

## **End Users License Agreement for Royalty-Free Content (Last Updated: April 1, 2014)**

Your use of royalty-free Content (“**Content**”) and the services related to Content (including, but not limited to, comping file services, impress-check services, visual marketing services and research services; “**Services**”), both made available by amana images inc. (“**Company**”) through Company’s web-site (amanaimages.com) or otherwise, is subject to your accepting and agreeing to be bound by the terms of use set forth below (the “**Terms**”). Any person who uses Content and/or Services (“**User**”) shall be deemed to have accepted and agreed to be bound by the Terms. Company may, in its sole discretion, change, remove, add to or otherwise modify the Terms. Each time before you use Content, you should review the latest version of the Terms available at amanaimages.com

The Terms shall also apply to Content and/or Services provided through Company’s authorized distributors.

### **1. Scope of License to Use Content**

1.1. Subject to Sections 2 (Uses Requiring Extra Licenses) and 3 (Prohibited Uses), Company grants to User a worldwide, perpetual, non-transferable and non-exclusive license to use Content: (i) for unlimited number of times, via any medium, in any geographical area and on a permanent basis; and (ii) for any purposes including advertising and/or promotional purposes. User acknowledges and agrees in advance that content that are identical or similar to Content has been or may have been used by third parties.

1.2. User acknowledges and agrees that, depending on the intended use of Content, rights management and/or payment of royalties may be separately required with respect to the copyrights, portrait rights, trademarks, design and other rights in or to Content or of the subject thereof.

1.3. Content may be used by: (i) up to ten (10) persons within User’s legal entity; or (ii) up to ten (10) persons who are involved in the same project for which User is responsible.

### **2. Uses Requiring Extra Licenses**

Use of Content in any merchandise for resale, in the production of any deliverables intended to be made available for direct use by general consumers or in any similar occasions (“**Commercial Use**”) requires an extra license. User who wishes to use Content for Commercial Use must promptly contact Company and separately obtain extra licenses under which Commercial Use is permitted. Information on the applicable fees for extra licenses is available on Company’s web-site at amanaimages.com

### Uses requiring Extra Licenses - Examples:

The following examples are for illustrative purposes only, and are not intended to limit the scope of uses requiring extra licenses.

- To use Content in connection with any merchandise for resale, including, without limitation, greeting cards, postcards, stamps, calendars, posters, billboards, signs, toys, games, puzzles, stationery items, apparel items or other items, or for installation in various terminals and devices, or in application software or print service.
- Use by more than 10 (ten) persons.

### **3. Prohibited Uses**

User may not:

- i) resell, distribute, assign, lease or transmit Content to third parties, or otherwise assign or lease any right to use Content to third parties, or create any security interest over Content, in each case whether for commercial or non-commercial purposes (for the avoidance of doubt, delivery to an advertiser of advertisements or other deliverables produced by User, or any use of such deliverables by such advertiser shall not be prohibited under this paragraph);
- ii) produce, sell, or provide (i) any content similar to Content; or (ii) any services similar to Services , by misappropriating Content;
- iii) use Content in a manner that infringes any portrait rights, publicity rights or trademark, copyright or any other right of the subject of the Content, by failing to comply with instructions by Company, or by clipping, trimming, processing or editing any specific subject of the Content;
- iv) use or register all or part of Content as all or part of a trademark, trade name or service mark, etc. or any labeling, etc. of any merchandise for commercial resale or distribution;
- v) use Content for the purpose of impairing the good name or reputation of, or libeling or slandering, the subject of Content, or for any other illegal and/or improper purposes.
- vi) in case the subject of Content is person(s), use Content in a manner that might or would create a misunderstanding as if such subject had a particular religious or political belief or were a patient with a particular disease; or use Content in a manner that would damage such subject's image, reputation, credibility and/or dignity; or use Content for any purposes by which such subject may feel offended or uncomfortable; or use Content in any advertisements, leaflets or other materials associated with such purposes;
- vii) use Content in a manner that may create a misunderstanding that User has partnership or cooperative or other special relationships with the subject of the Content, or that such

- subject appreciates or endorses User's or any third party's for-profit activities or services;
- viii) use Content for any purposes that are offensive to public order or morals, or (whether or not offensive to public order or morals) for pornographic or adult entertainment industry, any illegal business practice, any pornographic or dating web-site, or any activity, etc., associated with any organized crime group; or
  - ix) use Content in breach of any applicable restriction that may separately be imposed by Company for each piece of Content.

If there is any doubt as to whether User's contemplated use of Content constitutes any of the prohibited use listed above, User shall consult with Company to obtain and follow Company's view and instructions on such use. Even if User's contemplated use could constitute one of the prohibited uses listed above, User may use Content if Company, at its sole discretion, separately permits User in writing to allow such use.

#### **4. Improper Use**

Any User who uses Content not in compliance with the Terms (including any use without obtaining appropriate license from Company) ("**Improper Use**") shall: (i) pay to Company a penalty in the amount equivalent to five (5) times the usage fees set forth by Company for such Content; (ii) indemnify, defend and hold Company and the supplier and the subject of Content harmless from and against any and all claims, liability, losses, damages, costs and expenses (including attorneys' fees) incurred by Company and the supplier and the subject of Content as a result of or in connection with Improper Use, any breach or alleged breach by User of the Terms; and (iii) at the request of Company, disclose all information requested by Company that is related to Improper Use, including, but not limited to, the names, addresses telephone numbers and other contact information of, and the names of contact persons of, the third parties involved in such Improper Use.

#### **5. Usage Fees and Payment**

5.1. For each Content, User shall pay to Company the usage fees separately determined by Company, in the manner designated by Company. All remittance charges incurred in such payment shall be borne by User.

5.2. If User falls into arrears in the payment of the usage fees as set forth in the preceding paragraph, he/she shall pay to Company, in addition to the usage fees, penalty interest calculated at a rate of ten percent (10%) per annum of the amount due, for the period from the day immediately following the payment due date to the date of full payment.

5.3. Company may change the usage fees and/or the means of payment thereof, by giving

prior notice to User in such manner as deemed appropriate by Company; provided, however, that such notice shall be deemed to have been given to User if the details of any such change to the usage fees and/or the means of payment are posted at Company's web-site. Under no circumstances shall Company be obliged to refund the usage fees paid by User.

## **6. Replacement of Data, Returns and Refunds**

6.1. If, due to any reason attributable to Company, any defect is identified in the digital data itself of Content or if the downloaded image of Content is not the one ordered by User, subject to User's notifying Company within two (2) days of the receipt of such digital data or downloaded image, Company shall promptly deliver replacement of such digital data or downloaded image of such Content to User. If User does not notify Company within the aforementioned time period, it shall be deemed that the digital data of Content has no defects, or that the downloaded image of Content is the one in conformity with the order placed by User, as the case may be.

6.2. Except for the circumstances referenced in the immediately preceding paragraph, Company shall not be required to accommodate any request by User for replacement of Content or for refunds with respect to any erroneous downloading for which User is responsible.

## **7. Disclaimer**

7.1. While Company takes great care in quality control of Content, COMPANY DOES NOT MAKE AND HEREBY DISCLAIMS ANY WARRANTY IN RESPECT OF CONTENT, WHETHER EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR PURPOSE OR COMPATIBILITY OF CONTENT WITH RESPECT TO USE FOR ANY SPECIFIC PURPOSES.

7.2. Before using any Content, User shall, at his/her responsibility, examine the details thereof (including the directions, color tones, contrast, etc., of the images) as well as the captions, keywords, explanations, etc., accompanying such Content and the accuracy of such captions, keywords, explanations, etc.

7.3. User shall, at his/her responsibility, review and confirm the status of rights management of the copyrights, portrait rights, trademark, design and other rights in or to the subject of Content (including any rights management with respect to such subject that may be required if User modifies or transforms the Content).

7.4. Under no circumstances Company shall be responsible in any manner for the following disputes or damages:

- i) Any damages incurred due to, or any disputes between User and any third party arising

from or in connection with User's failure to comply Sections 7.2. and 7.3.;

- ii) Any disputes between User and any third party arising from or in connection with whether Content has merchantability, fitness for purpose or compatibility of Content for any specific purposes;
- iii) Any damages, prejudice or liabilities arising from or in connection with the content of any information disseminated or provided by User through various deliverables produced by User using Content, and any disputes between User and any third party arising from or in connection with such information;
- iv) Any damages, prejudice or liabilities arising from or in connection with any use by User of Content for any purposes or in any manner other than those permitted hereunder, or any use by User of any Content for which Company has given notice of suspension of use to User in advance; or
- v) Any impact and/or damages caused by any computer virus, etc., on User's terminal or communication equipment, recording media, software, etc., or any damage to data that occurs or may occur as a result of or in connection with User's use of Content.

## **8. Limitation of Liability of Company**

If User incurs any damages in relation to his/her use of Content due to malice or gross negligence on the part of Company, Company shall compensate User for such damages suffered by User; provided, however, that Company's total liability hereunder shall not exceed the amount of the usage fees paid by User to Company for such Content, and in no event shall Company be liable for any special, indirect or consequential damages arising out of or in connection with the use of Content and/or the Terms, including, but not limited to, damages for lost profits.

## **9. Copyrights and Other Rights**

9.1. User acknowledges and agrees that all copyrights and other intellectual property rights in or to Content licensed to User (including all images, all explanations and keywords accompanying such images and other related information) are the sole property of Company or the copyright holders who have entrusted their copyrights management to Company ("**Copyright Holders**"), and none of these copyrights or other intellectual property rights are assigned to User.

9.2. User acknowledges and agrees that neither Company nor Copyright Holders have any portrait or trademark right, copyright, design right, right of use or any other right in or to the persons, goods or places contained in the subject of Content. User further acknowledges and agrees that s/he may need to separately obtain, at his/her own expense and responsibility,

licenses to these rights in advance, and that the usage fees for Content payable to Company hereunder do not include any fees for licenses to such rights.

#### **10. Termination of License to Use Content**

If any of the following events occurs in respect of User, Company may, with immediate effect and without giving any notice or whatsoever, revoke User's license to use Content, in which case User may no longer use Content in any manner whatsoever. In such case, User shall destroy Content and all reproductions thereof pursuant to Company's directions, and User (or by his/her employer or organization of affiliation if User uses Content in the course of performance of his/her duties at work) shall compensate for any damages (including any court costs and attorneys' fees) incurred by Company or any third parties as a result of the relevant act of User. Company shall not be liable for any damages incurred by User or any third parties due to, or for any dispute between User and any third party arising from, any restrictions on or any suspension, revocation of User's license, regardless of the causes for such damages or dispute.

- i) User breaches the Terms;
- ii) User provides any false information in its statement or report to Company;
- iii) It is found out that User's membership with amanaimages.com was cancelled in the past or is cancelled at any time during the time User uses Content and/or Services.
- iv) Any payment bill or check issued by User is dishonored or that User suspends payments.
- v) A petition for compulsory execution, provisional attachment, provisional disposition or public auction or a legal action similar to the foregoing is filed against User, or that User is subject to coercive collection of unpaid taxes.
- vi) A petition for bankruptcy, special liquidation, corporate reorganization or civil rehabilitation or similar legal procedures is filed by or against User.
- vii) User is subject to punishment by any competent governmental authorities, whereby User is ordered to suspend operating its businesses or User's business license or registration is revoked.
- viii) User's financial condition has deteriorated or is likely to deteriorate.
- ix) User engages in any other activity that would ruin the relationship of trust with Company.
- x) It is discovered that User is a member of or associated with an organized crime group, or that User is involved in any criminal conduct.
- xi) It is discovered that there is a financial or any other relationship, whether directly or indirectly, between User, any of its officers or employees and any organized crime group, or that User, any of its officers or employees provide financing to any organized

crime group or engages in any similar act, regardless of the pretext.

- xii) User appoints as its director, officer or employs any person who belongs to, or has a close relationship with, any organized crime group, or that any organized crime group is involved in the management of User.

## **11. Miscellaneous**

11.1. User acknowledges and agrees that s/he shall be responsible for all use, sales, value-added or similar taxes and duties imposed by any governmental authorities in any jurisdiction in connection with the license granted to him or her pursuant to the Term.

11.2. No failure or delay of Company to require performance by User of any provision of the Terms shall in no way adversely affect Company's right to require full performance of such provision after that. No waiver by Company of a breach of any provision of the Terms shall be taken to be a waiver by Company of any subsequent breach of such provision.

11.3. The formation, validity, construction, performance and enforceability of the Terms shall be governed by and construed under the laws of Japan.

11.4. If any provision or any portion of any provision of the Terms is held to be invalid or illegal, that will in no way affect, impair or invalidate any other provision, and all other provisions of the Terms shall remain in full force and effect.

11.5. If any issue arises between User and Company in respect of any Content and/or in connection with the Terms, the parties shall discuss with each other in good faith to resolve it. If such discussion fails to resolve the issue, each party submits to the exclusive jurisdiction of the Tokyo District Court of Japan.

## **12. Changes to the Terms**

User acknowledges and agrees that, from time to time, Company may change the Terms in its sole discretion and without giving notice to User. Company will post the updated Terms to Company's web-site, and all such Terms take effect immediately.

END