

# Photos To GO Single Image Purchase Terms and Conditions

## IMAGE (NON-SUBSCRIPTION) LICENSE AGREEMENT FOR PHOTOS TO GO

This Image License Agreement (the "Agreement") sets forth the terms and conditions of Licensee's Photos To GO Image purchase (the "License"). As a condition of Licensing Images from Photos To Go, you must accept the Agreement in its entirety.

**PLEASE REVIEW THIS AGREEMENT CAREFULLY AND INDICATE LICENSEE'S ACCEPTANCE BY CLICKING ON THE "I AGREE" CHECKBOX ("CHECKBOX"). BY CLICKING THE CHECKBOX, YOU AGREE TO BE BOUND BY ALL OF THE TERMS OF THIS AGREEMENT.**

### 1. GENERAL

1.1 Photos To GO is an electronic information service (the "Service") operated by Photolibary, Group Inc. ("Photolibary") on the Internet (currently located at [www.PhotosToGO.com](http://www.PhotosToGO.com)) (the "Service Website"). The Service offers Licensees access to selected images, photographs and other content (each, an "Image") owned or licensed by Photolibary. "Licensee" means any person who establishes an authorized account ("Account") for access to and use of the Service. Once you click the "Checkbox" and complete the registration process, you become a Licensee.

1.2 You acknowledge that you are at least 18 years old, and you agree to be bound by all of the terms in this Agreement. If you are registering on the Service in Licensee's capacity as an employee of a corporation or other legal entity, you acknowledge that you have the authority to enter into this Agreement on its behalf. The right to use the Service may not be transferred.

1.3 This Agreement shall commence on the date the payment is received by Photolibary and shall continue for the duration of the Subscription you have chosen, unless otherwise terminated pursuant to this Agreement (the "Term").

### 2. PRICE AND PAYMENT

2.1 Licensee authorizes Photolibary to charge the applicable License fee ("License Fee") to a valid credit card account designated by Licensee and approved by Photolibary. License Fees will be charged at the standard rate in effect at the time the fee is payable. Current License Fees and other charges can be found at [www.PhotosToGO.com](http://www.PhotosToGO.com). Licensee may cancel their Photos To GO License Agreement by contacting Photolibary within 5 days of placing order. . Licensee agrees to pay all sales, use, and other similar taxes imposed in connection with Licensee's use of the Service. Licensee is responsible for all Internet service provider fees, telecommunication and other charges required for Licensee's connection to the Service.

### 3. LICENSEE ACCOUNT RESPONSIBILITIES

3.1 All use of the Service under Licensee's Account must comply with the provisions of this Agreement. Licensee's registration information must be kept accurate and current.

3.2 Licensee is responsible for all usage or activity on Licensee's Account. LICENSEE, AND NOT Photolibrary, IS RESPONSIBLE FOR PAYING ANY AMOUNTS BILLED TO LICENSEE'S CREDIT CARD INCLUDING THOSE MADE BY A THIRD PARTY THAT WERE NOT AUTHORIZED BY LICENSEE

3.3 Licensee understands and agrees that Photolibrary may, in its sole discretion: (i) monitor Licensee's use of the Service including the Images Licensee downloads;; (ii) track any abuse of Licensee's Account ID and password in connection with the Service or in connection with this Agreement; and (iii) terminate this Agreement, without notice, if Photolibrary believes there is a violation of this Agreement and/or abuse of Licensee's ID and password. If Licensee's Account is terminated because of any violation of this Agreement and/or any abuse of an ID or password, Licensee loses all rights to use the Service, including any rights which may survive termination of this Agreement.

3.4 Licensee must maintain the confidentiality of Licensee's password. If Licensee believes that Licensee's Account is not secure (e.g., in the event of a loss, theft or unauthorized disclosure or use of Licensee's password), Licensee must promptly change Licensee's password and inform Photolibrary. Licensee agrees to take all steps necessary to prevent any third party from duplicating or distributing any Images or any elements of the Service. Defamatory, offensive, pornographic, or otherwise unlawful uses of Images is prohibited. Use of any logo or trademark without authorization from its owner is prohibited. If Licensee becomes aware of any activity that infringes any rights, including copyrights, in the Images or of the Service, Licensee must promptly notify Photolibrary and provide all cooperation reasonably requested by Photolibrary regarding such activity.

3.5 Any fraudulent, abusive or otherwise illegal activity may be grounds for termination of Licensee's License Agreement and/or Account, at Photolibrary's sole discretion, and appropriate law enforcement agencies may be notified. Licensee may not use any means to circumvent the navigational structure or presentation of the Service or to index or improperly retrieve the Images, including but not limited to the use of any site search or retrieval application to "spider" the service. Licensee may not translate, reverse engineer, decompile, or disassemble the Service or the Images, including any software provided in connection with the Service except to the extent the foregoing restriction is expressly prohibited by applicable law.

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(i) "Printed Materials," as part of advertisements; editorial or promotional copy; brochures; reports; newsletters; packaging; and items intended for resale or complimentary distribution that incorporate the Image(s) in their design

such as books, clothing, and CD packaging;

(ii) "Online and Broadcast Video Media," limited exclusively to World Wide Web site display, online display and broadcast video; provided however that only low-resolution versions of Images (no greater than 640 x 480 pixels - 72 dpi) may be displayed on any World Wide Web site or online; and

(iii) "Offline Digital Media" in or as part of computer, audiovisual and multimedia use; software; multimedia programs; and CD ROM products; provided however that only low-resolution versions of Images (no greater than 640 x 480 pixels - 72 dpi) may be displayed on Offline Digital Media;

B. Alter the Images, including but not limited to adding or changing text and resizing or cropping images (hereafter "Derivative Works") for use in Printed Materials, Online and Broadcast Video Media or Offline Digital Media; provided, however, all ownership and any right, title and interest in and to such Derivative Works shall remain with Photolibrary;

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B. Reproduce, distribute, download, sell, broadcast, or publish (except as otherwise permitted in Section 4.2 above) any Images to anyone, including but not limited to others in the same entity, without the express prior written consent of Photolibrary;

C. Use or copy any Image (or any portion thereof) in any manner, except as permitted by the express terms of this Agreement;

D. Use any Image in any form of pornography, or in a defamatory, fraudulent or illegal manner;

E. Simultaneously use any Image on more than one computer at a time (multiple use), or on a network system without first obtaining a license upgrade from Photolibrary;

F. Distribute any Image on a computer bulletin board or any other form of online or Internet-accessible service except as expressly permitted herein;

G. Use any Image or any portion thereof as a trademark or service mark, or claim any proprietary rights in any Image, or any portion thereof;

H. Produce any advertising or promotional material containing any Image with the intent to promote an image product or to promote a business that is an image provider;

I. Post any Image for individual downloading; otherwise allow viewers or browsers direct download access to a collection of the Images; or distribute any Image alone or that is not part of a permitted product or service.

4.4 To obtain a special license, upgrade, or if Licensee has any questions about a proposed use, contact Photolibrary, LTD at (800) 690-6979.

## 5. LICENSEE INFORMATION

5.1 Licensee agrees that Photolibrary may store information that Licensee provides during the registration process, as well as usage information, and provide aggregate statistical information about Licensees to advertisers, potential

advertisers, suppliers and content providers. Except in the event of merger or sale of substantially all of the assets of Photolibrary, Photolibrary will not: (1) disclose to third parties personal identifying information, such as Licensee's name, address, email address, or phone number, unless required to do so by law or court order; (2) disclose to third parties Licensee's credit card information except to the extent necessary to complete a transaction. However, Photolibrary may use such information to inform Licensee about the Service and other Photolibrary products and services.

## **6. WARRANTIES, DISCLAIMERS AND LIMITATION OF LIABILITY**

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6.2 EXCEPT FOR THE FOREGOING WARRANTY, ALL IMAGES AND THE SERVICE IS PROVIDED "AS IS". Photolibrary MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY OR WARRANTIES OF FITNESS FOR ANY PARTICULAR PURPOSE.

6.3 LIMITATION OF LIABILITY: IN NO EVENT WILL Photolibrary OR ITS EMPLOYEES, DIRECTORS, AFFILIATES, AGENTS, CONTENT PROVIDERS, SUPPLIERS OR LICENSORS (COLLECTIVELY, "ITS AFFILIATES"), BE LIABLE TO LICENSEE FOR ANY LOSS OF USE, INTERRUPTION OF BUSINESS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS) REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY OR OTHERWISE, EVEN IF THEY ARE FORESEEABLE OR IF Photolibrary HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL THE TOTAL LIABILITY OF Photolibrary OR ITS AFFILIATES, FOR ANY AND ALL DAMAGES, LOSSES AND CAUSES OF ACTION WHETHER IN CONTRACT, TORT, INCLUDING NEGLIGENCE, OR OTHERWISE, EITHER JOINTLY OR SEVERALLY, EXCEED THE AGGREGATE DOLLAR AMOUNT PAID BY LICENSEE TO Photolibrary IN THE 12 MONTHS PRIOR TO THE CLAIMED INJURY OR DAMAGE.

6.4 Photolibrary AND ITS AFFILIATES DO NOT GUARANTEE THE UNINTERRUPTED OPERATION OF THE SERVICE AND SHALL NOT BE LIABLE FOR DAMAGE ARISING FROM ERRORS, OMISSIONS, INTERRUPTIONS, DELAYS, TRANSMISSION ERRORS OR DISRUPTIONS, EQUIPMENT FAILURES OR BREAKDOWNS, OR FROM ANY OTHER CAUSE.

## **7. INDEMNIFICATION**

7.1 Licensee agrees to defend, indemnify and hold harmless Photolibrary, its affiliates, licensors and content providers, and each of their respective directors, officers, employees and agents from and against all claims and expenses, including reasonable attorneys' fees, arising out of any unauthorized use by Licensee of the Service, the Images or Licensee's Account or any breach by Licensee of this Agreement.

## **8. TERMINATION**

8.1 Either Licensee or Photolibrary may terminate this Agreement and Licensee's Account at any time, with or without cause. Additionally, Licensee's right to use the Service and/or any Image will terminate immediately upon Licensee's breach of any material term of this Agreement. In the event that Licensee is dissatisfied with the Service for any reason whatsoever the only right available to Licensee is to terminate Licensee's Account by providing notice to Photolibrary pursuant to this Agreement. Photolibrary may suspend or terminate Licensee's Account, without notice, in the event of Licensee's breach of this Agreement or for other conduct which Photolibrary, in its sole discretion, considers to be unacceptable. Suspension or termination of Licensee's Account means that the Service will no longer be accessible to Licensee. Photolibrary shall not be responsible for any consequences of such lack of access.

8.2 The provisions concerning payment obligations, Licensee responsibilities, Licensee information, ownership of copyright and other intellectual property rights, limitations on use, disclaimers, limitations of liability, indemnification, termination, and the miscellaneous provisions of this Agreement shall survive the termination of the Agreement or Licensee's Account, whether by Licensee or Photolibrary.

## **9. SPECIAL NOTICE TO CALIFORNIA LICENSEES**

9.1 As required by California Code Section 1789.3, this notice is to advise Licensee of the following: (a) The Service is a service provided by Photolibrary Group Inc., 23 West 18th Street - 3rd Floor, New York, NY 10011. Photolibrary's telephone number is (800) 690-6979. (b) For a description of all current fees and charges, see [www.PhotosToGO.com](http://www.PhotosToGO.com). Photolibrary reserves the right to change the amount of any fee or charge and to institute new fees or charges, pursuant to the terms of this Agreement. (c) If Licensee has a complaint regarding the Service or desire further information on use of the Service, contact Photolibrary by telephone at (800) 690-6979. For complaints, Licensee may also contact the Complaint Assistance Unit of the Division of Consumer Services of the Department of Consumer Affairs in writing at 400 "R" Street, Sacramento, California 95814 or by telephone at 1-916-445-1254.

## **10. MISCELLANEOUS**

10.1 This Agreement constitutes the entire and only agreement between Licensee and Photolibrary with respect to the Service, and supersedes all other communications and agreements, oral or written, with respect to the subject matter hereof. This Agreement may be modified from time to time by Photolibrary as described above. This Agreement shall be deemed to have been executed in the State of New York, it shall be governed by and construed in accordance with the substantive laws of the State of New York, without regard to its conflict of laws rules, and it excludes the United Nations Convention on Contracts for the International Sale of Goods and any legislation implementing such Convention, if otherwise applicable. Licensee consents to the exclusive jurisdiction of the state and federal courts located in and for the County and State of New York to resolve any dispute arising in connection with this Agreement, the Images or the Service. If any provision of this Agreement is determined to be invalid, all other provisions shall remain in full force and effect. Photolibrary shall not be held liable for any failure or delay in the

execution of its obligations under this Agreement insofar as such failure or delay is attributable directly or indirectly to any of the following circumstances: fire, flood, earthquake, the elements or any cause of force majeure, riots, terrorism, war, civil disorders, labor dispute or any other cause beyond the reasonable control of Photolibrary. No waiver of any breach or default hereunder shall be deemed to be a waiver of any preceding or subsequent breach or default. The section headings used herein are for convenience only and shall not be given any legal import.

## Photos to GO - Terms and Conditions

### SUBSCRIBER AGREEMENT FOR PHOTOS TO GO UNLIMITED SUBSCRIPTION

This Subscriber Agreement (the "Agreement") sets forth the terms and conditions of Subscriber's Photos To Go Unlimited Subscription (the "Subscription"). As a condition of subscribing to the Subscription, you must accept the Agreement in its entirety.

PLEASE REVIEW THIS AGREEMENT CAREFULLY AND INDICATE SUBSCRIBER'S ACCEPTANCE BY CLICKING ON THE "I AGREE" CHECKBOX ("CHECKBOX"). BY CLICKING THE CHECKBOX, YOU AGREE TO BE BOUND BY ALL OF THE TERMS OF THIS AGREEMENT.

#### 1. GENERAL

1.1 Photos to GO is an electronic information service (the "Service") operated by Photolibrary, LTD. ("Photolibrary") on the Internet (currently located at [www.PhotostoGO.com](http://www.PhotostoGO.com)) (the "Service Website"). The Service offers Subscribers access to selected images, photographs and other content (each, an "Image") owned or licensed by Photolibrary. "Subscriber" means any person who establishes an authorized account ("Account") for access to and use of the Service. Once you click the "Checkbox" and complete the registration process, you become a Subscriber.

1.2 You acknowledge that you are at least 18 years old, and you agree to be bound by all of the terms in this Agreement. If you are subscribing to the Service in Subscriber's capacity as an employee of a corporation or other legal entity, you acknowledge that you have the authority to enter into this Agreement on its behalf. The right to use the Service may not be transferred

1.3 This Agreement shall commence on the date the payment is received by Photolibrary and shall continue for the duration of the Subscription you have chosen, unless otherwise terminated pursuant to this Agreement (the "Term").

#### 2. PRICE AND PAYMENT

2.1 Subscriber authorizes Photolibrary to charge the applicable Subscription fee ("Subscription Fee") to a valid credit card account designated by Subscriber and approved by Photolibrary. Subscription Fees will be charged at the standard rate in effect at the time the fee is payable. Current Subscription Fees and other charges can be found at [www.PhotostoGO.com](http://www.PhotostoGO.com). Subscriber may cancel their Photos to GO subscription by contacting Photolibrary within 5 days of placing order. Subscriber agrees to pay all sales, use, and other similar taxes imposed in connection with

Subscriber's use of the Service. Subscriber is responsible for all Internet service provider fees, telecommunication and other charges required for Subscriber's connection to the Service.

### **3. SUBSCRIBER ACCOUNT RESPONSIBILITIES**

3.1 All use of the Service under Subscriber's Account must comply with the provisions of this Agreement. Subscriber's registration information must be kept accurate and current.

3.2 Subscriber is responsible for all usage or activity on Subscriber's Account. SUBSCRIBER, AND NOT Photolibrary, IS RESPONSIBLE FOR PAYING ANY AMOUNTS BILLED TO SUBSCRIBER'S CREDIT CARD INCLUDING THOSE MADE BY A THIRD PARTY THAT WERE NOT AUTHORIZED BY SUBSCRIBER.

3.3 Subscriber understands and agrees that Photolibrary may, in its sole discretion: (i) monitor Subscriber's use of the Service including the Images Subscriber downloads; (ii) flag Subscriber's account if the number of daily download of Images exceeds daily maximums; (iii) track any abuse of Subscriber's subscriber ID and password in connection with the Service or in connection with this Agreement; and (iv) terminate this Agreement, without notice, if Photolibrary believes there is a violation of this Agreement and/or abuse of Subscriber's ID and password. If Subscriber's subscription is terminated because of any violation of this Agreement and/or any abuse of an ID or password, Subscriber loses all rights to use the Service and Images, including any rights which may survive termination of this Agreement, and Subscriber must immediately delete and cease use of all Images acquired from the Service.

3.4 Subscriber must maintain the confidentiality of Subscriber's password. If Subscriber believes that Subscriber's Account is not secure (e.g., in the event of a loss, theft or unauthorized disclosure or use of Subscriber's password), Subscriber must promptly change Subscriber's password and inform Photolibrary. Subscriber agrees to take all steps necessary to prevent any third party from duplicating or distributing any Images or any elements of the Service. Defamatory, offensive, pornographic, or otherwise unlawful uses of Images is prohibited. Use of any logo or trademark without authorization from its owner is prohibited. If Subscriber becomes aware of any activity that infringes any rights, including copyrights, in the Images or of the Service, Subscriber must promptly notify Photolibrary and provide all cooperation reasonably requested by Photolibrary regarding such activity.

3.5 Any fraudulent, abusive or otherwise illegal activity may be grounds for termination of Subscriber's Subscription, at Photolibrary's sole discretion, and appropriate law enforcement agencies may be notified. Subscriber may not use any means to circumvent the navigational structure or presentation of the Service or to index or improperly retrieve the Images, including but not limited to the use of any site search or retrieval application to "spider" the service. Subscriber may not translate, reverse engineer, decompile, or disassemble the Service or the Images, including any software provided in connection with the Service except to the extent the foregoing restriction is expressly prohibited by applicable law.

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A. Use the Images solely in: (i) "Printed Materials," as part of advertisements; editorial or promotional copy; brochures; reports; newsletters; packaging; and items intended for resale or complimentary distribution that incorporate the Image(s) in their design such as books, clothing, and CD packaging; (ii) "Online and Broadcast Video Media," limited exclusively to World Wide Web site display, online display and broadcast video; provided however that only low-resolution versions of Images (no greater than 640 x 480 pixels - 72 dpi) may be displayed on any World Wide Web site or online; and (iii) "Offline Digital Media" in or as part of computer, audiovisual and multimedia use; software; multimedia programs; and CD ROM products; provided however that only low-resolution versions of Images (no greater than 640 x 480 pixels - 72 dpi) may be displayed on Offline Digital Media;

B. Alter the Images, including but not limited to adding or changing text and resizing or cropping images (hereafter "Derivative Works") for use in Printed Materials, Online and Broadcast Video Media or Offline Digital Media; provided, however, all ownership and any right, title and interest in and to such Derivative Works shall remain with Photolibrary;

4.3 Subscriber may not:

A. Loan, rent, sell, sub-license, lease, or otherwise transfer the right to use any Image to any other person or entity, except to the extent that any such Image has been incorporated by Subscriber into Printed Materials, Online and Broadcast Video or Offline Digital Media. Images may not be distributed or sold individually; they must be incorporated into these items;

B. Reproduce, distribute, download, sell, broadcast, or publish (except as otherwise permitted in Section 4.2 above) any Images to anyone, including but not limited to others in the same entity, without the express prior written consent of Photolibrary;

C. Use or copy any Image (or any portion thereof) in any manner, except as permitted by the express terms of this Agreement;

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E. Simultaneously use any Image on more than one computer at a time (multiple use), or on a network system without first obtaining a license upgrade from Photolibrary;

F. Distribute any Image on a computer bulletin board or any other form of online or Internet-accessible service except as expressly permitted herein;

G. Use any Image or any portion thereof as a trademark or service mark, or claim any proprietary rights in any Image, or any portion thereof;

H. Produce any advertising or promotional material containing any Image with the intent to promote an image product or to promote a business that is an image provider;

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4.5 By purchasing a Subscription, Subscriber is granted a license to use all of the Images that are available through the Subscription, and Subscriber's use of individual Images is not limited by the number of items produced, circulated or sold that contain an Image. However, Photolibary limits the number of daily downloads to thirty (30) Images. If Subscriber requires more than thirty (30) Images per day, Subscriber may contact Photolibary. Please note that permitting additional daily downloads is at the sole discretion of Photolibary.

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4.8 Subscriber acknowledges and agrees that the Service and Images are subject to restrictions and controls imposed by the Export Administration Act and the Export Administration Regulations ("the Acts"). Subscriber agrees and certifies that neither the Service nor the Images is being or will be used for any purpose prohibited by the Acts.

Subscriber agrees and certifies that Subscriber is not a citizen or permanent resident of the following countries: Cuba, Iran, Iraq, North Korea, Libya, Sudan, Syria, or the Taliban controlled areas of Afghanistan.

4.9 To obtain a special license, upgrade, additional daily downloads, or if Subscriber has any questions about a proposed use, contact Photolibrary, LTD at (800) 690-6979.

## **5. SUBSCRIBER INFORMATION**

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6.4 Photolibrary AND ITS AFFILIATES DO NOT GUARANTEE THE UNINTERRUPTED OPERATION OF THE SERVICE AND SHALL NOT BE LIABLE FOR DAMAGE ARISING FROM ERRORS, OMISSIONS,

INTERRUPTIONS, DELAYS, TRANSMISSION ERRORS OR DISRUPTIONS, EQUIPMENT FAILURES OR BREAKDOWNS, OR FROM ANY OTHER CAUSE. IF THERE IS A DISRUPTION OF SERVICE FOR A PERIOD EXCEEDING TWENTY FOUR HOURS, SUBSCRIBER'S SUBSCRIPTION WILL AUTOMATICALLY BE EXTENDED FOR A PERIOD OF TIME EQUAL TO THE TIME OF INTERRUPTION.

## **7. INDEMNIFICATION**

7.1 Subscriber agrees to defend, indemnify and hold harmless Photolibrary, its affiliates, licensors and content providers, and each of their respective directors, officers, employees and agents from and against all claims and expenses, including reasonable attorneys' fees, arising out of any unauthorized use by Subscriber of the Service, the Images or Subscriber's Account or any breach by Subscriber of this Agreement.

## **8. CHANGES; NOTICES**

8.1 Photolibrary reserves the right, at any time, to (i) change the terms of this Agreement, (ii) change the Service, including eliminating or discontinuing any content or feature of the Service, restricting the hours of availability or limiting the amount of use permitted, or (iii) change any fees or charges for use of the Service, including instituting new or increased fees or charges for the use of the Service or any feature thereof. All other changes shall be effective immediately upon notice. Notice of changes to this Agreement shall be made by Photolibrary to Subscriber by email or by posting the new Agreement or changes in the End User License Agreement section of the Service, and Subscriber agrees to review this section regularly to obtain timely notice of such changes. Any use of the Service under Subscriber's Account after such notice shall be deemed to constitute acceptance of the changes by Subscriber. Photolibrary may give any other notices to Subscriber, at Photolibrary's option, by sending notices to Subscriber by electronic or conventional mail.

8.2 Notices by Subscriber to Photolibrary must be given by a national courier service or by conventional certified mail, return receipt requested and delivered to: Photolibrary, LTD., 23 West 18th Street - 3rd Floor, New York, NY 10011, Attn: Customer Service. Any notice conveyed by Subscriber to Photolibrary will not change the terms of this Agreement or any Photolibrary operating rule, unless the change is expressly accepted in a signed writing by an authorized officer of Photolibrary.

## **9. TERMINATION**

9.1 Either Subscriber or Photolibrary may terminate this Agreement and Subscriber's Account at any time, with or without cause. Additionally, Subscriber's right to use the Service and/or any Image will terminate immediately upon Subscriber's breach of any material term of this Agreement. In the event that Subscriber is dissatisfied with the Service for any reason whatsoever the only right available to Subscriber is to terminate Subscriber's Account by providing notice to Photolibrary pursuant to this Agreement. Photolibrary may suspend or terminate Subscriber's Account, without notice, in the event of Subscriber's breach of this Agreement or for other conduct which Photolibrary, in its sole discretion, considers to be unacceptable. Suspension or termination of Subscriber's Account

means that the Service will no longer be accessible to Subscriber. Photolibrary shall not be responsible for any consequences of such lack of access.

9.2 The provisions concerning payment obligations, Subscriber responsibilities, subscriber information, ownership of copyright and other intellectual property rights, limitations on use, disclaimers, limitations of liability, indemnification, termination, and the miscellaneous provisions of this Agreement shall survive the termination of the Agreement or Subscriber's Account, whether by Subscriber or Photolibrary.

## **10. SPECIAL NOTICE TO CALIFORNIA SUBSCRIBERS**

10.1 As required by California Code Section 1789.3, this notice is to advise Subscriber of the following: (a) The Service is a service provided by Photolibrary, LTD., 23 West 18th Street - 3rd Floor, New York, NY 10011. Photolibrary's telephone number is (800) 690-6979. (b) For a description of all current fees and charges, see [www.PhotostoGO.com](http://www.PhotostoGO.com). Photolibrary reserves the right to change the amount of any fee or charge and to institute new fees or charges, pursuant to the terms of this Agreement. (c) If Subscriber has a complaint regarding the Service or desire further information on use of the Service, contact Photolibrary by telephone at (800) 690-6979. For complaints, Subscriber may also contact the Complaint Assistance Unit of the Division of Consumer Services of the Department of Consumer Affairs in writing at 400 "R" Street, Sacramento, California 95814 or by telephone at 1-916-445-1254.

## **11. MISCELLANEOUS**

11.1 This Agreement constitutes the entire and only agreement between Subscriber and Photolibrary with respect to the Service, and supersedes all other communications and agreements, oral or written, with respect to the subject matter hereof. This Agreement may be modified from time to time by Photolibrary as described above. This Agreement shall be deemed to have been executed in the State of New York, it shall be governed by and construed in accordance with the substantive laws of the State of New York, without regard to its conflict of laws rules, and it excludes the United Nations Convention on Contracts for the International Sale of Goods and any legislation implementing such Convention, if otherwise applicable. Subscriber consents to the exclusive jurisdiction of the state and federal courts located in and for the County and State of New York to resolve any dispute arising in connection with this Agreement, the Images or the Service. If any provision of this Agreement is determined to be invalid, all other provisions shall remain in full force and effect. Photolibrary shall not be held liable for any failure or delay in the execution of its obligations under this Agreement insofar as such failure or delay is attributable directly or indirectly to any of the following circumstances: fire, flood, earthquake, the elements or any cause of force majeure, riots, terrorism, war, civil disorders, labor dispute or any other cause beyond the reasonable control of Photolibrary. No waiver of any breach or default hereunder shall be deemed to be a waiver of any preceding or subsequent breach or default. The section headings used herein are for convenience only and shall not be given any legal import.