

# Licence Agreement

THIS LICENCE IS AGREED and effective from your date of purchase and made between PHOTOSYMBOLS LTD of 4a Greenway Business Centre, Doncaster Road, Bristol BS10 5PY ("the Developer") and YOU, as set out in the Schedule, ("the Licensee") which term includes your employees, agents and authorised users. WHEREAS the Developer has developed the Product known as Photosymbols® and holds and is entitled to licence the rights granted under this Licence AND WHEREAS the Licensee desires to use the rights and the Developer desires to grant to the Licensee the licence to use the rights for the Fee, subject to the terms and conditions of this Licence. IT IS AGREED AS FOLLOWS:

## 1. KEY DEFINITIONS

1.1 In this Licence, the following terms shall have the following meanings: -

**Authorised Users:** Current members of the staff (whether on a permanent, temporary or contract basis) of the Licensee together with the contractors named in the Licensee Contractor Schedule who are permitted to access the Licensed Material (including access via the Licensee's Network upon which the Licensed Material is located and whether such access from within the Licensee's Premises or from such other places where Authorised Users undertake their work for the Licensee (including but not limited to Authorised Users' offices and homes), whether or not the Licensee employees or contractors have been issued by the Licensee with a password or other authentication for the network. Such number not to exceed those set out in the Schedule.

**Commercial Use:** Use for the purposes of monetary reward (whether by or for the Licensee or an Authorised User) by means of sale, resale, loan, transfer, hire or other form of exploitation of the Licensed Materials. For the avoidance of doubt, use by the Licensee or by an Authorised User of the Licensed Materials in the course of research, product development and related activity in the normal course of business does not constitute Commercial Use however the use of the Licensed Material incorporated within commercial items sold or otherwise exploited for gain shall be Commercial Use.

**Fee:** The one-off Fee paid at date of purchase.

**Licensee's Premises:** The physical premises owned or operated by the Licensee, as specified in the Schedule, such schedule to identify whether or not access is possible to the Licensed Material via the Licensee's Network upon which the Licensed Material is located and whether such access from within the Licensee's Premises or from such other places where Authorised Users undertake their work for the Licensee (including but not limited to Authorised Users' offices and homes).

**Licensed Materials:** The electronic and other material as set out in the Schedule to this Licence.

**Developer's Representative:** A third party appointed from time to time by the Developer to act on the Developer's behalf, who may execute this Licence on behalf of the Developer and undertake any or all of the Developer's obligations under this Licence, as agreed between the Developer and the Developer's Representative.

**Network:** A network (whether a standalone or virtual network within the Internet) which is accessible to Authorised Users approved by the Licensee whose identity must be authenticated at the time of log-in consistent with current best practice, and whose conduct is subject to regulation by the Licensee.

**Server:** The Licensee's server on a Secure Network.

## 2. AGREEMENT

2.1 a) The Developer agrees to grant to the Licensee a non-exclusive and non-transferable Licence, throughout the world, to give Authorised Users access to the Licensed Materials directly, via USB flashdrive supplied by the Developer or via a Network subject to the terms and conditions of this Licence, and the Licensee agrees to pay the Fee.

b) The number of Authorised Users shall not concurrently exceed that number stated in the Schedule

c) The total number of Authorised Users during the term, calculated cumulatively, shall not exceed that number stated in the Schedule

2.2 This Licence shall commence on the date (or the effective date if earlier) for each of the Licensed Materials as set out in Schedule (or in any new Schedules to this Licence that may be added subsequently if signed by and on behalf of both parties).

2.3 On termination of this Licence, the Licensee shall ensure that its employees and any Authorised Users of the Licensed Materials (whether in whole or in part) cease use thereof immediately and that the Licensed Materials (including any electronic files or archives) are immediately deleted from the Server (or archive or other storage) and that any Flashdrives, CD-Roms, DVD-Roms, printed copies or other physical copies of the Licensed Materials are returned immediately to the Developer by the Licensee.

## 3. USAGE RIGHTS

3.1 The Licensee, subject to clause 4 below, may, during the term:

3.1.1 load the Licensed Materials on the Licensee's server on the Secure Network;

3.1.2 make such back-up copies of the Licensed Materials as are reasonably necessary;

3.1.3 make such temporary local electronic copies whether by means of cache or mirrored storage of all or part of the Licensed Materials as are necessary solely to ensure efficient use by Authorised Users;

3.1.4 allow Authorised Users to have access to the Licensed Materials from the Server via the Secure Network;

3.1.5 provide Authorised Users with integrated access to the Licensed Material and all other similar material licensed from other Developers;

3.1.6 use the Licensed Materials as part of an integrated information service for Authorised Users that will include links between the Licensed Materials and the Licensee's own indexes, third party abstracting and indexing services and other information resources utilised by the Licensee, providing such use does not allow the users of the Licensee's own indexes, third party abstracting and indexing services and other information resources to systematically extract the Licensed Materials;

3.1.8 display, download or print the Licensed Materials for the purpose of internal testing or for training Authorised Users or groups thereof, and for internal corporate training programmes (in respect of which appropriate acknowledgement of the source shall be made);

3.1.9 provide print or electronic copies of the Licensed Materials incorporated during the term within the Licensee's products or services;

3.1.10 provide printed or electronic copies of the Licensed Materials incorporated within product, marketing, medical, professional, necessary trade, printed information, web graphics or signage information purposes, subject to the terms specified in the Schedule;

3.1.11 search, view, retrieve and display the Licensed Materials.

3.1.12 Nothing in this Licence shall in any way exclude, modify or affect any of the Developers rights under the copyright laws in any part of the world.

## 4. PROHIBITED USES

4.1 Neither the Licensee nor its Authorised Users may:

4.1.1 remove or alter the Developer's copyright notices or other means of developer identification or disclaimers as they appear in the Licensed Materials;

4.1.2 make duplicate copies of the flashdrive containing Licensed Material, save where for the purposes of backup or for additional Authorised Users covered under the Schedule;

4.1.3 provide, by any means, any part of the Licensed Materials to a user at another library or a person other than the Authorised Users, save where the Licensed Materials are irretrievably incorporated into the Licensee's products;

4.1.4 mount or distribute any part of the Licensed Material on any publicly accessible electronic network, including without limitation the Internet and the World Wide Web, save where the Licensed Materials are irretrievably incorporated as web graphics;

4.1.5 use the Licensed Materials in a way that is patently offensive or promotes racism, sexism, homophobia, bigotry, or hatred against any group or individual.

4.2 The Developer's explicit written permission must be obtained to:

4.2.1 use all or any part of the Licensed Materials for any Commercial Use, other than as permitted in clauses 3.1.9 and 3.1.10;

4.2.2 systematically distribute the whole or any part of the Licensed Materials to anyone other than Authorised Users, save as permitted herein;

4.2.3 publish, distribute or make available the Licensed Materials, works based on the Licensed Materials or works which combine them with any other material, other than as permitted in this Licence;

4.2.4 alter, abridge, adapt or modify the Licensed Materials, except to the extent necessary to make them perceptible on a computer screen or as otherwise permitted in this Licence, to Authorised Users. For the avoidance of doubt, no alteration of the words or their order is permitted.

## **5. DEVELOPER'S UNDERTAKINGS & IPR**

5.1 The Licensed Materials provided by the Developer have been developed entirely by the Developer and use within this Licence will not therefore infringe the copyright or any other proprietary or intellectual property rights (IPR) of any person. The Developer reserves the right at any time to withdraw from the Licensed Materials any item or part of an item for which it no longer retains the right to publish, or which it has reasonable grounds to believe infringes copyright or is defamatory, obscene, unlawful or otherwise objectionable. The Developer shall give written notice to the Licensee of such withdrawal. In the event of any claim of infringement or withdrawal of material, the Developer's sole liability shall be to replace the part of the Licensed Material alleged to be infringing with non-infringing replacement Licensed Material.

5.2 No Liability is accepted for any claim of infringement by the Developer under this Licence howsoever arising.

5.3 No warranties about the purpose or suitability for any particular use of the Licensed Material is made and, save for liability arising from death or personal injury stemming from the Developers' negligence, any and all liability arising from the use of the Licensed Material is excluded to the full extent permitted by law.

5.4 In the event that any media upon which the Developer provides Licensed Material is defective, the Developer will replace the media providing that the Licensee notifies the Developer of defect within ninety (90) days of supply by the Developer.

5.5 Except as expressly provided in this Licence, the Developer makes no representations or warranties of any kind, express or implied, including, but not limited to, warranties of design, accuracy of the information contained in the Licensed Materials, merchantability or fitness of use for a particular purpose. The Licensed Materials are supplied 'as is'.

5.6 Except as provided in clause 5, under no circumstances shall the Developer be liable to the Licensee or any other person, including but not limited to Authorised Users, for any special, exemplary, incidental or consequential damages of any character arising out of the inability to use, replacement or the use of, the Licensed Materials. Irrespective of the cause or form of action, the Developer's aggregate liability for any claims, losses, or damages arising out of any breach of this Licence shall in no circumstances exceed the Fee paid by Licensee to the Developer under this Licence. The foregoing limitation of liability and exclusion of certain damages shall apply regardless of the success or effectiveness of other remedies.

## **6. LICENCEE'S UNDERTAKINGS**

6.1 The Licensee shall:

6.1.1 ensure that only Authorised Users are permitted access to the Licensed Materials;

6.1.2 ensure that all Authorised Users are appropriately notified of the importance of respecting the intellectual property rights in the Licensed Materials and that they are made aware of and undertake to abide by the terms and conditions of this Licence;

6.1.3 monitor compliance and immediately upon becoming aware of any unauthorised use or other breach, inform the Developer and take all steps, including disciplinary action, both to ensure that such activity ceases and to prevent any recurrence;

6.1.4 take reasonable steps to issue passwords or other access information only to Authorised Users and ensure that Authorised Users do not divulge their passwords or other access information to any third party;

6.1.5 keep full and up-to-date records of all Authorised Users and their access details and provide the Developer with details of such additions, deletions or other alterations as are necessary to enable the Developer to provide Authorised Users with access to the Licensed Materials as contemplated by this Licence.

6.2 The Licensee hereby acknowledges that the business of the Developer is entirely dependent upon the Developer's intellectual property rights in the Licensed Materials, and that any material and persistent breach thereof constitutes a fundamental breach of this Licence, in which event, notwithstanding clause 8, this Licence shall immediately terminate; the Developer shall be entitled to immediate injunctive relief and the return of all of the Licensed Materials and the immediate removal of all electronic copies of the Licensed Materials held by the Licensee without any rebate of the Fee and without prejudice to any other rights or remedies to which it may be entitled.

6.3 The Licensee agrees to indemnify, defend and hold the Developer harmless from and against any loss, damage, costs, liability and expenses (including reasonable legal and professional fees) arising out of any claim or legal action taken against the Developer related to or in any way connected with any use of the Licensed Materials by the Licensee or Authorised Users save permitted uses set out in this Licence or any failure by the Licensee to perform its obligations in relation to this Licence

6.3 The Licensee shall, in consideration for the rights granted under this Licence, pay the Fee where it has not already done so at the time of delivery of Licensed Material by the Developer, within thirty (30) days of receipt of invoice. For the avoidance of doubt, the Fee shall be exclusive of any sales, use, value added or similar taxes and the Licensee shall be liable for any such taxes in addition to the Fee.

## **7. UNDERTAKINGS BY BOTH PARTIES**

7.1 Each party shall use its best endeavours to safeguard the intellectual property, confidential information and proprietary rights of the other party.

7.2 Neither party shall disclose the terms and conditions or the subject matter of this Licence (including, without limitation, the content of the Schedules, the list of the Licensed Materials and any related usage data compiled and supplied) or any other information about the other party's business to any third party without the prior written consent of the other. This provision shall survive the termination of this Licence, and any information obtained or received which comes within these restrictions shall remain confidential, PROVIDED always that this obligation shall not apply to any information which at the time of disclosure is in the public domain or is made available at any time by an independent third party which has not obtained it directly or indirectly in breach of any confidentiality agreement with either of the parties hereto. Parties shall be entitled without breach of their confidentiality obligations herein, to disclose to professional advisers, regulators and under order of Court.

## **8. TERM AND TERMINATION**

8.1 This Licence shall be terminated:

8.1.1 if the Licensee defaults in making payment of the Fee as provided in this Licence;

8.1.2 if either party commits a material or persistent breach of any term of this Licence and fails to remedy the breach (if capable of remedy) within thirty (30) days of notification in writing by the other party;

8.1.3 if either party becomes insolvent or becomes subject to receivership, liquidation or similar external administration.

8.2 On termination all rights and obligations of the parties automatically terminate except as specifically provided in this Licence;

8.3 On termination of this Licence for cause, as specified in clauses 8.1, the Licensee shall immediately cease to distribute or make available the Licensed Materials to Authorised Users and shall return to the Developer or destroy all Licensed Materials locally mounted or physical Licensed Materials pursuant to clause 3.

## **9. GENERAL**

9.1 This Licence constitutes the entire agreement of the parties and supersedes all prior communications, understandings and agreements relating to the subject matter of this Licence, whether oral or written.

9.2 Alterations to this Licence and to the Schedules to this Licence are only valid if they are recorded in writing and manuscript signed by both parties.

9.3 This Licence may not be assigned by either party to any other person or organisation, nor may either party sub-contract any of its obligations, except as provided in this Licence in respect, without the prior written consent of the Developer.

9.4 If rights in all or any part of the Licensed Materials are assigned to another Developer, the Developer shall use its best endeavours to ensure that the terms and conditions of this Licence are maintained.

9.5 If the Licensee shall come under the control of any third party other than that by which it is controlled at the date of this Licence, the Developer shall have the right immediately to terminate this Licence without refund &/or renegotiate the terms of this Licence. Control shall mean either the ownership of more than fifty per cent (50%) of the ordinary share capital carrying the right to vote at general meetings or the power to nominate a majority of the board of directors.

9.6 Any notices to be served on either of the parties by the other shall be sent by prepaid recorded delivery or registered post to the address of the addressee as set out in this Licence or to such other address as notified by either party to the other as its address for service of notices. All such notices shall be deemed to have been received within 14 days of posting.

9.7 Neither party's delay or failure to perform any provision of this Licence, as result of circumstances beyond its control (including, without limitation, war, strikes, floods, governmental restrictions, power, telecommunications or Internet failures, or damage to or destruction of any network facilities) shall be deemed to be, or to give rise to, a breach of this Licence.

9.8 The invalidity or un-enforceability of any provision of this Licence shall not affect the continuation or enforceability of the remainder of this Licence.

9.9 Either party's waiver, or failure to require performance by the other, of any provision of this Licence will not affect its full right to require such performance at any subsequent time, or be taken or held to be a waiver of the provision itself.

9.10 This Licence shall be governed by and construed in accordance with English Law and subject entirely and exclusively to the jurisdiction of the English courts and the parties irrevocably agree that any dispute arising out of or in connection with this Licence will be subject to and within such jurisdiction .