



**Author's contract for the exhibition-sale of Digital Images on the Website « www.xilopix.com »**

Paris 12/01/2010,

**This contract is entered into between:**

Filopix, a simplified joint stock company [« SAS »] having share capital of EUR 1,200,000, registered at the Trade & Companies Registry of Paris under No. 505 176 594 and having its head office at 37 rue de la Plaine, 75020 Paris, has developed and is now operating the website « www.xilopix.com » ;

**hereinafter referred to as « Xilopix »**

of the first part,

and the individual, of full age and enjoying full capacity/the company/the association/specified on the registration form and on the last page of this contract, and subject to Xilopix accepting his/her/its application in the conditions referred to below;

**hereinafter referred to as « PARTNER »**

of the second part.

The purpose of this contract for the exhibition and sale of Digital Images on the Website « www.xilopix.com » is, to define the scope of Xilopix's commitments on the one hand and, the rights and obligations conferred upon PARTNER by Xilopix for supplying its Digital Images.

Prior to supplying its Digital Images, PARTNER must read and accept all the stipulations in this contract, which governs all of his Digital Images filed in the Xilopix Photo Library up to and including today.

**Recitals**

Xilopix's commercial activity includes three Families of products:

- **Family 1** > Image exploitation licenses: exclusive or non-exclusive licenses aimed at vesting any interested professional (publisher, communication agency, travel agency, press agency, etc.) with all or part of the reproduction and representation rights for Digital Images, on any type of media, with unlimited publication, and with or without time limitations, under terms defined by contract. These reproduction and representation rights granted by Xilopix to professionals for Digital Images are assigned by reference to the Digital Images Xilopix makes available through its Photo Library.
- **Family 2** > Subscriptions: E-cards, Wallpapers, Personal Photo and Video Albums, customizable Universal Calendar with Holidays, Alert Services, etc.
- **Family 3** > Print items and other derivative products: Real Postcards, printed Photo Albums, Photo Books, Calendars, photographic prints, object printing, textile printing, production of holograms, SMS, MMS and related services, etc.

Xilopix enters into contracts with PARTNERS to make their Digital Images available for: hosting on « www.xilopix.com », showing to the public, and thereby building up its Photo Library, in order to expand its activities described above.

PARTNER is interested in this association because of the recognition that he stands to gain from it and the potential for earning income as a result.

It was in this context that the parties met to agree the terms and conditions for making the said Digital Images available.

## **Definitions**

In this contract, it is agreed to define certain words and expressions as follows:

- **Digital Image:** the term "Digital Image" shall be used for convenience in the broadest sense possible: it refers to the image (Photo, Drawing, Watercolor, Animation, Video, etc.) over which PARTNER holds rights as author or as representative of a third-party author, and which he agrees to make available to Xilopix, regardless of the medium on which this image is fixed, i.e. on any paper medium, negative, slide, digital file, etc.
- **users:** this refers to Internet users (Individuals, Associations, Companies and Professionals) who visit the site
- « [www.xilopix.com](http://www.xilopix.com) », and who are therefore freely able to access and view the Digital Images;
- « [www.xilopix.com](http://www.xilopix.com) »: encompasses the Website « <http://www.xilopix.com> » and all of the affiliated sites related thereto;
- **on-lining:** on-lining the Digital Image is the act by which the image appears on « [www.xilopix.com](http://www.xilopix.com) », and thus offered to users;
- **Photo Library:** is constituted by all of the Digital Images (Photos, Drawings, Watercolors, Animations, Videos, etc.) contained in the databases of « <http://www.xilopix.com> » for purposes of commercialization. It therefore does not include the Digital Images shown in Personal Photo and Video Albums.

## **Article 1 - Warranty clause**

Only Digital Images that are not the subject of any exclusivity elsewhere are eligible for Xilopix's Photo Library.

PARTNER expressly warrants that he personally is the author of the Digital Images that he makes available and is therefore the holder of all of the intellectual property rights over the latter (in particular, their content). If PARTNER is not the author of the Digital Images, he expressly warrants that he holds all the authorizations needed to make these available to Xilopix in the name of the third-party author or pseudonym in accordance with the express will of this third-party author, and that he is therefore authorized to assign the operating rights thereof.

With respect to the Digital Images that he supplies, the assigner (PARTNER) therefore warrants the assignee (Xilopix):

- that he has full power and capacity to grant the rights assigned herein and that these rights have not been assigned, mortgaged, encumbered or in any manner devolved in favor of a third-party on an exclusive basis;
- that he has not carried out and will not carry out, by way of assignment to a third-party or by any other process, any act that could compromise the rights assigned to Xilopix or impede or disturb the full enjoyment of the rights acquired by Xilopix;
- that he has not introduced into his Digital Images any reproduction, reminiscence or element of any kind that is likely to breach any third-party rights and give rise to court actions for plagiarism, infringement, unfair competition or civil liability or that could give rise to any disturbance in the exercise or working of the rights assigned;
- that where appropriate, he has obtained or will obtain all necessary authorizations from the third parties mentioned or represented, preventing the latter from disturbing the exercise of the rights assigned. More specifically, he warrants that he holds the authorizations needed to work images representing persons, their underage children, any animals owned by them, as well as their movable or immovable property. This

warranty is an absolute condition of the contract. In this connection, Xilopix can provide PARTNER with a standard letter of authorization to reproduce and represent photographs (available either from his account on [www.xilopix.com](http://www.xilopix.com) or else by e-mail on request) to present to any third parties when photographs are taken of their person and/or of their property;

- PARTNER agrees he will be financially liable in the event he fails to comply with any commitments made. PARTNER warrants to hold Xilopix harmless against any recourse or action brought for any reason whatsoever by any natural person or legal entity who considers they are entitled to rely on any rights against the assignment hereby granted, or any of the provisions hereof. Accordingly, in the event of a court decision rendered against it, Xilopix could have recourse against PARTNER, within the limits stipulated by law, and request the said PARTNER to reimburse the sums due under any judgment against it, in full or in part, as well as the interest and ancillary expenses incurred by Xilopix, including legal and paralegal expenses and attorneys' fees.
- PARTNER therefore warrants and represents to Xilopix that he has carried out or will carry out all the administrative actions pertaining to him at his sole expense and liability, (including with regard to the tax authorities), that might be necessary as a result of entering into this contract, such that Xilopix is held harmless in this connection against any action by any third party whatsoever.

## **Article 2 - Principles governing provision of the images**

By making his Digital Images available to Xilopix, PARTNER expressly authorizes Xilopix:

- to incorporate the Digital Images in the technical formats of its choice, deemed necessary for putting these online on « [www.xilopix.com](http://www.xilopix.com) »;
- to make users aware thereof by including them on « [www.xilopix.com](http://www.xilopix.com) »;
- to publish, reproduce and commercialize them on « [www.xilopix.com](http://www.xilopix.com) », in accordance with Xilopix's activity and in the conditions described in the recitals.

## **Article 3 - Granting of the usage rights**

In accordance with the provisions of this Contract, PARTNER grants to any interested professional (publisher, communication agency, travel agency, press agency, etc.), through Xilopix's international operating licenses, a worldwide, perpetual right to use his Digital Images.

## **Article 4 - Environment in which the Digital Images are shown to the public**

PARTNER unconditionally accepts the inclusion of his Digital Images on the site « [www.xilopix.com](http://www.xilopix.com) ». Since Xilopix continually strives to improve the conditions in which the Digital Images on are showcased on « [www.xilopix.com](http://www.xilopix.com) », all modifications made to the presentation, graphics, colors or functionalities of « [www.xilopix.com](http://www.xilopix.com) », shall not, under any circumstances, entitle PARTNER to withdraw from his commitments made hereunder.

## **Article 5 - Free management of the display of the Digital Images on « [www.xilopix.com](http://www.xilopix.com) »**

Xilopix has sole discretion to decide on which Digital Images it selects for displaying to users on « [www.xilopix.com](http://www.xilopix.com) ».

As part of its plan for continuing improvement of the quality of « [www.xilopix.com](http://www.xilopix.com) », Xilopix reserves the right to remove one or more Digital Images of its choice from display on « [www.xilopix.com](http://www.xilopix.com) » at any time.

Accordingly, the PARTNER expressly authorizes Xilopix to carry out the Complete removal (from its Photo Library and therefore from the display on « www.xilopix.com ») or Partial removal (from the display on « www.xilopix.com » only) one or more of his Digital Images, without notice.

Those Digital Images having been subject to Partial removal shall be retained in the Photo Library's databases and shall therefore still be used for the activities referred to in the Recitals, linked to the financial conditions set out in Articles 12.1 and 12.2.

If the Digital Images are put back on line on « www.xilopix.com », they shall be used for all of the activities referred to in the Recitals, in all of the financial conditions mentioned in Article 12.

Those Digital Image that have been permanently removed from the Photo Library shall regain their freedom insofar as concerns Xilopix and shall no longer be subjected to any obligation whatsoever under this contract.

At any time, PARTNER may check the presence on display (« Full » presence) or the partial removal (« Part » presence) of his Digital Images on « www.xilopix.com » via his Account on « www.xilopix.com », Digital Image, and of any operating licenses that cover them.

Finally, with respect to the Digital Images retained in the Photo Library, Xilopix reserves the right to modify the indexing and caption if necessary as part of its continuous improvement plan for « www.xilopix.com ».

#### **Article 6 - Limit to Xilopix's liability with respect to users' conduct**

Xilopix shall do its utmost to provide a technical response in the interests of maximizing the security of « www.xilopix.com », specifically in order to limit the scope for potential unauthorized reproduction by third parties.

However, the PARTNER is aware of the fact that, taking account of the technical possibilities of the Internet and more generally of networks, certain users may well be able to work all or part of the Digital Images due to their particularly broad technical knowledge, Digital Image in a manner that could infringe the PARTNER'S rights.

Under no circumstances may Xilopix be held liable as a result.

#### **Article 7 - Technical constraints**

Although Xilopix will back up PARTNER's Digital Images hosted in its Photo Library throughout the term of this contract, PARTNER must take into account that the Photo Library does not, under any circumstances, constitute a storage space.

Accordingly, PARTNER is strongly recommended to make back-ups of his image files on his hard drive or on any other storage medium (CD-ROM, DVD, USB memory stick, etc.).

Under no circumstances may Xilopix be held liable for the loss of data and the content hosted in its Photo Library.

In general, PARTNER must take all necessary precautions to back up his original data (Photos, Drawings, Watercolors, Animations, Videos, etc.) on other media.

PARTNER must take into consideration that the continuing development of the Internet network may give rise to changes of these constraints in the course of the contract. He warrants that he is familiar with the constraints relating to speed of transmission of data and information over the Internet and the risks that access to the site may be unavailable at certain times.

Under no circumstances may Xilopix be held liable for accidental damages sustained by PARTNER, whether or not these are caused by third parties.

PARTNER acknowledges and accepts these constraints and these risks.

### **Article 8 - Non-pecuniary right**

PARTNER retains all of the attributes of his non-pecuniary rights on his photograph and graphic works.

However, the PARTNER authorizes Xilopix and its subsidiaries, its partners and clients, to adapt or modify his photos or drawings in accordance with their needs, provided that said modification in no way infringes the integrity of his work. These modifications may relate to the dimension, luminosity, contrast or correction of any defects, pivoting, and/or a slight cropping. In the event of a substantial modification of the work, the buyer shall be obliged to offer the new version of the image to Xilopix, who shall transmit the specific proposed modification, as well as the new image/work to PARTNER in order for the latter to approve it.

In the specific case of downloading a desktop background, PARTNER is aware that due to the technical constraints of screens, and specifically those on cell phones, cropping the image will be left to the user's discretion.

Finally if he wishes, PARTNER may request by e-mail or post for one of his Digital Images to be withdrawn.

### **Article 9 - Right to compliance with the name**

Xilopix agrees to include the first name and last name or any pseudonym, or other name of PARTNER or of the third-party author such that it appears clearly on, next to or in an index, for each of the Digital Images provided.

The following expressions are used:

- firstname.lastname@Xilopix.com
- pseudonym@Xilopix.com
- companyname@Xilopix.com
- associationname@Xilopix.com

### **Article 10 - Business relationships - Prices set for the assignment of the Digital Images**

PARTNER acknowledges that Xilopix has exclusive competence to negotiate with third parties the pricing terms for the transfer of rights on the Digital Images.

He acknowledges that Xilopix alone is authorized to set the price for the transfer of rights.

It is understood that Xilopix negotiates and sets these prices to best reflect the interests of each party.

### **Article 11 - Case of "trading services for traffic"**

Xilopix may seek to enter into any partnership that would promote its site and make it known to as many people as possible.

This arrangement, dubbed "trading services for traffic", consists of making a sample of Digital Images appearing in the Photo Library available to an associated Website; the Digital Images are then installed on the associated Internet site for a limited time, specified by contract.

Surfers discovering these Digital Images on the associated site are given the option to access the <http://www.xilopix.com> Website by means of a link.

This partnership entails no remuneration to be paid to or by either party.

PARTNER is informed that his Digital Images may possibly be used within the framework of this « trading services

for traffic » scheme. He hereby expressly authorizes Xilopix to include all or some of his Digital Images in the samples taken from the Photo Library by the associated Website for this purpose.

He acknowledges that this partnership works in the interest of the activity of « www.xilopix.com » and therefore in his own interest.

As this type of partnership does not generate any direct financial profit, PARTNER accepts that he is not entitled to claim any specific remuneration for its implementation.

## **Article 12 - Financial terms**

### **12.1 - Remuneration**

Making the Digital Images available Digital Image does not, in itself, give rise to any remuneration for PARTNER.

The financial consideration or Royalties payable to PARTNER each month for making the Digital Images available, is the turnover resulting from sales generated by its Digital Images on « www.xilopix.com » Digital Image in the conditions set out in Article 12.2.

The Royalties shall be calculated following a 1-month period of observation on the last date of the calendar month, at midnight, French time, on the basis of:

- the turnover resulting from the sales generated on « www.xilopix.com »,
- the number of Digital Images shown in Xilopix's Photo Library,
- the use of the Digital Images shown in Xilopix's Photo Library.

### **12.2 - Calculation of Royalties**

#### **For direct sales**

This calculation distinguishes between the three aforementioned product families:

- Family 1 > Exclusive and non-exclusive licenses to work the Digital Images  
**40%** of turnover from this family paid to PARTNER as Royalties. Author's Contract for the exhibition-sale of Digital Images
- Family 2 > Subscriptions: E-cards, Wallpapers, Photo and video albums, etc. 10% of turnover from this family paid to PARTNER as Royalties.  
**10%** of turnover from this family paid to PARTNER as Royalties.
- Family 3 > Printed articles and other derivative products: Real Post Cards, MMS and equivalent articles, etc.  
**5%** of this Family's turnover paid to PARTNER as Royalties.

#### **For indirect sales**

In the case of sales through an Affiliated Partner, its Royalties shall be calculated on the basis of **90%** of turnover.

#### **For all sales**

The calculation is made as follows:

- **90%** on the basis of the selection of PARTNER's Digital Images by the buyer(s);
- **10%** on the basis of the rate of representation of PARTNER's Digital Images chosen in Xilopix's Photo Library.

### **12.3 - Invoicing**

Xilopix or one of the partner sites shall collect the amounts paid in respect of the marketing and sale of the Digital Images.

Xilopix shall treat a sale as having taken place only after payment in full by the buyer (and where appropriate the affiliated and/or industrial partner(s)).

Xilopix shall make the detailed summary of how the Royalties are calculated available to PARTNER in his account (accessible on <http://www.xilopix.com>). This summary is updated on a monthly basis, within 15 days following each calendar month. The form of this summary may vary over time and is left entirely to Xilopix's discretion. It is recalled that all the files and data that it contains shall remain the property of Xilopix, who shall not disclose the same in any manner.

If PARTNER challenges the figures mentioned in the summary, Xilopix shall have said figures certified by a company auditor and the certified documents shall alone be authoritative between the parties.

#### If PARTNER is an Individual

Within 30 days after each calendar month, Xilopix shall send PARTNER payment for the Royalties due, determined on the basis of the information provided by Xilopix in the above-mentioned summary.

At the same time, Xilopix shall send PARTNER a receipt of said payment by electronic means (E-mail).

#### If PARTNER is a legal entity (Company, Sole Proprietorship or Association)

After each calendar month, PARTNER shall send Xilopix an invoice for the Royalties by electronic means (E-mail) or via the Post Office, indicating, where applicable, the VAT, and prepared on the basis of the information provided by Xilopix in the aforementioned summary.

This invoice for Royalties must also include the Company's identification number at the Trade & Companies Registry, together with the company's registration number and the name of the city in which the office of the clerk where it was registered is located (for Sole Proprietorships and companies alike), the « SIREN » number [company ID number] for traders (natural persons), or registration with the office of the prefecture clerk (for associations) or at any other competent entity if PARTNER is not French.

It is recalled that the PARTNER is solely and entirely liable for preparing the invoice for Royalties.

This invoice shall be paid by Xilopix, 30 days from the date of receipt, by check or by bank transfer, only if it is drawn up in accordance with all relevant legal provisions.

#### In all cases:

The Royalties shall be paid only if the total amount due for the month (beginning of the calendar month) exceeds £50.00 (excluding tax). If this is not the case, the amount shall be carried forward to the following month.

Accordingly, upon acceptance of this Contract, PARTNER shall provide Xilopix with all the critical information needed to make the payments in question by bank transfer or by any other equivalent means organized by Xilopix.

The Royalty invoices shall be paid in euros. Any exchange rate costs shall therefore be borne by PARTNER.

It is agreed between the parties that apart from the Royalties mentioned herein, no amount of any kind whatsoever shall be due to PARTNER.

Finally, for the whole term of this contract, PARTNER agrees to forward his new contact information (postal address, Internet address, and bank account information for transfers) in the event of a change.

### **Article 13 - Exclusivity**

No exclusivity is granted to Xilopix on the Digital Images provided by PARTNER. However, in order to increase his income, PARTNER has the choice (if he wishes) of authorizing the sale of his Digital Images under the Annual Exclusive Royalty-Free Operating License offered by Xilopix. In the event that a buyer purchases such a License, PARTNER shall grant Xilopix and therefore, the buyer, a temporary 12-month exclusivity, which may be renewed by this same buyer.

A Digital Image that is the subject of an Annual Exclusive Royalty-Free Operating License cannot be sold during this period through any other License whatsoever and shall therefore be withdrawn from sale and display by Xilopix during the period in question.

It is important to note that any Digital Image having been the subject of a non-exclusive Royalty-Free Operating License (without a time limit) can no longer be transferred under an Exclusive Operating License.

In order to enable him to manage his Digital Images properly, Xilopix shall make a management facility available to PARTNER in his Account within which:

- he can check the Operating Licenses transferred by Xilopix which include his Digital Images;
- he must notify Xilopix of any operating License sold outside Xilopix which include his images.

In the event of a breach of the information obligation concerning the use of a Digital Image by means of such an operating License, the party who is responsible shall alone assume any harmful consequences that such a breach may entail.

Reminder: In no circumstances is the PARTNER entitled to store Digital Images in Xilopix's Photo Library for which he has granted exclusivity, to any party other than Xilopix.

**NB:** all of the operating Licenses offered by Xilopix may be consulted in the Photo Library « Licenses & Pricing » section for Purchasing images.

### **Article 14 - The Contract's term and termination**

This Contract shall take effect as of its acceptance and may be terminated at any time by Xilopix or PARTNER.

However, in the interests of giving absolute priority to the parties' efforts to work in partnership, termination will take effect only after a period of 3 months has expired from the date of receipt of a letter of termination (sent by registered mail with return receipt) by the party so wishing, so as to enable a constructive dialogue to take place aimed at securing the continued existence of the partnership.

Unless terminated, this Contract is made for the entire legal protection period of the author's pecuniary rights.

### **Article 15 - Effect of termination**

Regardless of the reason therefore, termination of the Contract shall automatically give rise to the withdrawal of all of PARTNER's Digital Images that are the subject of the Contract from display on « www.xilopix.com » Digital Image.

However, Xilopix shall be entitled to keep Partner's Digital Images, solely for internal archiving purposes.

Following the date of termination of Contract, any License to work a Digital Image of PARTNER, granted by Xilopix to one of its clients, shall continue to apply, since, it is attributed by PARTNER to the client de facto in the same conditions as those determined by the operating License granted by Xilopix.

The provisions of Articles 1, 15, and 17 shall remain in effect following expiry of this Contract.

#### **Article 16 - Preferential access to Xilopix's Digital Media Center**

As a member of the Xilopix community of authors, PARTNER shall be entitled to benefit free of charge from certain services of Xilopix's Digital Media Center in the conditions indicated below.

Accordingly, when more than 100 of PARTNER's Digital Images are included in the photo library, PARTNER will qualify for a free first-level membership Subscription for, the Digital Media Center, (currently equivalent to 5 euros), as defined in the Standard Terms of Use, not for a year, but for so long as there are at least 100 of his Digital Images included in the Photo Library.

As soon as the requisite number of Digital Images falls below that figure, free membership will be suspended in accordance with the Digital Media Center's Standard Terms of Use, until the requisite number of Digital Images has been reached again or PARTNER has purchased a Subscription.

PARTNER activates this Subscription from his Account after confirming acceptance of the Digital Media Center's Standard Terms of Use. The automatic renewal mentioned above is effective after validation of the Digital Media Center's Standard Terms of Use for each subsequent 1-year period.

#### **Article 17 - Legislation and assignment of jurisdiction clause**

This contract is governed by French law. In the event of a dispute, the parties agree to seek out an amicable solution to the dispute before referring the dispute to arbitration by a third-party appointed by them. Should said arbitration fail to resolve the dispute, the courts of Paris shall have exclusive jurisdiction, even if there is more than one defendant, or in the case of third-party proceedings.

#### **For Filopix**

A simplified joint stock company [« SAS »] having share capital of EUR 1,200,000  
Registration N° RCS PARIS 505 176 594  
Intra-Community VAT No.: FR 48505176594

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#### **For PARTNER**

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