Paid License.

a) JUPITERIMAGES grants you a non-exclusive and non-transferable license to use the Image(s) only as provided in this License Agreement. See Section 13(A) below for special terms if you are licensing a subscription plan.

##### (II) Comp Use

a) JUPITERIMAGES grants you the non-exclusive and non-transferable right to use Image(s) for Comp Usage for a period not to exceed sixty (60) days.

D. Number of Users (defined above):

**(I) FOR IMAGES ACQUIRED BY PAY PER DOWNLOAD AND STORAGE MEDIA.**

YOU ARE GRANTED A TEN (10) USER SINGLE USE, SEAT LICENSE FOR USE OF THE IMAGES. THIS IS NOT A SIMULTANEOUS USE LICENSE. Only one (1) User may access or use the Image(s) at one time with up to a maximum of ten (10) Users (within the same legal entity entering into this License) who may access or use the Image(s).

Licensee may distribute Image(s) within a network or similar asset management system to no more than ten (10) computers/workstations within the same company or legal entity for use by one (1) person at a time. If the Image(s) are to be placed on a network server accessible by more than ten (10) computers/workstations, please contact your sale representative as you will require a multiple seat license.

**(II) FOR IMAGES ACQUIRED BY SUBSCRIPTION OR COMP USE.**

YOU ARE GRANTED A ONE (1) USER SEAT LICENSE. ONLY ONE USER MAY ACCESS THE SUBSCRIPTION WEB SITE, OR USE IMAGES FOR ANY COMP USE, AS APPLICABLE. YOU MAY NOT DESIGNATE ONE (1) USER TO ACCESS THE SUBSCRIPTION WEBSITE IF MORE THAN ONE (1) USER WILL USE THE IMAGES. IN SUCH CASES, PLEASE CONTACT YOUR SALES REPRESENTATIVE AS YOU WILL REQUIRE A MULTIPLE SEAT LICENSE.

E. Permitted Uses. You may, subject to Section 1(F) below:

- (I) Back up, and store, single Image(s) as necessary on a single server for archival, tracking or asset management purposes only. Any copy or archive you make must include copyright notice pursuant to Section 1(G)(III).
- (II) Use the Image(s) in any electronic or print media, including advertising and editorial use, provided such use is not intended to allow the re-distribution or re-use of the Image(s).
- (III) Use the Image(s) in any items for personal use or resale, including book covers, calendars, consumer merchandise (T-shirts, posters, art, etc.), provided such use is not intended to allow the re-distribution or re-use of the Image(s).
- (IV) Modify or alter the Image(s) as necessary for your use, provided that if such modification or alteration constitutes a derivative work, the rights to all such derivative works shall belong exclusively to JUPITERIMAGES or its licensors, as the case may be, and that you shall only use such derivative work in accordance with this Agreement. If requested by JUPITERIMAGES, you agree to execute a written assignment of any such rights, including copyrights, at no cost to JUPITERIMAGES.
- (V) Use the Image(s) as décor in an office, lobby, public area, restaurant, or retail store.
- (VI) Use the Image(s) as design elements in video, film, or television broadcasts.
- (VII) Use the Image(s) in connection with your business or entity, e.g. corporate identity documents and letterhead, except as prohibited below.
- (VIII) Use the Image(s) for any other uses approved in writing by JUPITERIMAGES.

F. Prohibited Uses: You may NOT:

- (I) Sublicense, distribute, transfer or assign the Image(s) or rights to the Image(s).
- (II) Reverse engineer, decompile, translate, or disassemble any part of the Image(s).
- (III) Copy or reproduce the Image(s), except as specifically provided for in Section 1(E).
- (IV) Remove any copyright, trademark or watermark from any place where it appears on the Image(s).
- (V) Display the Image(s) in any digital format or for any digital use at a resolution greater than 72 dpi, except in editorial or preliminary design work. Doing so will be viewed as an attempt to distribute the Image(s) in violation of this Agreement.
- (VI) Use the Image(s), or any part of the Image(s), as part of a trademark, service mark, or logo. JUPITERIMAGES or its licensors retain the full rights to the Image(s), and therefore you cannot establish your own rights.
- (VII) Use the Image(s) to compete with JUPITERIMAGES. JUPITERIMAGES is in the business of licensing images to its customers. It is the specific intent of this provision to prohibit you from using the Image(s) to enter, either directly or indirectly, a similar or competing business.
- (VIII) Use the Image(s) in a product or service whereby the Image(s) can be used apart from a product or service.
- (IX) Use the Images(s) in any downloadable format intended for multiple distribution including, without limitation, Web site templates, software products, e-greetings, etc. You may contact [templatelicense@jupiterimages.com](mailto:templatelicense@jupiterimages.com) to find out about a special license for such use.
- (X) Use the Image(s) in any way that could be considered defamatory, pornographic, libelous, immoral, obscene or fraudulent, or illegal, either by making physical changes to it, in the juxtaposition to accompanying text or images, or otherwise.
- (XI) Use Image(s) as part of any use involving sensitive subject matters, as determined by JUPITERIMAGES, including but not limited to the following: all sexual issues, sexually transmitted diseases, substance abuse, alcohol, tobacco, AIDS,

cancer, mental ailments, Homosexual or alternative lifestyles, and physical or mental abuse, without advance written consent from JUPITERIMAGES and any model in such Image(s). Sensitive subject use pertains to both commercial and editorial uses. Contact JUPITERIMAGES for verification of model releases. Availability of model releases does not grant the right to use Image(s) in any sensitive subject matters.

#### G. Additional Terms

(I) JUPITERIMAGES reserves the right to (i) not permit use of any Image(s) for any reason whatsoever; and (ii) notify you that certain Image(s) are no longer available for use. Upon such notification, the license to use such Image(s) shall automatically and immediately terminate.

(II) All other rights not expressly granted to you are reserved solely for JUPITERIMAGES.

(III) JUPITERIMAGES requests the copyright notice "© [insert current year] JupiterImages Corporation" appear adjacent to the Image(s) or on a credit page.

(IV) JUPITERIMAGES reserves the right to replace Image(s) with an alternative Image for any reason. Upon notice of such replacement, the license for the replaced Image(s) immediately, and automatically, terminates for any use of the Image(s) that does not already exist, and this License Agreement shall automatically apply to any replacement Image(s). You agree not to use any replaced Image(s) with future products or services and you shall take all reasonable steps to discontinue use of the replaced Image(s) in existing products or services.

**2. PAYMENT TERMS** You agree to pay all Image(s) license fees and no rights are granted under this Agreement until all payments are made in full. A service charge of two percent (2%) per month, or the amount allowed by law, will be charged on any unpaid balance. Any claims for adjustments must be made to JUPITERIMAGES within five (5) days of billing. You shall be liable for all past due amounts, interest and costs of collection, including attorneys' fees. Refunds are governed by the terms of the individual service used. Please see Section 11 below for terms applicable to refunds in the event of cancellation.

#### 3. TERMINATION

A. This License Agreement is effective until it is terminated.

(I) This License Agreement will terminate automatically, without notice from JUPITERIMAGES, if you fail to comply with any provision of this License Agreement.

(II) You can terminate this Agreement by destroying the Image(s), along with any copies or archives, any CD-ROM or accompanying materials (if applicable), and ceasing all use of the Image(s) for any purpose. Such termination may not effect payment obligations.

B. JUPITERIMAGES may, in its sole discretion: (i) monitor, as frequently as JUPITERIMAGES determines, anything you download from our Web sites, (ii) limit downloads to a fixed amount of downloads per 24 hour period so as to insure the best possible service to all subscribers to our Web sites, (iii) track any abuse of your username and password, (iv) suspend or terminate your account, without notice, if JUPITERIMAGES believes to be there is a violation of this Agreement and/or any abuse of your username and password.

C. Upon termination of this Agreement, you agree to (i) destroy all copies and archives of the Image(s), (ii) cease using the Image(s) for any purpose, and (iii) confirm to JUPITERIMAGES in writing that you have complied with these requirements. Please see Section 13(A) below for other terms also applicable to Subscription terminations.

#### 4. WARRANTY

A. JUPITERIMAGES represent and warrants that:

(I) it has the right to enter into this Agreement and to grant the rights hereunder; and

(II) the Image(s) or other Storage Media (if applicable) will be free from defects in materials and workmanship under normal use for a period of 30 days from the date of license.

B. EXCEPT AS PROVIDED ABOVE, THE IMAGE(S), STORAGE MEDIA AND ACCOMPANYING MATERIALS (IF APPLICABLE) ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT. JUPITERIMAGES GRANTS NO RIGHTS OR WARRANTIES WITH RESPECT TO THE USE OF NAMES, TRADEMARKS, LOGO TYPES, COPYRIGHTED DESIGNS OR WORKS OF ART OR ARCHITECTURE DEPICTED IN ANY IMAGE, AND THE USER MUST SATISFY ITSELF THAT ALL NECESSARY RIGHTS, CONSENTS, OR PERMISSIONS AS MAY BE REQUIRED ARE OBTAINED. JUPITERIMAGES DOES NOT WARRANT THAT THE IMAGE(S), WEB SITES OR OTHER MATERIALS, WILL MEET YOUR REQUIREMENTS OR THAT USE WILL BE UNINTERRUPTED OR ERROR FREE. THE ENTIRE RISK AS TO THE QUALITY, PERFORMANCE AND USE OF THE IMAGE(S) IS SOLELY WITH YOU. YOU UNDERSTAND THAT YOU

SHOULD SEEK COMPETENT COUNSEL BEFORE USING IMAGES ON OR IN CONNECTION WITH ANY GOODS OR SERVICES OR FOR ANY OTHER COMMERCIAL PURPOSES.

C. You represent, warrant and covenant that:

- (I) You are at least eighteen years of age and have the full right and authority to enter into this License on behalf of yourself and/or your company, employer or principal;
- (II) You do not reside in any country to which export of US products are prohibited or restricted and you may not ship, transfer or export any of the Images into any country or use any of the Images in any manner prohibited by any laws, restrictions or regulations;
- (III) You will not use the Image(s) in any way that is not permitted by this License;
- (IV) Your use of the Image(s) will not violate any applicable law or regulation of any country, state, or other governmental entity;
- (V) The information that you provide to JUPITERIMAGES is accurate and true, including, without limitation, all credit card or other payment information and you shall update such information as necessary; and
- (VI) You shall be solely responsible for your use of the Image(s) and agree that JUPITERIMAGES grants no rights and make no warranties with regard to the use of trademarks, trade dress, copyrighted designs or works of art or architecture in any Images, and you must satisfy yourself that all necessary rights or consents regarding any of the above, as may be required for reproduction, have been obtained.
- (VII) You are solely responsible for determining whether your use of any Image(s) requires the consent of any other party or the license of any additional rights, and you should not rely solely on the information provided by JUPITERIMAGES.
- (VIII) You are solely responsible for obtaining any and all releases and clearances as may be required. If you are unsure whether additional rights are needed for your use of the Images, you are responsible for consulting with competent legal counsel.

## 5. LIMITATION OF REMEDIES

A. Replacement or Refund:

JUPITERIMAGES' entire liability and your exclusive remedy, with respect to any claims arising out of this Agreement shall be at JUPITERIMAGES' sole discretion, either: (i) replacement of Image(s); or (ii) refund of any fee paid for the specific Image(s). See Section 11 for other refund terms that may apply.

B. No Money Damages:

Under no circumstances whatsoever will JUPITERIMAGES be liable to you for any money damages including, without limitation, any lost profits, lost revenue, lost savings, or other incidental or consequential damages arising out of: (i) the use or inability to use the Image(s), (ii) JUPITERIMAGES' breach of this Agreement, , or (iii) for any claim by any other party, even if JUPITERIMAGES has been advised of the possibility of such damages. In no event shall the liability of JUPITERIMAGES exceed the amount paid by you for accessing, acquiring, and/or using any Image(s) within the preceding six (6) months. Any claims must be brought within twelve (12) months of the date that you discovered such claim, or reasonably should have discovered such claim, or shall be waived.

## 6. INDEMNIFICATION

You agree to indemnify and hold JUPITERIMAGES, its affiliates, parents, subsidiaries, employees, directors, officers, successors, assigns, distributors and anyone else associated with JUPITERIMAGES, harmless from, and against, any and all claims, liabilities, costs, damages, or expenses, (including attorneys' fees) asserted against JUPITERIMAGES arising out of your use of the Images or in connection with any breach of any of the terms of this Agreement.

## 7. GENERAL

A. Enforceability:

If any provision of this Agreement is held to be not enforceable, such provision shall be reformed only to the extent to make it enforceable, consistent with the parties' intent.

B. Taxes and other:

You agree to pay and be solely responsible for any and all sales taxes, use taxes, value added taxes and duties imposed by any jurisdiction as a result of the license granted to you, or your use of the Image(s), pursuant to this Agreement.

C. Waiver: No action of JUPITERIMAGES, other than an express written, signed waiver may be construed as a waiver of any part of this Agreement, and no employee of JUPITERIMAGES is authorized to make an oral waiver. In the event that JUPITERIMAGES waives a specific part of the Agreement, it does not mean that JUPITERIMAGES waives any other part.

## 8. JURISDICTION

This Agreement, its validity and effect, shall be solely interpreted, and governed by, the laws of the State of Connecticut, United States. Any claims shall be brought solely in the Federal District Court of the District of Connecticut and you expressly consent to the exclusive jurisdiction of the federal courts of the State of Connecticut, United States. You consent to the service of any required notice or process upon you by registered mail or overnight courier with proof of delivery.

## **9. LEGAL FEES**

You agree to reimburse JUPITERIMAGES for its legal fees, costs and disbursements if JUPITERIMAGES is successful in enforcing any of its rights under this Agreement including, without limitation, in connection with any action to collect payment.

## **10. ASSIGNABILITY**

You may not assign or transfer to anyone else the rights granted to you in this Agreement, without our prior written consent. JUPITERIMAGES may assign or transfer this Agreement freely.

## **11. CANCELLATION**

If you wish to cancel the rights granted in this License and your invoice, the following apply:

**(a) If you licensed single Images or purchased CD(s) (opened or unopened),** you may receive a full refund if you submit a completed and signed refund affidavit (located at [http://jupiterimages.com/en/company/refund\\_aff](http://jupiterimages.com/en/company/refund_aff)), and return any CD's, within fourteen (14) days of your invoice date. After fourteen (14) days, no cancellations will be accepted, no refunds made and you will be responsible for and must pay the full amount of the invoice.

**(b) If you purchased a Subscription,** you may receive a full refund within three (3) days of your invoice date, provided that you have not downloaded more than five (5) images. After three (3) days, or download of more than five (5) Images, no cancellations will be accepted, no refunds made and you will be responsible for and must pay the full amount of the invoice. By requesting a refund, you hereby represent and warrant that: (i) you have deleted or destroyed all downloaded Images, (ii) that you have not, and will not use any Images from the subscription, and (iii) that a breach of the foregoing shall require you to immediately repay the entire subscription fee plus damages to JUPITERIMAGES.

You are solely responsible for all shipping and handling fees with regard to a cancellation. All cancellations are final. See Termination Section 3 above for other applicable terms.

## **12. ENTIRE CONTRACT**

YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS. YOU FURTHER AGREE THAT IT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN YOU AND JUPITERIMAGES, WHICH SUPERSEDES ANY PROPOSAL OR PRIOR AGREEMENT, ORAL OR WRITTEN, AND ANY OTHER COMMUNICATION BETWEEN YOU AND JUPITERIMAGES RELATING TO THE SUBJECT OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY PURCHASE ORDER TERMS (EVEN IF SUCH TERMS ARE SUBSEQUENT TO THE DATE OF THIS AGREEMENT). FAQ'S, OTHER EXPLANATIONS, AND TEXT IN JUPITERIMAGES' WEBSITES ARE FOR YOUR INFORMATION ONLY AND ARE NOT, AND SHALL NOT BE CONSTRUED AS, PART OF THIS AGREEMENT UNLESS SPECIFIED OTHERWISE IN THIS AGREEMENT.

## **13. ADDITIONAL TERMS ADDENDUM**

In addition to terms 1-12 above, the following terms also apply if you obtain certain other services, or certain other Image(s), from JUPITERIMAGES and form a material part of your License Agreement:

### **A. SUBSCRIPTIONS**

If you are purchasing a subscription plan to any of JUPITERIMAGES' Web sites, the following also applies and is added to the Agreement as follows:

The following is added to Section 4(C):

"VII) You will hold all passwords for any subscription in the strictest of confidence. You may not share or disclose any password to any other user or third party other than as specifically provided for herein. If you breach any provision of this section, we shall be entitled to (i) terminate this Agreement immediately, (ii) retain all payments paid pursuant to this Agreement and, (iii) seek any legal or equitable remedies."

The following is added to Section 1(C)(I):

(b) This License Agreement, and your right to use the Image(s) shall immediately, and automatically, terminate upon the termination of the term of your subscription provided, however, that after your subscription term you may continue to use any Image(s) incorporated into a product or service during the subscription term in the same product or service in accordance with the terms of this Agreement.

The following is added to Section 1(F):

(XII) Stockpile, download, or otherwise store Images not used during the subscription term for future use.

**B.** If you are licensing Images from **clipart.com**, the following also applies and is added to the Agreement as follows:

The following is added to Section 1(E):

“(IX) Use the Images as a design element in electronic templates including Web site templates and e-greetings but NOT for software products that are intended for distribution or use by others. Electronic template use is restricted to 250 templates per year, must include a statement on the same page as the Content as follows: "Certain images and/or photos used in this template are the copyrighted property of JupiterImages and are being used with permission under license". Images used in an electronic template may not be used at a resolution higher than 72 dpi. You may obtain additional information about template licensing from [templatelicense@jupiterimages.com](mailto:templatelicense@jupiterimages.com).”

**C.** If you are licensing Images from **ablestock.com**, the following also applies and is added to the Agreement as follows:

The following is added to Section 1(F):

“(XII) Use any of the Images for any commercial purposes in excess of 100,000 printed copies without explicit written permission. NOTE: Web page impressions are unlimited”

#### **D. THIRD PARTY CONTENT**

If you are licensing Images from JupiterImages' third party suppliers, special license terms from the third party suppliers may apply. Please see the individual Web site or Storage Media for details of any special license terms.

09/01/2005