

# Five Tiger Use and Licence Agreement

Five Tiger (“We/Us”) is a business in the stock image industry that sells online images and a company registered in South Africa, with company registration number 2010/079512/23. Our address is 1 Charnwood Avenue, Zwaanswyk, Tokai Cape Town 7945.

These are the terms of use (“Terms of Use”) subject to which We licence our products to you (the “User”) and subject to which the User may make use of our website, [www.fivetiger.co.za](http://www.fivetiger.co.za), (“the Website”) whether as a guest or a registered user. By visiting the Website, you agree to be bound by these Terms of Use.

The User will also comply with the terms of Our Privacy Policy (<http://www.fivetiger.co.za/pages/privacy-policy.html>), which sets out the terms on which we process any Personal Data we collect from the User, or that the User provides to us. By using the Website, the User consents to such processing and warrants that all information provided by the User is accurate at the time provided by the User.

We reserve the right to change, modify, add to or remove from portions or the whole of these Terms and Use from time to time. Changes to these Terms of Use will become effective upon such changes being posted to this Website. It is the User’s obligation to periodically check these Terms of Use at the Website for changes or updates. The User’s continued use of this Website following the posting of changes or updates will be considered notice of the User’s acceptance to abide by and be bound by these Terms of Use, including such changes or updates

You may not use the Website if you are under the age of 18 years.

It is now agreed as follows:

## 1. Definitions

In this agreement, the following words shall have the following meanings, unless the context requires otherwise:

<p>“Copy or Publish”</p>	<p>with reference to a Licensed Product, means copy, republish, frame, link to, download, transmit, modify, adapt, create derivative works based on, rent, lease, loan, sell, assign, distribute, display, perform, license or sublicense in whole or in part, using any means, in any medium. It includes breaking up, changing, cropping or any other change or use as part of some other created work;</p>
<p>“Intellectual Property Rights”</p>	<p>means intellectual property rights owned by us, of every sort, whether or not registered or registerable in any country, including all Licensed Products, intellectual property rights of kinds coming into existence after today; and including, among others, copyright, patents, trademarks, design rights, and database right, and all rights which are derived from those rights;</p>
<p>“Licence”</p>	<p>has the meaning given in paragraph 3;</p>
<p>“Licensed Product”</p>	<p>means any product, material or thing offered for licence by us on the Website, whether or not bought by a User. A reference to “Licensed Product” shall be a reference to all or part of a Licensed Product or to a Licensed Product changed by you in any way;</p>

<p>“Personal Data”</p>	<p>means the user’s name, identity or passport number, physical address, postal address, e-mail address, telephone number/s, credit card details, banking details or any other information from which a person may be identified, which also includes information the site may collect about a user’s visit, such as: the name of the Internet service provider and the Internet Protocol (IP) address through which the user accesses the Internet; the date and time the user accesses the site; the pages that the user accesses while on the site; and the Internet address of Our Website from which the user linked directly to the Website;</p>
<p>“Restrictions on Use”</p>	<p>has the meaning given to it in Clause 4 of this Agreement;</p>
<p>“Third Party Owner”</p>	<p>means an owner of a Licensed Product which is not owned by us;</p>
<p>“Website”</p>	<p>means all of the hardware and software that enables the Website to function and the related user interface; and</p>
<p>“Works”</p>	<p>Photographs, illustrations, images or other pictorial or graphic work.</p>

## 2. Interpretation

In this agreement the following terms apply unless the context otherwise requires:

**2.1** all Restrictions on Use shall be incorporated into this agreement no matter how communicated to the User;

**2.2** a reference to a person includes a human individual, a corporate entity and any organisation which is managed or controlled as a unit; it includes that person's successors, legal representatives, permitted assignees and any person to whom rights and obligations are transferred or passed as a result of a merger, division, reconstruction or other re-organisation involving that person;

**2.3** in the context of permission, "may not" in connection with an action of the User, means "must not";

**2.4** the headings to the paragraphs and schedules (if any) to this agreement are inserted for convenience only and do not affect the interpretation;

**2.5** any agreement by any party not to do or omit to do something includes an obligation not to allow some other person to do or omit to do that same thing;

**2.6** a reference to an act or regulation includes new laws of substantially the same intent as the act or regulation referred to;

**2.7** a reference to 'including' or 'includes' will be construed to mean 'including without limitation';

**2.8** this agreement applies to all supplies of Licensed Products by us. They prevail over any terms proposed by the User; and

**2.9** this agreement is made only in the English language. If there is any conflict in meaning between the English language version of this agreement and any version or translation of this agreement in any other language, the English language version shall prevail.

## **3. The Licence**

**3.1** Subject to the terms of this agreement, we grant to the User a personal, non-exclusive, non-transferable, right to use and reproduce images in terms of the User's purchase parameters (regarding time period, image size and media channel) in accordance with paragraph 3 (the "Licence"). In the event that the User creates a derivative work based on or incorporating one or more Licensed Products, all rights in and to such Licensed Products shall continue to be owned by Us. All other rights in the Licensed Products are expressly reserved by Us.

**3.2** The User confirms that they have the capacity to enter into this agreement.

**3.3** In entering into this contract the User has not relied on any representation or information from any source except our Website.

**3.4** We do not offer the Licensed Products in all countries. Please contact Us for a list of countries for which we can provide a Licence.

**3.5** If any information the User gives to Us is inaccurate, We will contact the User and give the User 10 working days to correct the inaccuracies. If the User does not comply within this timeframe, We reserve to the right to terminate the Licence and no refund will be due to the User.

**3.6** The User has no right to use a Licensed Product outside the use specified at the time of purchase, permissions granted under the Licence in accordance with paragraph 3 and limitations as set out in paragraph 4.

**3.7** This Licence is limited by the “Restrictions on Use” (paragraph 4) and by the choices the User has made which relate to time, extent, numbers, type of usage, and other matters, at the time of purchase of the User’s Licence. The User agrees to comply with all Restrictions on Use.

**3.8** If, after purchasing a Licence subject to certain Restrictions on Use, the User wishes to amend the Restrictions on Use, the User must submit such a request via email. We will respond to the request within 10 working days of receiving it and the User must wait for written approval and comply with any conditions of that approval before deviating from the Restrictions on Use as originally agreed

**3.9** No express or implied licence of the Licensed Product or any other material is granted to you other than the express Licence granted in this agreement.

## **4. Restrictions on Use**

**4.1** The User is not entitled to print more than 250,000 copies of the Licensed Product.

**4.2** The User must not sub-license a Licensed Product.

**4.3** The User must not Copy or Publish a Licensed Product except as specifically allowed in this agreement. Displaying any Licensed Product in any digital format or for any digital use at a resolution greater than provided in the purchase parameters for the User’s purchase as set out in paragraph 3, will be deemed to be an attempt to redistribute the Licensed Product and, at Our discretion, could result in the termination of the User’s Licence.

**4.4** The User may not allow any other person to use a Licensed Product except in the situation or context for which the User has bought it.

**4.5** The User may not represent or in any imply that the User is the owner or originator of any Licensed Product.

**4.6** The User may not remove any identification or reference number or other information which may be embedded in any file of a Licensed Product.

**4.7** Every publication or appearance of a Licensed Product on a website must be protected as far as the law allows by separate, specific or general provisions against Copying or Publishing. We allow the User to use the definition of “Copy or Publish” used in this agreement.

**4.8** The User may not use a Licensed Product:

**4.8.1** except for the use specified at the time of purchase;

**4.8.2** in a context which is pornographic;

**4.8.3** containing a human model in any way which might degrade that person in the eyes of a reasonable viewer;

**4.8.4** in part or as a whole, as a logo or otherwise to incorporate it in any Intellectual Property Rights of yours;

**4.8.5** in an application for mobile/cell phone use, except as part of a marketing programme based on a website; and

**4.8.6** for a secondary use, for example on social networks.

## 5. Pricing

**5.1** The prices payable by the User for the Licensed Products are specified on the Website.

If the User wants a Licensed Product which gives the User rights beyond the Licence as set out on the Website, the prices payable by the User are set out on the website and may be amended by us from time to time on the Website:

<b>Extended License</b>	<b>Price</b>
Unlimited print runs	+R2,000
Products for resale (calendar, t-shirts etc.)	+R5,000
Web resale (wordpress template etc.)	+R7,000

**5.2** If the User wishes to effect the total buyout of any image, the User must contact Us directly.

**5.3** The merchant outlet country at the time of presenting payment options to the cardholder is South Africa. The transaction currency is the South African Rand (ZAR).

**5.4** All prices on the Website are calculated including VAT, which will be charged on the prices quoted in this Clause 5 when payment is due.

**5.5** Payment for our Licensed Products is non-refundable and cancellation and/or termination of this agreement by the User will not entitle the User to a refund of any payment made.

## **6. Third Party Owners and additional restrictions**

Some Licensed Products offered for Licence on the Website are owned by Third Party Owners and not by Us. Where that is indicated, the following additional provisions apply:

**6.1** the price of the Licence includes a sum payable by us to the Third Party Owner;

**6.2** the User has no obligation to make payment to the Third Party Owner;

**6.3** We are the agent of the Third Party Owner and accept all obligations and liability to the User in connection with the Licensed Product;

**6.4** the User remains liable to the Third Party Owner, through Us, for compliance with this agreement;

**6.5** in any event when the User may be liable to the Third Party Owner for breach of this agreement, the User will indemnify Us for all cost and liability arising from Our relationship with the Third Party Owner, Our acting as his agent, or the User buying a Licensed Product owned by the Third Party Owner.

## **7. Release of third party rights**

**7.1** In some jurisdictions you may not use a human image without the consent of that person. That may apply to any person or only to a model. The permission is generally known as a “release”. The User alone are responsible for obtaining any necessary release and for paying any fees due.

**7.2** Our Licensed Products are marked on the Website with a notation as to whether a release may be necessary. If not marked, you may take it that the Licensed Product in question has been released.

**7.3** In any event, We give no warranty that any Licensed Product may be used without the permission or release of some person. The User should exercise caution with regard to a Licensed Product containing a human person, trade mark, logo or work of art or architecture.

**7.4** We are not liable to you in tort, delict, contract or other law, for any act or omission of a Third Party Owner.

**7.5** Subject to the specific rights mentioned in this paragraph, we warrant that:

**7.5.1** We have used our reasonable efforts to identify any person who may claim a right in a Licensed Product and have obtained any necessary release; and

**7.5.2** We have used our reasonable efforts to obtain an indemnity on the User's behalf from the Third Party Owner for expense and liability incurred by the User as a result of his failure to obtain the release of those third party rights.

**7.6** If we inform the User that someone has claimed that We and the User are infringing his right by the User's use of a Licensed Product, We may require the User to:

**7.6.1** stop using the Licensed Product;

**7.6.2** delete or remove from the User's possession and control, every copy of the Licensed Product; and

**7.6.3** ensure that every other copy of the Licensed Product which the User has passed to any other party is also deleted or destroyed.

## **8. Renewal payments**

**8.1** At least four weeks before expiry of the period for which the User has paid, We will contact the User through the User's last known email address to inform the User that their licence to use the Licensed Products is due to expire and invite the User to renew. A quotation for the new period will be included.

**8.2** At any time before expiry of the User's subscription, the User may use the "My Account" tab on the Website to access the User's Personal Data and [change their requirements for Licensed Products or] cancel renewal.

**8.3** At expiry of the User's subscription We shall automatically take payment from the User's credit card of the sum specified on the invoice sent earlier and shall confirm the renewal of the User's Five Tiger membership for a further period by sending the User an email message.

## **9. Security of your payment card**

**9.1** We make reasonable commercial efforts to make the Website safe for Users to use. Card payments are not processed through pages controlled by Us. We use one or more online payment service providers who will encrypt the User's card or bank account details in a secure environment.

**9.2** All online credit card payments are processed by PayFast who are the approved payment gateway for the Standard Bank of South Africa. PayFast uses the strictest form of encryption namely Secure Socket Layer 3 (SSL3) and no credit card details are stored on Our Website. Users may go to [www.payfast.co.za](http://www.payfast.co.za) to view their security policy.

**9.3** If the User has asked us to remember their credit card details in readiness for their next purchase or subscription, We will securely store your payment details on our systems. These details will be fully encrypted and only used to process the User's automatic monthly payments or other transactions which the User has initiated.

## **10. Terms of download**

**10.1** User will register on the Website by choosing a username and a password. The Licensed Products (where available to the User) available within as downloadable files in the Jpeg format once purchased will be available at the User's account on [www.fivetiger.co.za](http://www.fivetiger.co.za).

**10.2** The User must not disclose their username and password to third parties.

**10.3** Downloaded files cannot be returned. In case of defect, the User must notify us within 24 hours of becoming aware of defect by email to the following address ([info@fivetiger.co.za](mailto:info@fivetiger.co.za)).

**10.4** User's cooling off rights under section 44 of Electronic Communications and Transactions Act do not apply in terms of section 42 of Electronic Communications and Transactions Act, due to downloads being audio, or video recordings, or software or newspapers, periodicals, magazines or books.

**10.5** We have the right to disable any User accounts, at any time, if We reasonably believe that the User has failed to comply with any of the terms and conditions of this agreement.

## **11. Disclaimers and limitation of liability**

**11.1** The law differs from one country to another. This paragraph applies so far as the applicable law allows.

**11.2** Subject to sections 43(5) and 43(6) of Electronic Communications and Transactions Act, and to the extent permitted by law, our Website and all Licensed Products and Works on Our Website, are provided on an "as is" basis, and may include inaccuracies or typographical errors and providers, owners, suppliers, employees, directors, partners, affiliates and agents will not be liable for any damage, or loss or liability of any nature incurred by whoever as a result of any action or omission. We make no warranty or representation as to the availability, accuracy or completeness of the Licensed Product or Works, or any third party content accessible via an Internet link.

**11.3** All implied conditions, warranties and terms are excluded from this agreement. If in any jurisdiction an implied condition, warranty or term cannot be excluded, then this sub-paragraph shall be deemed to be reduced in effect, only to the extent necessary to release that specific condition, warranty or term.

**11.4** We make no representation or warranty regarding the Licensed Product or Works including that it will be:

**11.4.1** useful to the User;

**11.4.2** of satisfactory quality;

**11.4.3** fit for a particular purpose;

**11.4.4** available or accessible, without interruption, or without error.

**11.5** claim no expert knowledge in any subject. We disclaim any obligation or liability to you arising directly or indirectly from information you take from the Website.

**11.6** We do not guarantee that our site will be secure or free from bugs or viruses. We shall not be liable for any loss or damage caused by a virus or other technologically harmful material that may affect the User's computer due to the User's use of the Website.

**11.7** The User agrees that in any circumstances when We may become liable to the User, the limit of our liability is the amount the User has paid Us for the Licensed Products concerned. This applies whether your case is based on contract, tort, delict or any other basis in law.

**11.8** We shall not be liable to the User for any loss or expense which is:

**11.8.1** indirect or consequential loss; or

**11.8.2** economic loss or other loss of turnover, profits, business or goodwill, even if such loss was reasonably foreseeable.

**11.9** This paragraph (and any other paragraph which excludes or restricts our liability) applies to Our directors, officers, employees, subcontractors, agents and affiliates as well as to Us.

**11.10** If the User becomes aware of any breach of any term of this agreement by any person, please tell Us by email to [info@fivetiger.co.za](mailto:info@fivetiger.co.za).

**11.11** Nothing in this agreement shall be construed as limiting or excluding our liability for death or personal injury caused by our negligence.

**11.12** Please note that the Website may contain links to third party websites supplying third party images and other goods or services. We have no control over the contents of those websites. Any dealings between the User and such third parties, including payment for and delivery of images, products or services and any other terms, conditions, warranties or

representations, acts or omissions associated with such dealings, are solely between the User and the third party. We do not accept any responsibility for and The User agrees not to hold Us liable for any loss or damage of any kind incurred as the result of any such dealings. By using the Website, the User expressly relieves Us from any and all liability arising from the User's use of any third-party website.

## **12. User Indemnifies Us**

The User agrees to defend, indemnify and hold harmless Us and our officers, directors, employees and agents, against all costs, claims, damages, obligations, losses, liabilities, costs or debt, and expense (including but not limited to attorney's fees) arising directly or indirectly from:

**12.1** The User's use of and access to the Website, Works, Content and Marks (as defined in paragraph 13 below);

**12.2** The User's failure to comply with the applicable law;

**12.3** The User's breach of this agreement;

**12.4** any act, neglect or default by any agent, employee, licensee or customer of the User;

**12.5** a contractual claim arising from the User's use of the Licensed Products;

**12.6** a breach of the Intellectual Property Rights of any person.

This defence and indemnification obligation will survive these terms and conditions and the User's use of the Website.

## **13. Copyright and other Intellectual Property Rights**

**13.1** The content on the Website, including without limitation, the text, software, scripts, graphics, photos, sounds, music, videos, and the like ("Content") and the trademarks, service marks and logos contained therein ("Marks"), are owned by or licensed to Us, subject to copyright and other intellectual property rights under the law.

**13.2** We expressly reserve all Intellectual Property Rights in and to the Website and stock images thereon and the User's use of the Website is subject to such restrictions. The User must not use any materials and images from the Website in any manner that may infringe any Intellectual Property Rights, or other property right of ours or any third parties; or reproduce,

modify, display, perform, publish, distribute, disseminate, broadcast, frame, communicate to the public or circulate to any third party the Content contained thereon, in any way other than as expressly provided for in terms of the User's purchase parameters set out in paragraph 5 without Our prior written consent. We reserve all rights not expressly granted in and to the Website and its content.

**13.3** Should the User's payment for the use of stock images on the Website fail for whatever reason, the User's rights to utilise the Licensed Product contained thereon shall immediately terminate and any use thereof whatsoever will be deemed transgression of these terms and conditions. In such event, We reserve the right to take legal action at the User's cost to prevent the User's use of the Licensed Product.

**13.4** The User agrees that at all times the User will:

**13.3.1** not cause or permit anything which may damage or endanger Our title to any Licensed Product or other Intellectual Property Rights or the title of any Third Party Owner whose work has been made available to us as a Licensed Product;

**13.3.2** notify Us of any suspected infringement of Intellectual Property Rights.

**13.4** If We terminate the Licence on account of the User's breach, the User agrees that the User will:

**13.4.1** immediately stop using the Licensed Product;

**13.4.2** destroy all copies of the Licensed Product in the User's possession or control; and

**13.4.3** destroy any work of the User's derived from a Licensed Product.

**13.5** To give assurance both to the User and to Us that the User is using the Licensed Product in accordance with the terms of the Licence, the User agrees that the User will give Us copies of the User's works and materials containing or using a Licensed Product upon [14] days' notice of this requirement. The User agrees also to provide access to relevant pages which have restricted access or are fire-walled.

**13.6** If We reasonably believe that the User is using a Licensed Product outside the scope of this Licence, the User agrees to provide written confirmation of your compliance.

## **14. Assignment**

Neither party may assign, delegate, sub-contract, mortgage, charge or otherwise transfer any or all of its rights and obligations under this agreement without the prior written consent of the other party, except that a party may assign and transfer all its rights and obligations under this agreement to any person to which it transfers all of its business, provided that the assignee

undertakes in writing to the other party to be bound by the obligations of the assignor under this agreement.

## **15. Miscellaneous matters**

**15.1** The parties undertake to provide to the other party its current land address, e-mail address, telephone and fax numbers as often as they are changed together with all information that may be require to enable each party to fulfil its obligations under this contract.

**15.2** We may, at our sole discretion, change this agreement or any part thereof at any time without notice.

**15.3** The parties acknowledge and agree that this agreement has been jointly drawn by the parties and accordingly it should not be construed strictly against either party.

**15.4** If any term or provision of this agreement is at any time held by any jurisdiction to be void, invalid or unenforceable, then it shall be treated as changed or reduced, only to the extent minimally necessary to bring it within the laws of that jurisdiction and to prevent it from being void and it shall be binding in that changed or reduced form. Subject to that, each provision shall be interpreted as severable and shall not in any way affect any other of these terms.

**15.5** The rights and obligations of the parties set out in this agreement shall pass to any permitted successor in title.

**15.6** If the User is in breach of any term of this agreement, We may terminate any Licence of a Licensed Product.

**15.7** Any obligation in this agreement intended to continue to have effect after termination shall so continue.

**15.8** No failure or delay by any party to exercise any right, power or remedy will operate as a waiver of it nor indicate any intention to reduce that or any other right in the future.

**15.9** When the User visits the Website or sends messages to Us by email, the User is communicating with us electronically. We communicate with the User by e-mail or by posting notices on the Website. The User agrees that all Our electronic communications satisfy any legal requirement that such communications be in writing.

**15.10** Any communication to be served on either of the Parties by the other shall be delivered by hand, recorded delivery, by fax or by e-mail. It shall be deemed to have been delivered:

**(a)** if delivered by hand: on the day of delivery;

**(b)** if sent by post to the correct address: within two working days of posting to an address in South Africa, four working days to any address in the European Union and eight working days to any other address;

**(c)** if sent by fax to the correct number: within 24 hours; and

**(d)** if sent by e-mail to the address from which the receiving party has last sent e-mail: within 24 hours if no notice of non-receipt has been received by the sender.

**15.11** In the event of a dispute between the parties to this agreement, they undertake to attempt to settle the dispute by engaging in good faith with the other party before commencing arbitration or litigation.

**15.12** This agreement does not give any right to any third party.

**15.13** In the event of any conflict between any term of this agreement and the provisions of the articles of a limited company or any comparable document intended to regulate any other corporate or collective body, then the terms of this agreement shall prevail.

**15.14** This agreement shall be governed by the laws of the Republic of South Africa and exclusive jurisdiction of the courts of South Africa. This agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is hereby expressly excluded.

**15.15** The validity, construction and performance of this agreement shall be governed by the laws of the Republic of South Africa and any dispute arising from it shall be litigated only in the Republic of South Africa. We choose as our domicilium citandi et executandi for all purposes under this agreement, whether in respect of court process, notice, or other documents or communication of whatsoever nature, 1 Charnwood Avenue, Zwaanswyk, Tokai Cape Town 7945.

These terms and conditions are effective as of September 2017.