

**VECTORIZATION SERVICES AND API ACCESS AGREEMENT**

Customer:	Contact:
Address:	Phone:
	Fax:
	E-Mail:
Services: The "Services" are the image vectorization services described at and provided through <a href="http://vectormagic.com">http://vectormagic.com</a> , which Customer will be entitled to access using the APIs ("API") provided by Vector Magic. Customer will submit images for vectorization by making calls via the API. For more details, please see the API protocol documentation.	
Fees: \$TBD per image uploaded, \$TBD per result downloaded, \$TBD per image-storage-year beyond the first three months of storage. This pricing is valid until the end of FY2008. The pricing will be adjusted on an annual basis, with any pricing changes communicated in November and taking effect from Jan 1 <sup>st</sup> .	
Payment Schedule:	Method of Payment:
Service Term: Effective until Terminated as per Section 6.	

**Agreement**

This agreement ("Agreement") is entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2008, (the "Effective Date") between Vector Magic, Inc. with offices at 450 Oak Grove Ave #204, Menlo Park CA 94025 ("Vector Magic"), and the Customer listed above ("Customer"). This Agreement includes and incorporates this Cover Page, as well as the accompanying Terms and Conditions and contains, among other things, warranty disclaimers, liability limitations and use limitations. There will be no force or effect to any different terms of any related purchase order or similar form even if signed by the parties after the date hereof. Each party's acceptance of this Agreement was and is expressly conditional upon the other's acceptance of the terms specified or referenced in the Agreement to the exclusion of all other terms.

**Vector Magic:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Customer:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## TERMS AND CONDITIONS

### **1. SERVICES AND SUPPORT**

1.1 Subject to the terms and conditions of this Agreement, Vector Magic will provide Customer with access to the Services through the internet. The Services are subject to modification from time to time at Vector Magic's sole discretion, for any purpose deemed appropriate by Vector Magic. Vector Magic will use reasonable efforts to give Customer prior written notice of any such modification.

1.2 Vector Magic will undertake commercially reasonable efforts to make the Services available twenty-four (24) hours a day, seven (7) days a week. Notwithstanding the foregoing, Vector Magic reserves the right to suspend Customer's access to the Services: (i) for scheduled or emergency maintenance, or (ii) in the event Customer is in breach of this Agreement, including failure to pay any amounts due to Vector Magic.

1.3 Subject to the terms hereof, Vector Magic will provide reasonable support to Customer for the Services from Monday through Friday during Vector Magic's normal business hours.

1.4 Vector Magic will provide Customer with an API solely to assist Customer in interacting with the service in an automated manner strictly in accordance with this Agreement. Customer will protect and maintain such API in a secure fashion, will not use such API for any other purpose and will not provide or disclose it to any third party (or even to any internal personnel who do not need access to such API for such purpose).

### **2. RESTRICTIONS AND RESPONSIBILITIES**

2.1 Customer will not, and will not permit any third party to: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of the Services or any software, API, documentation, image or data related to the Services ("Software") (provided that reverse engineering is prohibited only to the extent such prohibition is not contrary to applicable law); modify, translate, or create derivative works based on the Services or Software; use the Services or Software for timesharing or service bureau purposes or for any purpose other than its own use for the benefit of End Users; or use the Services or Software other than in accordance with this Agreement and in compliance with all applicable laws and regulations (including but not limited to any European privacy laws), intellectual property, consumer and child protection, obscenity or defamation).

2.2 Customer will not: (i) take any action that imposes or may impose (as determined by Vector Magic at its sole discretion) an unreasonable or disproportionately large load on Vector Magic's (or its third party providers') infrastructure; (ii) interfere or attempt to interfere with the proper working of the Service or any activities conducted on the Service; (iii) bypass any measures Vector Magic may use to prevent or restrict access to the Service (or other accounts, computer systems or networks connected to the Service); (iv) register for multiple licensee accounts.

2.3 Customer will not use the preview image supplied for free for any other purpose than preview. Other than such bona fide previewing, Customer will not use, access or distribute any image resulting from the Service without paying for such image.

2.4 Customer may not re-sell the Services or otherwise distribute any image resulting from the Services, except that Customer may incorporate such image into a product the primary value of which is not such image.

2.5 Customer will cooperate with Vector Magic in connection with the performance of this Agreement by making available such personnel and information as may be reasonably required, and taking such other actions as Vector Magic may reasonably request. Customer will also cooperate with Vector Magic in establishing a password or other procedures for verifying that only designated employees of Customer have access to any administrative functions of the Services.

2.6 Customer will designate an employee who will be responsible for all matters relating to this Agreement ("Primary Contact"). Customer may change the individual designated as Primary Contact at any time by providing written notice to Vector Magic.

2.7 Customer hereby agrees to indemnify and hold harmless Vector Magic against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorneys' fees) in connection with any claim or action that arises from an alleged violation of the foregoing or otherwise from Customer's use of Services or from anything provided by Customer. Although Vector Magic has no obligation to monitor the content provided by Customer or Customer's use of the Services, Vector Magic may do so and may remove any such content or prohibit any use of the Services it believes may be (or alleged to be) in violation of the foregoing.

2.8 Customer will be responsible for maintaining the security of Customer account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer account with or without Customer's knowledge or consent.

2.9 Customer further acknowledges, agrees to and is bound by the Term of Use and Privacy Policy on Vector Magic's website, except to the extent expressly and directly in conflict with the terms hereof.

### **3. CONFIDENTIALITY**

3.1 Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose information relating to the Disclosing Party's technology or business (hereinafter referred to as "Confidential Information" of the Disclosing Party). The Services, including the API, are Vector Magic's Confidential Information.

3.2 The Receiving Party agrees: (i) not to divulge to any third person any such Proprietary Information, (ii) to give access to such Proprietary information solely to those employees with a need to have access thereto for purposes of this Agreement, and (iii) to take the same security precautions to protect against disclosure or unauthorized use of such Proprietary information that the party takes with its own proprietary information, but in no event will a party apply less than reasonable precautions to protect such Proprietary Information. The Disclosing Party agrees that the foregoing will not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public without any action by, or involvement of, the Receiving Party, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it [without restriction] by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party. Nothing in this Agreement will prevent the Receiving Party from disclosing the Proprietary Information pursuant to any judicial or governmental order, provided that the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure to contest such order. In any event, Vector Magic may collect data with respect to and report on the aggregate response rate and other aggregate measures of the Services' performance.

3.3 Customer acknowledges that Vector Magic does not wish to receive any Proprietary Information from Customer that is not necessary for Vector Magic to perform its obligations under this Agreement, and, unless the parties specifically agree otherwise, Vector Magic may reasonably presume that any information received from Customer is not confidential or Proprietary Information.

3.4 Both Parties will have the right to disclose the existence but not the terms and conditions of this Agreement, unless such disclosure is approved in writing by both Parties prior to such disclosure, or is included in a filing required to be made by a Party with a governmental authority (provided such party will use reasonable efforts to obtain confidential treatment or a protective order) or is made on a confidential basis as reasonably necessary to potential investors or acquirors.

### **4. INTELLECTUAL PROPERTY RIGHTS**

Vector Magic alone (and its licensors, where applicable) will retain all intellectual property rights relating to the Service or the Software or any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by you or any other party relating to the Service and/or the Software, which are hereby assigned to Vector Magic. Customer will not copy, distribute, reproduce or use any of the foregoing except as expressly permitted

under this Agreement. This Agreement is not a sale and does not convey to Customer any rights of ownership in or related to the Service or Software, or any intellectual property rights.

## 5. PAYMENT OF FEES

5.1 Customer will pay Vector Magic the applicable fees as set forth on the Cover Page (the "Fees"). To the extent applicable, Customer will pay Vector Magic for additional services, such as integration fees or other consulting fees. All payments will be made in accordance with the Payment Schedule and the Method of Payment. If not otherwise specified, payments will be due within thirty (30) days of invoice.

5.2 Unpaid Fees are subject to a finance charge of one percent (1.0%) per month, or the maximum permitted by law, whichever is lower, plus all expenses of collection, including reasonable attorneys' fees. Fees under this Agreement are exclusive of all taxes, including national, state or provincial and local use, sales, value-added, property and similar taxes, if any. Customer agrees to pay such taxes (excluding US taxes based on Vector Magic's net income) unless Customer has provided Vector Magic with a valid exemption certificate. In the case of any withholding requirements, Customer will pay any required withholding itself and will not reduce the amount paid to Vector Magic on account thereof.

## 6. TERMINATION

6.1 Subject to earlier termination as provided below, this Service Agreement is for the Service Term as specified in the Cover Page.

6.2 Customer may terminate this Agreement at its convenience immediately by giving written notice to Vector Magic.

6.3 Vector Magic may terminate this Agreement at its convenience with ninety (90) days written notice to Customer.

6.4 In the event of any material breach of this Agreement, the non-breaching party may terminate this Agreement prior to the end of the Service Term by giving thirty (30) days prior written notice to the breaching party; provided, however, that this Agreement will not terminate if the breaching party has cured the breach prior to the expiration of such thirty-day period. Either party may terminate this Agreement, without notice, (i) upon the institution by or against the other party of insolvency, receivership or bankruptcy proceedings, (ii) upon the other party's making an assignment for the benefit of creditors, or (iii) upon the other party's dissolution or ceasing to do business.

6.5 Upon any termination or expiration of this Agreement, Customer must immediately cease using the Services.

6.6 All sections of this Service Agreement which by their nature should survive termination will survive termination, including, without limitation, restrictions, accrued rights to payment, confidentiality obligations, intellectual property rights, warranty disclaimers, and limitations of liability.

## 7. WARRANTY DISCLAIMER

THE SERVICES AND VECTOR MAGIC CONFIDENTIAL INFORMATION AND ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT ARE PROVIDED "AS-IS," WITHOUT ANY WARRANTIES OF ANY KIND. VECTOR MAGIC HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT.

## 8. LIMITATION OF LIABILITY

IN NO EVENT WILL VECTOR MAGIC BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OF THE SERVICES OR ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT, THE DELAY OR INABILITY TO USE THE SERVICES OR ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT OR OTHERWISE ARISING FROM THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, LOSS OF REVENUE OR ANTICIPATED PROFITS OR LOST BUSINESS OR LOST SALES, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, EVEN IF VECTOR MAGIC HAS

BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. THE TOTAL LIABILITY OF VECTOR MAGIC, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, WILL NOT EXCEED, IN THE AGGREGATE, THE LESSER OF (i) TEN THOUSAND DOLLARS, OR (ii) THE FEES PAID TO VECTOR MAGIC HEREUNDER IN THE THREE MONTH PERIOD ENDING ON THE DATE THAT A CLAIM OR DEMAND IS FIRST ASSERTED. THE FOREGOING LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

## 9. GOVERNMENT MATTERS

Notwithstanding anything else, Customer may not provide to any person or export or re-export or allow the export or re-export of the Services or any software or anything related thereto or any direct product thereof (collectively "Controlled Subject Matter"), in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. Without limiting the foregoing Customer acknowledges and agrees that the Controlled Subject Matter will not be used or transferred or otherwise exported or re-exported to countries as to which the United States maintains an embargo (collectively, "Embargoed Countries"), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "Designated Nationals"). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. Use of the Service is representation and warranty that the user is not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. The Controlled Subject Matter may use or include encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations. As defined in FAR section 2.101, any software and documentation provided by Vector Magic are "commercial items" and according to DFAR section 252.227-7014(a)(1) and (5) are deemed to be "commercial computer software" and "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Service Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

## 10. MISCELLANEOUS

If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicensable by either party without the other party's prior written consent, except that either party may transfer and assign any of its rights and obligations under this Agreement to a successor to substantially all of its business or assets. Both parties agree that this Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind Vector Magic in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; and upon receipt, if sent by certified or registered mail (return receipt requested), postage prepaid. Vector Magic will not be liable for any loss resulting from a cause over which it does not have direct control. This Agreement will be governed by the laws of the State of California, U.S.A. without regard to its conflict of laws provisions. The federal and state courts sitting in San Mateo County, California, U.S.A. will have proper and exclusive jurisdiction and venue with respect to any disputes arising from or related to the subject matter of this Agreement. Customer agrees to participate in press announcements, case studies, trade shows, or other forms reasonably requested by Vector Magic. Vector Magic is permitted to disclose that Customer is one of its customers to any third-party at its sole discretion.