

Eyecandy Images License Agreement

1. Definitions

- 1.1 In this Agreement the following words and expressions shall have the following meanings unless the context requires otherwise:

“Agreement” means, altogether the terms and conditions within this document on our invoicing, reminder, legal documents, correspondence and our website, including the copyright notice within all our assets.

“ECI” shall mean Eyecandy Images inc. and its related brands, Eyecandy, Eyecandy images, Eyecandy Pro and Eyecandy

“Royalty Free Content” shall mean Content licensed for an unlimited number of uses for a one time fee and includes abbreviations like ‘RF’.

“Rights Managed Content” shall mean Content licensed for a fee per usage basis, calculated via set depending factors and includes abbreviations like ‘RM’.

“Rights Combined Content” shall mean Content that is licensed via a categorized model, calculating price per categories set by ECI and includes abbreviations like ‘RC’.

“Comps/Presentation Images” shall mean Content licensed without a fee solely for ‘Presentation or Review’ purposes to determine if the content is appropriate for use within our Royalty Free, Rights Managed and Rights Combined licensing models.

“Images” shall mean all content provided, generated, produced and supplied by Eyecandy Images in any medium, digital or non digital, though physical cd/dvd/hd/ftp/xml/rss/ or any other form of transmission. This includes image data, META data, offline data, copyright data and technical data imbedded and/or included in the image or the original, text, key-wording or captioning.

“End Use” shall mean the final product created with Eyecandy Images content in any shape or form, print or digital – excluding ‘comp/presentation images’.

“Term” shall mean a) with respect to each license granted hereunder, the term specified herein or in the applicable Invoice and/or Specific content Web Page, unless earlier terminated as provided herein and, b) with respect to this Agreement, the term shall end on the earlier to occur of (1) termination or cancellation of this agreement as provided herein or (2) the expiration of all licenses issues under this agreement.

2. Parties

This Agreement is binding between ECI and Licensee, ‘Licensee’ means either 1) the person listed as the registrant of any ECI registration or account through which this agreement and the license(s) granted hereunder are entered (“Registrant”) or 2) if the Registrant is entering into this agreement and the licenses granted hereunder for the benefit of, and/or as an agent on behalf of, registrant’s employer (“Employer”) and/or a third party (“Principal”), then such Employer and/or Principal. If Registrant is entering into this Agreement and the licenses granted hereunder for the benefit of and/or as an agent on behalf of Employer and/or Principal, the Registrant (a) represents and warrants that such Principal and/or Employer has authorized Registrant to enter into this agreement, that the licenses granted hereunder are in that Principal’s and/or employer’s behalf, that such Principal and/or Employer has agreed to be bound hereby and that Registrant has actual express authority to act on behalf of and bind such Principal and/or Employer to the terms of this agreement; (b) the Content and End Use is Solely for the benefit of Employer, Principal or Third Party and that Registrant will not use Content or End use for

the benefit of any other person or entity without entering into a separate license with ECI and (c) registrant will comply with all of the terms hereof and shall be jointly and severally liable for any breach of the terms of this Agreement by principal and/or Employer. If registrant requests any ECI employee or contractor or representative to facilitate registrant entering in to any License hereunder on behalf of Registrant and through use of Registrant's account, registrant agrees to be bound by this Agreement.

3. **Licensing**

3.1 Any and all licenses granted by ECI are conditioned upon (1) Licensee compliance with all provisions of this Agreement and (2) ECI's receipt of full payment by Licensee as identified in the applicable Invoice. Any and all License(s) granted to Licensee hereunder and Licensee's right to use the Content shall immediately terminate upon Licensee's failure to comply with any provision of this Agreement or to make full payment when due, in which case ECI shall be entitled to pursue all other remedies available under copyright and other Laws

3.2 **Royalty Free Licence:** Subject to the terms and conditions of this Agreement, ECI grants Licensee a limited, non-exclusive, worldwide rights to create and exploit the End Use for any purpose authorized under this Agreement. The rights granted under this include the right to make the Royalty-Free Content available to ten (10) separate individuals (cumulatively over the Term) for the sole purpose of manipulating or otherwise using the Royalty-Free Content to create the End Use according to the terms provided herein ("Users"), in any and all media now known or hereafter devised. Licensee must obtain an additional license and pay ECI the applicable one-time flat fee in order to make the Content available to more than ten (10) Users

3.3 **Rights Managed License:** Subject to the terms and conditions of this Agreement, and excluding the rights granted in our Royalty Free License and Presentation images right to use, ECI grants Licensee a limited, non-exclusive right to use the Rights Managed Content licensed hereunder to create and exploit the End Use solely as specified in the Invoice, within the terms and conditions herein. ECI reserves all rights not specifically granted in this Agreement. Unless otherwise stated in the Invoice, the license granted hereunder for the applicable Rights Managed Content allows Licensee to use the Rights Managed Content obtained hereunder for one year from the date the applicable Invoice is issued. Except where specifically permitted on the Invoice for the applicable Content, Licensee may not distribute, publish, display or otherwise use in any way, the Rights Managed Content, including without limitation the End Use after the Term.

3.3 **Comps/Presentation Images:** Subject to the terms and conditions of this Agreement ECI grants Licensee the right to use Comps/Presentation images solely for 'Presentation or Review' purposes to determine if the content is appropriate for use within our Royalty Free, Rights Managed and Rights Combined licensing models, unless otherwise stated in the applicable Invoice, the Term of the Comps license is sixty (60) days from the date of download. Licensee may not copy, distribute, publish, display or otherwise use in any way the Comps after the Term without obtaining an appropriate Content license or if Licensee does not obtain such a license, upon expiration of the Term, Licensee must destroy all copies of the Comps Content. High Resolution Comp images can be obtained only at prior agreement with ECI or any ECI affiliate and any illegal use will be pursued.

5.0 **Limitation of Liability and Warranty:**

ECI warrants that: (1) it has all necessary rights and authority to enter into and perform this Agreement; (2) the Licensed Content will be free from defects in Content and workmanship for thirty (30) days from delivery (Licensee's sole and exclusive remedy for a breach of this warranty being the replacement of the Licensed Content); (3) Licensee's use of the Licensed Content in its original form and when used in accordance with this Agreement, will not infringe on any copyright, moral right, trademark or other intellectual property right and will not violate any right of privacy or right of publicity; and (4) all necessary model and/or property releases for use of the Licensed Content authorized under this Agreement have been obtained. Neither ECI, nor any party on whose behalf ECI licenses Licensed Content, makes any representations or warranties as to whether any additional fees or payments may be due to any person depicted in Licensed Content pursuant to the requirements of any applicable trade union, and Licensee shall be solely responsible for any such additional fees or payments to such trade union.

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- 6.0 **Intellectual Property:** Eyecandy Images retains all rights, titles, and interests in all copyrights, patent rights, trademarks, and all other proprietary rights from the content. No rights are granted except for the commercial licenses specified in this Agreement. Licensee do not acquire any copyright ownership or equivalent rights in/of any Content or any other property of ECI. Licensee hereby allow ECI to use without charge Licensee's End Use in displays and presentations for ECI marketing purposes, solely to demonstrate how Licensee have used the Content.
- 7.0 **Indemnification:** Licensee agrees to indemnify and hold harmless ECI and 'Licensors' officers, directors, employees, contractors, subsidiaries, joint ventures, licensors and licensees against all claims (including, without limitation, claims by third parties), liability, damages (including punitive damages), judgments, settlements, costs and expenses, including reasonable legal fees and expenses, arising out of or related to (1) Licensee's breach of any terms, conditions or restrictions of this Agreement (including the terms, conditions and restrictions identified on the Invoice(s) and Content Web Pages, (2) Licensee's use or modification of any Content, or combination of any Content, with any text or other content, (3) Licensee's failure to obtain from third parties all permissions necessary to use the Content, (4) Content which ECI has otherwise notified Licensee not to license or otherwise use prior to the beginning of the Term of the license for such Content; and (5) any act or failure to act by Licensee or any of Licensee's employees, contractors, Employers, agents, clients, Principals, or Users. ECI agrees to indemnify and hold Licensee harmless against all claims, liability, damages (except punitive damages), costs and expenses, including reasonable legal fees and expenses, awarded against Licensee arising out of or related to ECI's breach of the warranties to Licensee as provided above. Notwithstanding the preceding, ECI shall have no obligation unless Licensee provide ECI with written notice within fourteen (14) days of Licensee's receipt of any claim subject to indemnity and the right to defend or control the defence of such claim and shall not, in any case, have any obligation with respect to any claims covered above.
- 8.0 **Restrictions of Usage**
- 8.1 Licensee may store the Licensed Content in a digital library, network configuration or similar arrangement to allow the Licensed Content to be viewed by employees, partners and clients of Licensee, but under no circumstance may the Licensed Content ever be used by more than 10 Users unless a separate seat license is purchased for each additional User, before such additional use begins.
- 8.2 Licensee may not sublicense, sell, assign, convey or transfer this Agreement or any of its rights under this Agreement but Licensee may sell or license derivative works incorporating the Licensed Content. However, Licensee may not include the Licensed Content in an electronic template intended to be Reproduced by third parties on electronic or printed products.
- 8.3 Licensee may not sell, license or distribute any derivative work containing the Licensed Content in a way that would allow a third party to download, extract or access the Licensed Content as a standalone file.
- 8.4 Licensed Content shall not be incorporated into a logo, trademark or service mark.
- 8.5 Licensee may not post the Licensed Content online in a downloadable format or enable it to be distributed via mobile telephone devices.

- 8.6 If any Licensed Content featuring a model is used in (1) a manner that would lead a reasonable person to believe that the model personally uses or endorses a product or service; or (2) connection with a subject that would be unflattering or unduly controversial to a reasonable person, Licensee must accompany each such use with a statement that indicates that the person is a model and the Licensed Content is being used for illustrative purposes only.
- 8.7 The Licensed Content may not be used in a pornographic, defamatory or otherwise illegal manner, whether directly or in context or juxtaposition with other Contents.
- 8.8 Licensee must retain the copyright symbol, the name of ECI, the Licensed Content's identification number and any other information as may be invisibly embedded in the electronic file containing the original Licensed Content.
- 8.9 Licensee must abide by any restriction on use notified to it by ECI before or at the time of delivery of the Licensed Content, either in the information accompanying the Licensed Content or otherwise.
- 8.10 If the Licensed Content is used in an editorial manner, Licensee must include the following credit adjacent to the Licensed Content: “[Photographer’s name]/Eycandy Images”. While efforts have been made to correctly caption the subject matter of the Licensed Content, ECI does not warrant the accuracy of such information.

9.0 **Termination/Cancellation**

The license contained in this Agreement will terminate automatically without notice from ECI if Licensee fails to comply with any provision of this Agreement. Upon termination, Licensee must immediately (1) stop using the Licensed Content; (2) destroy or, upon the request of ECI, return the Licensed Content to ECI; and (3) delete or remove the Licensed Content from Licensee's premises, computer systems and storage (electronic or physical).

ECI reserves the right to revoke the license to use the Licensed Content for good cause and elect to replace such Licensed Content with alternative Licensed Content. Upon notice of any revocation of a license for any particular Licensed Content, Licensee shall immediately cease using such Licensed Content and shall where possible ensure that its clients and customers do likewise.

10.0 **Confidentiality**

During this Agreement, ECI may provide Licensee with certain pricing, technical, marketing, strategic, product development, locations, and other confidential information. Licensee acknowledge that such confidential information encompasses valuable trade secrets and is proprietary to ECI. Licensee agree that Licensee will maintain the confidentiality of any “confidential information” that ECI may provide to Licensee, and Licensee shall not use or disclose the same without the prior written consent of ECI. “Confidential information” includes any information that is either designated as confidential by ECI or that, under the circumstances surrounding the disclosure, ought in good faith to be treated as confidential by Licensee.

11.0 **Miscellaneous**

Unauthorized Use. Any use of Licensed Content in a manner not expressly authorized by this Agreement or in breach of a term of this Agreement constitutes copyright infringement, entitling ECI to exercise all rights and remedies available to it under copyright laws around the world. Licensee shall be responsible for any damages resulting from any such copyright infringement, including any claims by a third party. In addition and without prejudice to ECI’ other remedies under this Agreement, ECI reserves the right to charge and Licensee agrees to pay a fee equal to five times ECI’ normal license fee for use of the Licensed Content.

Governing Law. This Agreement will be governed in all respects by the laws of the State of New York, U.S.A., without reference to its laws relating to conflicts of law. Any disputes arising from this Agreement or its enforceability shall be settled by binding arbitration to be held in London, England and/or all other confirmed working offices of ECI; The United Nations Convention on Contracts for the International Sale of Goods does not govern this Agreement. Notwithstanding the foregoing, ECI shall have the right to commence and prosecute any legal or equitable action or proceeding before any court of competent jurisdiction to obtain injunctive or other relief against Licensee in the event that, in the opinion of ECI, such action is necessary or desirable.

Severability. If one or more of the provisions contained in the Agreement is found to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not be affected. Such provisions shall be revised only to the extent necessary to make them enforceable.

Waiver. No action of ECI, other than express written waiver, may be construed as a waiver of any provision of this Agreement. A delay on the part of ECI in the exercise of its rights or remedies will not operate as a waiver of such rights or remedies, and a single or partial exercise by ECI of any such rights or remedies will not preclude other or further exercise of that right or remedy. A waiver of a right or remedy by ECI on any one occasion will not be construed as a bar to or waiver of rights or remedies on any other occasion.

Currency. Licensee will oblige to set currency for his/her own target market, at no time a different currency will be granted by ECI and it's affiliated and at no time should customer seek Content from our Designated web pages and source lower currency value sources for purchase. This act will result in cancellation and termination of all licensing and registrations and/or accounts.

Offensive/Explicit Content

Our content may show offensive, sensitive or provocative scenes, situations or images. Nudity is shown as well as the interpretation of sexual acts. Images can be seen as pornographic which is the opinion of the viewer, any gross pornographic acts, scenes or body parts will not be shown. Eyecandy images will not be responsible or liable at all for any physical or emotional damage caused on the terms of underage viewing, religion, local legal practices, grievance or disciplinary issues within a corporate or non corporate workplace. Any person viewing our site and images will be doing this on their own accord and risk.