

Wildscreen Exchange

User Agreement

Last updated 25 May 2018

Background

- (A) Wildscreen Exchange is a web based platform established and operated by the Library in order to enable not-for-profit organisations to use images of the natural world in their conservation communications and campaigns.
- (B) This document sets out the terms of the Agreement between You and the Library relating to all Images You select from the Wildscreen Exchange platform while our [Privacy Policy](#) explains how we collect and use your personal information.
- (C) Certain Images may have additional terms applicable to them (**Additional Terms**). Those Additional Terms will be brought to your attention when You select the relevant Images.
- (D) The Agreement applies to members of Wildscreen Exchange only. Payment of the Wildscreen Exchange Membership Fee must be received in full before You may access the Images.

Agreed terms

1 Interpretation

- 1.1 The definitions and rules of interpretation in this clause apply in the Agreement.

Agreement: the terms set out in this document and the Additional Terms applicable to the Images You select.

Additional Terms: has the meaning ascribed to it in paragraph (C) of the Background section.

Basic Licence: has the meaning ascribed to it in clause 2.3.3.

Campaign: a single event or series of associated events undertaken by a not-for-profit organisation for a single purpose. The promotion of an entire organisation is not included in the definition of a Campaign.

Derivative Images: has the meaning ascribed to it in clause 5.

Designated Users: has the meaning ascribed to it in clause 2.4.1.

End User: your customer or client and the ultimate user of the Images.

Flexible Licence: has the meaning ascribed to it in clause 2.3.4.

Images: any still or moving image which has been selected (whether by You or by the Library on your behalf) for the purposes of licensing reproduction rights.

Invoice: an invoice to be sent to You by the Library.

Licence Fee: any sum(s) payable by You to the Library under the Agreement.

Library: WILDSCREEN incorporated and registered in England and Wales with company number 02206559 whose registered office is at 4th Floor, 36 King Street, Bristol, BS1 4DZ.

Royalty Free Image: any Image identified on the Wildscreen Exchange platform as not requiring the payment of a royalty.

Royalty Payable Image: any Image identified on the Wildscreen Exchange platform as requiring the payment of a royalty.

Wildscreen Exchange Membership Fee: the annual payment to be made by You in order to become a member of Wildscreen Exchange and have access to the Images. Payment is due in advance for your first year of membership and then on the 1st of the month of commencement for subsequent years. The amount of the annual payment is published on the Wildscreen Exchange website and may be updated by the Library from time to time.

You: the person who selects Images from the Wildscreen Exchange platform.

- 1.2 Any words following the terms, **including, include, in particular, for example, such as** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.3 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

2 Licence Grant

- 2.1 There are two types of Image on the Wildscreen Exchange platform: (i) Royalty Payable Images and (ii) Royalty Free Images. The type of Image is stated on the Wildscreen Exchange website.
- 2.2 Clause 2.3 applies only to Royalty Payable Images. Clause 2.4 applies only to Royalty Free Images.
- 2.3 Royalty Payable Images:
 - 2.3.1 Two types of licence can be granted in respect of Royalty Payable Images:
 - (a) Basic Licence; and
 - (b) Flexible Licence.
 - 2.3.2 You will have identified the type of licence required on the Wildscreen Exchange website before the Images are downloaded.
 - 2.3.3 Subject to clause 2.3.6, under a Basic Licence the Library grants You a non-exclusive, non-transferable right to reproduce the Royalty Payable Image selected from Wildscreen Exchange for use in an online format, provided that the platform for the Image is created by You and provided that the use is for a single Campaign. For these purposes, an "online format" includes online editorials and e-news publications. Images covered by a Basic Licence may not be used on third party platforms (such as Flickr, Plixi, Youtube, Facebook or Myspace).
 - 2.3.4 Subject to clause 2.3.6, under a Flexible Licence the Library grants You a non-exclusive, non-transferable right to reproduce the Royalty Payable Image selected from Wildscreen Exchange for use in any online format, provided that the use is for a single Campaign. For these purposes, an "online format" includes online editorials and e-news publications. Images covered by a Flexible Licence may be used on third party platforms (such as Flickr, Plixi, Youtube, Facebook or Myspace) provided this use is for a single Campaign.
 - 2.3.5 A Basic Licence or a Flexible Licence can be granted for a period of one month or one year as selected by You on the Wildscreen Exchange website. The Agreement will terminate automatically at the end of the period specified when the licence type for the Image was selected.
 - 2.3.6 No rights are granted by virtue of your downloading Royalty Payable Images. The right to reproduce a Royalty Payable Image arises only once You have identified your intended use of the Image, and paid the Library the relevant Licence fee in full, via the Wildscreen Exchange website.
 - 2.3.7 You may not use a Royalty Payable Image on or in goods, packaging for goods or advertising material in respect of goods.

- 2.3.8 Any further uses outside the scope of clause 2.3.3 and 2.3.4 must be approved by the Library in advance and in writing. The Library is not obliged to give any such approval, and any such approval may require additional payment.
 - 2.3.9 You must promptly provide to the Library reasonable evidence of your entire use of Images if requested by the Library.
 - 2.3.10 The fee specified in respect of a Royalty Payable Image is for the use of that Royalty Payable Image in a single Campaign, for the length of time specified when You select the Image.
 - 2.3.11 If You intend to use a Royalty Payable Image in more than one Campaign You must inform the Library immediately in writing and the Library shall send a revised Invoice.
- 2.4 Royalty Free Images:
- 2.4.1 The Library grants You a non-exclusive, non-transferable right to reproduce for use in a single Campaign only any Royalty Free Images downloaded by you from the Wildscreen Exchange website. Your use of Royalty Free Images may include presentations, publicity materials, websites, printed articles, display boards, online use and mobile applications.
 - 2.4.2 The licence granted under clause 2.4.1 will automatically terminate immediately if You cease to be a member of Wildscreen Exchange.
 - 2.4.3 The licence granted under clause 2.4.1 may be terminated by the Library by written notice of at least [3] months effective at any time after the first anniversary of the date on which You first downloaded the relevant Royalty Free Image from the Wildscreen Exchange website.

3 Restrictions and Indemnity

- 3.1 You may not use the Images for any commercial purposes.
- 3.2 You may not make the Images available separately from the end product into which it is incorporated in any medium accessible by persons other than You.
- 3.3 You may not sublicense, sell, assign, or transfer the Agreement or any of the rights licensed under the Agreement.
- 3.4 You shall take all commercially reasonable steps to prevent third parties from reproducing or distributing the Images, including affixing the credit line and implementing appropriate security protection and compliance procedures.
- 3.5 You shall ensure that the Images are not incorporated into a logo or trade mark unless the Library agrees otherwise in writing.
- 3.6 Pornographic, defamatory or otherwise unlawful use of the Images is strictly prohibited.
- 3.7 You shall abide by any restriction on use of the Images notified by the Library.
- 3.8 Within reason, You may crop, recolour, manipulate, add to or resize Images, or overlay text or watermarks onto Images, but any manipulation must not amount to distortion or derogatory treatment of Images.
- 3.9 Images must not be used as references for creating drawings or other visual works unless expressly agreed by the Library in writing.
- 3.10 Royalty Payable Images must not be used in presentations, projections or layouts unless expressly agreed by the Library in writing.
- 3.11 The Images must not be made available for use or distribution separately or detached from a product or web page. For example, the Images may be used as an integral part of a web page design, but may not be made available for downloading separately or in a format designed or

intended for storage or re-use by website users. Similarly, End Users may be provided with copies of the Images as an integral part of your work product, but must not be provided with the Images or permitted to use the Images separately. Images must not be made available on, or linked to via, websites, products or services such as Pixazza, Stipple or Clic2c.

- 3.12 Royalty Payable Images must not be used in mobile applications. For clarification, this restriction on mobile use is not breached if an Image that is licensed for web site use can be viewed via mobile devices, or is made available on a mobile responsive website, provided it is only modified, reconfigured or repurposed to the extent required for this purpose.
- 3.13 You acknowledge the original nature of, and agree not to challenge on the ground of non-originality the subsistence of copyright in, Images consisting of skilled photographic reproductions of artistic works such as paintings, photographs and sculptures.
- 3.14 You agree to indemnify and hold the Library harmless against any claim, loss, damage and liability of any kind (including reasonable legal fees and expenses) arising from any use of the Images other than in accordance with the terms of the Agreement.

4 **Content**

- 4.1 The Images may not be reproduced or stored by computer or transmitted by a computer network other than is immediately necessary for the permitted use.
- 4.2 Images stored, displayed or published electronically by You must retain the copyright symbol, the name of the copyright owner, the Images' identification numbers and any other metadata or information which may be visibly or invisibly embedded in the electronic files containing the original Images. Please note under EU Directive 2001/29/EC it is illegal to remove or alter metadata associated with Images or publish images on the internet that have had metadata removed or altered. You must not remove metadata information supplied in Images under any circumstances including from Images published online.

5 **Ownership and Derivative Images**

You acknowledge that Images are valuable property, as are any digital copies and new images created from the Images (**Derivative Images**). A Derivative Image includes anything sourced from or referenced from the Images. If You manipulate, clone, copy, trace, retouch, shrink, stretch, darken, or lighten the Images, alter colour, flip or flop, or include the Images or any part in a montage or use the Images as the basis for an artist's reference, or change the Images in any other way You create a Derivative Image. Such Derivative Images may be used only in accordance with the Agreement, and You hereby assign any and all copyright in respect of such Derivative Images to the Library. If You wish to use any Derivative Image, You must seek a licence from the Library. Otherwise You agree to destroy all Derivative Images including any pre-press or pre-production copies of the Images and any copies or records of the Images held on a database within 90 days of the date of receipt of the Images or expiry of the licence term, whichever is later.

6 **Captioning of content**

While reasonable care has been taken to correctly identify and caption the subject matter and orientate the Images, the Library does not warrant the accuracy of such information and accepts no liability for loss or damage incurred by You or any third party caused by errors connected with it.

7 **Copyright and Credit**

- 7.1 No ownership or copyright in any Images shall pass to You under the Agreement.
- 7.2 Any publication right (as defined in the Copyright and Related Rights Regulations 1996) arising from your use of any Image shall vest in the Library and You hereby assign all such rights to the Library.

- 7.3 Unless otherwise agreed by the Library in writing **You must include a credit adjacent to the Images in the form of the donor's name or such other name(s) as stipulated by the Library.** For Images used for a feature film, broadcast television or cable production, You must include a screen credit at the end.
- 7.4 Since it is difficult to quantify the loss or damage incurred due to an incorrect or missing credit, You agree that, in respect of a Royalty Payable Image, a reasonable amount of liquidated damages payable by You to the Library if the credit is missing or incorrect is 50% of the Licence Fee charged.

8 **Warranties and limitation of liability**

- 8.1 The Library warrants that it has all necessary rights and authority to enter into and perform the Agreement. You must satisfy yourself that all other rights, model releases or consents which may be required for reproduction are obtained. The Library makes no claim or warranty with regard to Your use of names, people, trade marks or copyright material depicted in any Image. The Library does not warrant that use of the Images will be uninterrupted, error free or free of viruses or bugs or that defects will be corrected, or give any warranty otherwise as to their functionality, accuracy, or reliability.
- 8.2 While the Library takes reasonable care in the performance of the Agreement, the Library makes no other warranties, express or implied, regarding the Images, including any implied warranties of merchantability or fitness for a particular purpose. The Library shall not be liable to You or any other person for any general, punitive, special, direct, indirect, consequential or incidental damages, or lost profits or any other damages, costs or losses arising out of your use of or inability to use the Images, the Agreement, any Invoice regarding the Images or otherwise, even if the Library has been negligent and even if the Library has been advised of the possibility of such damages, costs or losses.

9 **Payment**

- 9.1 No reproduction of any Royalty Payable Image is authorised until payment in full has been received by the Library. Any breach of this clause 9.1 entitles the Library to terminate the Agreement immediately on written notice to You.
- 9.2 Unless otherwise agreed by the Library in writing, all Invoices are payable by You immediately upon presentation and payment must be received in full before You download a Royalty Payable Image.
- 9.3 All amounts due under the Agreement are exclusive of VAT which shall, where applicable, be paid by You at the prevailing rates on the due date for payment and on receipt of a VAT invoice from the Library.
- 9.4 All payments to be made by You under the Agreement (except any deduction or withholding which is required by law) shall be paid free and clear of any deductions or withholdings for or on account of set-offs or counterclaims.

10 **Unauthorised Use**

- 10.1 The unlicensed reproduction by You, or on your behalf, by whatever means of the whole or any part of any Image (including electronic use, storage or transmission, artist's reference, artist's illustration, layout or presentation of Images) is strictly forbidden.
- 10.2 Any reproduction of an Image outside the terms of the Agreement (including any reproduction of a Royalty Image before payment of the invoice) constitutes an infringement of copyright and also a breach of the Agreement entitling the Library to terminate the Agreement immediately, to claim damages and to exercise all rights and remedies available to it under copyright laws around the world.
- 10.3 You shall indemnify the Library in respect of any claims, damages, costs or expenses incurred arising from any reproduction without licence of any Image supplied to You including any claims made by a third party.

10.4 The Library has calculated the Licence Fee by relying in good faith on the information provided by You in respect of the Campaign specified in the Invoice. Since it is difficult to quantify the loss or damage incurred if You use the Images other than in accordance with the Agreement, in addition and without prejudice to the Library's other remedies under the Agreement, the Library shall have the option (in respect of Royalty Payable Images) to forego its right to sue for copyright infringement and breach of contract if You pay, as liquidated damages, a sum equal to three times the fee which the Library would have charged for such use of the relevant Royalty Payable Image within 14 days of the Library invoicing You for such fee.

11 Termination

11.1 The Library has the right to terminate any licences granted under the Agreement immediately if You:

11.1.1 enter into voluntary or compulsory liquidation;

11.1.2 have a receiver appointed;

11.1.3 fail to comply with the Agreement within 28 days of the Library's giving You notice to comply.

11.2 In the event of termination, all rights granted will immediately revert to the Library and any further exploitation of any Image shall constitute an infringement of copyright.

11.3 Upon termination, You must immediately stop using the Images and take reasonable steps to delete the Images and all copies from all electronic and/or magnetic media and destroy all other copies of the Images within your possession or control as far as it is reasonably possible to do so.

12 Choice of Law / Jurisdiction

The Agreement shall be governed by and construed in accordance with English law and be subject to the exclusive jurisdiction of the English courts.

13 Miscellaneous

13.1 The Agreement contains the full and complete understanding between You and the Library in relation to Wildscreen Exchange. The Agreement supersedes any previous agreement between You and the Library regarding use of the Images. No variation of any of these terms shall be effective unless in writing and signed by You and the Library. 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 amended only to the extent necessary to make the Agreement enforceable.

13.2 In the event of a conflict between the terms contained in this document and any Additional Terms, those Additional Terms will prevail.