

BACKGROUND:

These Terms and Conditions shall apply to the hiring of Neil Cooling ("the Photographer") as a freelance photographer by customers wishing to acquire photographs for commercial purposes.

1. Definitions and Interpretation

1.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

"the Agreement"	means the agreement entered into and signed by the Customer and the Photographer incorporating these Terms and Conditions which shall govern the provision of the Photographer's services;
"Business Day"	means, any day (other than Saturday or Sunday) on which ordinary banks are open for their full range of normal business in France;
"Confidential Information"	means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to or in connection with the Agreement (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such);
"Data Protection Legislation"	means 1) unless and until EU Regulation 2016/679 General Data Protection Regulation ("GDPR") is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations, and secondary legislation (as amended from time to time), in the UK and subsequently 2) any legislation which succeeds the GDPR;
"Customer"	means the customer who requires the Photographer's services subject to these Terms and Conditions;
"Expenses"	means costs incurred by the Photographer in direct relation to the provision of his services;
"Licence"	means a non-exclusive, perpetual, non-transferrable, licence granted by the Photographer to the Customer to use the Selected Photographs for commercial purposes within a Project under Clause 7;
"Order"	means the Customer's initial request to acquire the services of the Photographer as set out in Clause 2 of these Terms and Conditions;
"Photograph"	means any photograph taken by the Photographer during the Photo Shoot;
"Photographer"	Neil Cooling, trading as Neil Cooling Photography, is a Micro Entrepreneur, registered in France under number SIRET: 522 068 337 00016, whose main trading address is Lieu-dit Le Limans, Festalemps, 24410, Saint Privat en Perigord, France.
"Photo Shoot"	means all stages of the Photographer's services provided to the Customer including preparation beforehand, the taking of Photographs and the processing of Photographs;
"Price"	means the fee payable for the Photo Shoot itself which shall not extend to Selected Photographs;
"Project"	means a particular use to which the Customer intends put the Selected Photographs;
"Rejection Fee"	means a sum agreed at the time of Ordering which shall be payable by the Customer in the event that the Customer chooses to reject the Photographs entirely;
"Royalty Fees"	means the fees payable on a per-Project basis for the licensed use of the Selected Photographs; and

“Selected Photographs” means the Photographs chosen by the Customer from the proofs made available to them which shall be licensed under these Terms and Conditions.

- 1.2 Unless the context otherwise requires, each reference in these Terms and Conditions to:
  - 1.2.1 “writing”, and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
  - 1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
  - 1.2.3 “these Terms and Conditions” is a reference to these Terms and Conditions and each of the Schedules as amended or supplemented at the relevant time;
  - 1.2.4 a Clause or paragraph is a reference to a Clause of these Terms and Conditions.
  - 1.2.5 a "Party" or the "Parties" refer to the parties to these Terms and Conditions.
- 1.3 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of these Terms and Conditions.
- 1.4 Words imparting the singular number shall include the plural and vice versa.
- 1.5 References to any gender shall include the other gender.
- 1.6 References to persons shall include corporations.

## 2. Orders

- 2.1 The Photographer accepts orders for Photo Shoots through email or post.
- 2.2 When placing an Order the Customer shall set out the following information:
  - 2.2.1 Location of the Photo Shoot;
  - 2.2.2 Date of the Photo Shoot;
  - 2.2.3 Specific requirements of the Photo Shoot;
  - 2.2.4 Details of any access, security, safety requirements;
  - 2.2.5 Any other details that the Customer considers relevant to the Photo Shoot.
- 2.3 In the absence of any information on the Order the Photographer shall provide prompt the Customer to provide all required information.
- 2.4 Once the Order is complete and submitted the Photographer shall prepare and submit a written quotation, or draft agreement (“the Quotation”), to the Customer either by email or first class post which shall set out the Booking Fee, the Price and any anticipated Expenses. The Quotation shall not necessarily include all Expenses which may be incurred nor shall it include the licence fees which may be payable for Photographs.
- 2.5 The Customer shall be free to make changes to the Order and Quotation prior to acceptance. The Customer may accept the Quotation by email or first class post.

## 3. Booking Fee

- 3.1 At the time of signing the Agreement or not more than 14 days thereafter the Customer shall be required to pay to the Photographer a fee to confirm the Photo Shoot (“Booking Fee”). This payment shall be set out in the Quotation. Orders shall not be confirmed until this fee is paid in full.
- 3.2 Subject to the cancellation provisions set out in Clause 5, the Booking Fee shall be non-refundable.

## 4. Price and Payment

- 4.1 The Price for the Photo Shoot shall be set out in the Quotation and detailed in the Agreement.
- 4.2 The Photographer shall invoice the Customer at the end of the Photo Shoot for all items set out in the Quotation and the Agreement, further reasonable Expenses incurred during the Photo Shoot and the total fees payable for the Selected Photographs.
- 4.3 Any and all invoices provided by the Photographer to the Customer under the Agreement must be paid in full within 30 days of receipt by the Customer.
- 4.4 Without prejudice to sub-Clause 11.3.1, any sums which remain unpaid following the expiry of the time period set out in sub-Clause 4.3 shall incur interest on a daily basis at 2% above the base rate of Barclays Bank from time to time until payment in

full is made.

- 4.5 Where any sums remain unpaid following the expiry of the time period set out in sub-Clause 4.3 the Licence granted to the Customer under Clause 7 shall be suspended until payment is received in full by the Photographer.

## 5. Cancellation and Rescheduling

- 5.1 The Customer may cancel or reschedule the Photo Shoot at any time prior to start date of the Photo Shoot. The following shall apply to cancellation or rescheduling:
- 5.1.1 If the Customer cancels the Photo Shoot more than 180 days ahead of the start date the Photographer shall issue a full refund of all sums paid, including the Booking Fee.
- 5.1.2 If the Customer reschedules the Photo Shoot more than 90 days ahead of the start date the Photographer shall retain all sums paid, including the Booking Fee and shall deduct all such sums from any balance payable on the rescheduled Photo Shoot.
- 5.1.3 If the Customer cancels the Photo Shoot less than 180 days but more than 90 days ahead of the start date the Photographer shall refund any sums paid less the Booking Fee.
- 5.1.4 If the Customer reschedules the Photo Shoot less than 90 days but more than 30 days ahead of the start date the Photographer shall retain any sums paid including the Booking Fee and shall deduct all such sums, excluding the Booking Fee, from any balance payable on the rescheduled Photo Shoot. A new Booking Fee shall be payable on the rescheduled Photo Shoot.
- 5.1.5 If the Customer cancels the Photo Shoot less than 90 days ahead of the start date the Photographer shall retain all sums paid and any outstanding sums shall become immediately payable. No refund shall be issued.
- 5.1.6 If the Customer reschedules the Photo Shoot less than 30 days ahead of the start date the Photographer shall retain all sums paid and any outstanding sums shall become immediately payable. No refund shall be issued and no sums paid will count toward the fees and a new Booking Fee payable on the rescheduled Photo Shoot.
- 5.2 The Photographer may cancel the Photo Shoot at any time prior to the start date and shall refund all sums paid, including the Booking Fee.
- 5.3 Where a refund is due it shall be paid by Bank Transfer within 20 Business Days of the event triggering such refund.

## 6. Photography

- 6.1 The Customer shall specify the subject matter of the Photo Shoot and shall, prior to the date of the Photo Shoot, specify any particular Photographs or compositions they require.
- 6.2 Subject to any specific requirements set out by the Customer, the Photographer shall use his own exclusive judgement when selecting equipment and deciding upon artistic factors such as composition, lighting and photographic style.
- 6.3 Subject to the nature of the Photo Shoot and the specific requirements of the Customer the Photographer will take as many Photographs as he deems appropriate with a view to giving the best choice when processing and preparing the final Photographs for selection by the Customer. The number of Photographs taken during the Photo Shoot shall not affect the Price payable by the Customer.
- 6.4 Following processing and preparation of the Photographs the Photographer will make proofs available to the Customer to enable the Customer to select the Photographs they require.
- 6.5 The Photographer shall deliver the Selected Photographs to the Customer in the format(s) agreed at the time of selection, subject to the terms of the Licence granted in Clause 7.
- 6.6 The Customer shall have a period of 30 days following the delivery of the Selected Photographs to inform the Photographer of any discrepancies with their choices or significant flaws in the Selected Photographs which were not visible in the proofs. The Photographer shall undertake, where reasonably possible using the Photographers software, any necessary remedial action which is possible upon being informed of any such problems.
- 6.7 Subject to the provisions of sub-Clause 6.6 there shall be no right to reject the Photographs on the basis of style or composition unless a Rejection Fee has been agreed at the time of Ordering.
- 6.8 The Photographer shall be free to sub-contract any of his obligations under the Agreement provided that any and all sub-contractors are reasonably skilled in the relevant practices and provided that no additional charges are passed on to the Customer.

## 7. Copyright and Licensing

- 7.1 The Copyright in the Photographs is and shall remain the property of the Photographer. Subject to a written agreement to the contrary nothing in these Terms and Conditions shall vest any ownership rights in the Customer.
- 7.2 All Licences shall become effective following delivery of the Selected Photographs to the Customer and, subject to the provisions of sub-Clauses 4.5 and 7.9, shall continue from that date for the duration of copyright protection (which shall be the life of the Photographer plus 70 years under Section 12 of the Copyright Designs and Patents Act 1988).

- 7.3 The Photographer's name must be shown on or in reasonable proximity to all reproductions of the Photographs which are published by the Customer. The Photographer hereby asserts his statutory right to be identified under Sections 77-79 of the Copyright Designs and Patents Act 1988. The Photographer may subsequently waive this requirement at any time by giving written notice to the Customer.
- 7.4 All Licences shall be granted on a per-Project basis. The Customer shall pay Royalty Fees once per Project and shall not be required to pay recurring Royalty Fees for repeated use within the same Project.
- 7.5 The Customer shall be permitted to use the Selected Photographs in any Project subject to the following limitations:
- 7.5.1 The Selected Photographs may not be used for any purposes which are libellous, defamatory, pornographic, obscene or otherwise unlawful;
- 7.5.2 The Selected Photographs may not be used to form any part of a logo, service mark, trade mark or any other form of business or brand identity;
- 7.5.3 The Selected Photographs may not count for any more than 50% of the value of the Project in which they are used;
- 7.5.4 If applied to printed matter of any form the Selected Photographs may not occupy any more than 50% of the printed surface area; and
- 7.5.5 Where the Selected Photographs are to be published on a website of any kind the Customer must take reasonable steps to limit the ease of copying and downloading the same.
- 7.6 The Licences shall apply only to the stated Selected Photographs and Projects and shall not extend to proofs or any other material provided by the Photographer to the Customer or any other Projects.
- 7.7 The Customer may not sub-licence the Selected Photographs without the prior written permission of the Photographer.
- 7.8 The Photographer reserves the right to use the Photographs in any advertising or promotional material provided such material is only related to the Photographer or his services.
- 7.9 The Licences granted to the Customer shall be automatically revoked if the Customer breaches any of their terms.
8. Insurance, Liability and Indemnity
- 8.1 The Photographer has in place the following insurance:  
Professional and Public Liability (Responsabilite Civile); AXA France Contract 0000005708839304 Ptf 0024065044.  
This includes cover associated with the below;
- a) Physical, material and immaterial damage,
- b) Inexcusable fault, intentional fault and physical injury,
- c) Damage to belongings,
- d) Pollution and damage to the environment and
- e) Physical injury.
- 8.2 Whilst the Photographer shall use all reasonable endeavours to ensure that all Photographs delivered in a digital format are free from viruses and errors, provides no guarantee that the Photographs will be free from such defects and accepts no liability for any loss or damage which may result from the same.
- 8.3 The Photographer shall indemnify and hold harmless the Customer against any costs, liability, damages, loss, claims, threatened claims or proceedings brought by any third party arising out of any failure by the Photographer to obtain any clearances for which he was responsible in respect of third party copyright works, trade marks, designs or other intellectual property provided that:
- 8.3.1 It is agreed at the time of the Order that the Photographer shall be responsible for obtaining such clearances.
- 8.3.2 The Photographer shall be given full control of any proceedings or negotiations in connection with any such claim or threatened claim;
- 8.3.3 The Customer shall at their own cost give the Photographer all reasonable assistance for the purpose of any such proceedings or negotiations;
- 8.3.4 Except pursuant to a final award, the Customer shall not pay or accept any such claim or threatened claim, or compromise any such proceedings or negotiations, without the consent of the Photographer, such consent not to be unreasonably withheld;
- 8.3.5 The Customer shall do nothing which would or might vitiate any policy of insurance or insurance cover which they may have in relation to any such claim or threatened claim, and the indemnity provided by the Photographer under this sub-Clause 8.3 shall not apply to the extent that the Customer recovers any sums under any such policy or cover (which the Customer shall use its best endeavours to do);

- 8.3.6 The Photographer shall be entitled to, and the Customer shall accordingly account to the Photographer for, all damages and costs (if any) awarded against any other party or agreed by the Customer (which agreement shall not be unreasonably withheld) to be paid by any other party in respect of any such claim or threatened claim; and
- 8.3.7 The Photographer shall be entitled to require the Customer to take such steps as the Photographer may reasonably require to mitigate or reduce any loss of the Customer.

## 9. Confidentiality

- 9.1 Each Party undertakes that, except as provided by sub-Clause 9.2 or as authorised in writing by the other Party, it shall, at all times during the continuance of the Agreement and for 1 year after its termination:
  - 9.1.1 keep confidential all Confidential Information;
  - 9.1.2 not disclose any Confidential Information to any other party;
  - 9.1.3 not use any Confidential Information for any purpose other than as contemplated by and subject to the terms of the Agreement;
  - 9.1.4 not make any copies of, record in any way or part with possession of any Confidential Information; and
  - 9.1.5 ensure that none of its directors, officers, employees, agents, sub-contractors or advisers does any act which, if done by that Party, would be a breach of the provisions of sub-Clauses 9.1.1 to 9.1.4 above.
- 9.2 Either Party may:
  - 9.2.1 disclose any Confidential Information to:
    - 9.2.1.1 any sub-contractor or supplier of that Party;
    - 9.2.1.2 any governmental or other authority or regulatory body; or
    - 9.2.1.3 any employee or officer of that Party or of any of the aforementioned persons, parties or bodies;to such extent only as is necessary for the purposes contemplated by the Agreement (including, but not limited to, the provision of the Services), or as required by law. In each case that Party shall first inform the person, party or body in question that the Confidential Information is confidential and (except where the disclosure is to any such body under sub-Clause 9.2.1.2 or any employee or officer of any such body) obtaining and submitting to the other Party a written confidentiality undertaking from the party in question. Such undertaking should be as nearly as practicable in the terms of this Clause 9, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made; and
  - 9.2.2 use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of the Agreement, or at any time after that date becomes, public knowledge through no fault of that Party. In making such use or disclosure, that Party must not disclose any part of the Confidential Information which is not public knowledge.
- 9.3 The provisions of this Clause 9 shall continue in force in accordance with their terms, notwithstanding the termination of the Agreement for any reason.

## 10. Force Majeure

- 10.1 No Party to the Agreement shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.
- 10.2 The Photographer will not be liable for any failure or delay in performing his/her obligations where that failure or delay results from failure or breakdown of transport, access prevented to the Photo Shoot location, wrong Photo Shoot address details provided, sickness of the Photographer or acts of violence or abuse towards the Photographer (threatened or actual).
- 10.3 In the event that a Party to the Agreement cannot perform their obligations thereunder as a result of force majeure for a continuous period of 14 days, the other Party may at its discretion terminate the Agreement by written notice at the end of that period. In the event of such termination, the Parties shall agree upon a fair and reasonable payment for all work completed up to the date of termination. In Such payment shall take into account any prior contractual commitments entered into in reliance on the performance of the Agreement. In any event the Booking Fee shall be retained by the Photographer.
- 10.4 In the event any of the circumstances detailed 10.2, excluding failure or breakdown of transport or sickness of the Photographer, prevents the Photographer from taking or continuing to take the Photographs, then the Customer shall pay the Photographer in accordance with clause 5.1.5.

## 11. Term and Termination

- 11.1 The Agreement shall come into force on an agreed commencement date and shall continue an agreed period from that date, subject to the provisions of this Clause 11.

- 11.2 In the event of cancellation under Clause 5 the Agreement shall immediately terminate.
- 11.3 Either Party may immediately terminate the Agreement by giving written notice to the other Party if:
- 11.3.1 any sum owing to that Party by the other Party under any of the provisions of the Agreement is not paid within 10 Business Days of the due date for payment;
  - 11.3.2 the other Party commits any other breach of any of the provisions of the Agreement and, if the breach is capable of remedy, fails to remedy it within 20 Business Days after being given written notice giving full particulars of the breach and requiring it to be remedied;
  - 11.3.3 an encumbrancer takes possession, or where the other Party is a company, a receiver is appointed, of any of the property or assets of that other Party;
  - 11.3.4 the other Party makes any voluntary arrangement with its creditors or, being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);
  - 11.3.5 the other Party, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or re-construction and in such a manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other Party under the Agreement);
  - 11.3.6 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other Party;
  - 11.3.7 that other Party ceases, or threatens to cease, to carry on business; or
  - 11.3.8 control of that other Party is acquired by any person or connected persons not having control of that other Party on the date of the Agreement. For the purposes of this Clause 11, "control" and "connected persons" shall have the meanings ascribed thereto by Sections 1124 and 1122 respectively of the Corporation Tax Act 2010.
- 11.4 For the purposes of sub-Clause 11.3.2, a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects.
- 11.5 The rights to terminate the Agreement given by this Clause 11 shall not prejudice any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.

## 12. Effects of Termination

Upon the termination of the Agreement for any reason:

- 12.1 any sum owing by either Party to the other under any of the provisions of the Agreement shall become immediately due and payable;
- 12.2 all Clauses which, either expressly or by their nature, relate to the period after the expiry or termination of the Agreement shall remain in full force and effect;
- 12.3 termination shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any Party may have in respect of any breach of the Agreement which existed at or before the date of termination; and
- 12.4 subject as provided in this Clause 12 and except in respect of any accrued rights neither Party shall be under any further obligation to the other; and
- 12.5 each Party shall (except to the extent referred to in Clause 9) immediately cease to use, either directly or indirectly, any Confidential Information, and shall immediately return to the other Party any documents in its possession or control which contain or record any Confidential Information.

## 13. Data Protection

13.1 All personal information that the Photographer may use will be collected, processed, and held in accordance with the provisions of EU Regulation 2016/679 General Data Protection Regulation ("GDPR") and the Customer's rights under the GDPR.

13.2 For complete details of the Photographer's collection, processing, storage, and retention of personal data including, but not limited to, the purpose(s) for which personal data is used, the legal basis or bases for using it, details of the Customer's rights and how to exercise them, and personal data sharing (where applicable), please refer to the Photographer's Privacy Notice

## 14. Data Processing

- 14.1 In this Clause 14 and in the Agreement, "personal data", "data subject", "data controller", "data processor", and "personal data breach" shall have the meaning defined in Article 4, EU Regulation 2016/679 General Data Protection Regulation ("GDPR").
- 14.2 Both Parties shall comply with all applicable data protection requirements set out in the Data Protection Legislation. Neither this Clause 14 nor the Agreement shall relieve either Party of any obligations set out in the Data Protection Legislation and shall not remove or replace any of those obligations.

- 14.3 For the purposes of the Data Protection Legislation and for this Clause 14 and the Agreement, the Photographer is the “Data Processor” and the Customer is the “Data Controller”.
- 14.4 The type(s) of personal data, the scope, nature and purpose of the processing, and the duration of the processing shall be set out in a Schedule to the Agreement.
- 14.5 The Data Controller shall ensure that it has in place all necessary consents and notices required to enable the lawful transfer of personal data to the Data Processor for the purposes described in these Terms and Conditions.
- 14.6 The Data Processor shall, with respect to any personal data processed by it in relation to its performance of any of its obligations under these Terms and Conditions.
- 14.6.1 Process the personal data only on the written instructions of the Data Controller unless the Data Processor is otherwise required to process such personal data by law. The Data Processor shall promptly notify the Data Controller of such processing unless prohibited from doing so by law.
- 14.6.2 Ensure that it has in place suitable technical and organisational measures (as approved by the Data Controller) to protect the personal data from unauthorised or unlawful processing, accidental loss, damage or destruction. Such measures shall be proportionate to the potential harm resulting from such events, taking into account the current state of the art in technology and the cost of implementing those measures. Measures to be taken shall be agreed between the Data Controller and the Data Processor and set out in the Schedule to the Agreement.
- 14.6.3 Ensure that any and all staff with access to the personal data (whether for processing purposes or otherwise) are contractually obliged to keep that personal data confidential; and
- 14.6.4 Not transfer any personal data outside of the European Economic Area without the prior written consent of the Data Controller and only if the following conditions are satisfied:
- 14.6.4.1 The Data Controller and/or the Data Processor has/have provided suitable safeguards for the transfer of personal data;
- 14.6.4.2 Affected data subjects have enforceable rights and effective legal remedies;
- 14.6.4.3 The Data Processor complies with its obligations under the Data Protection Legislation, providing an adequate level of protection to any and all personal data so transferred; and
- 14.6.4.4 The Data Processor complies with all reasonable instructions given in advance by the Data Controller with respect to the processing of the personal data.
- 14.6.5 Assist the Data Controller at the Data Controller’s cost, in responding to any and all requests from data subjects in ensuring its compliance with the Data Protection Legislation with respect to security, breach notifications, impact assessments, and consultations with supervisory authorities or regulators (including, but not limited to, the Information Commissioner’s Office);
- 14.6.6 Notify the Data Controller without undue delay of a personal data breach;
- 14.6.7 On the Data Controller’s written instruction, delete (or otherwise dispose of) or return all personal data and any and all copies thereof to the Data Controller on termination of the Agreement unless it is required to retain any of the personal data by law; and
- 14.6.8 Maintain complete and accurate records of all processing activities and technical and organisational measures implemented necessary to demonstrate compliance with this Clause 14 and to allow for audits by the Data Controller and/or any party designated by the Data Controller.
- 14.7 The Data Processor shall not sub-contract any of its obligations to a sub-processor with respect to the processing of personal data under [this Clause 14 without the prior written consent of the Data Controller (such consent not to be unreasonably withheld). In the event that the Data Processor appoints a sub-processor, the Data Processor shall:
- 14.7.1 Enter into a written agreement with the sub-processor, which shall impose upon the sub-processor the same obligations as are imposed upon the Data Processor by this Clause 14 and which shall permit both the Data Processor and the Data Controller to enforce those obligations; and
- 14.7.2 Ensure that the sub-processor complies fully with its obligations under that agreement and the Data Protection Legislation.
- 14.8 Either Party may, at any time, and on at least 30 days notice, alter the data protection provisions of the Agreement, replacing them with any applicable data processing clauses or similar terms that form part of an applicable certification scheme. Such terms shall apply when replaced by attachment to the Agreement.

## 15 No Waiver

No failure or delay by either Party in exercising any of its rights under the Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of the Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

16 Further Assurance

Each Party shall execute and do all such further deeds, documents and things as may be necessary to carry the provisions of the Agreement into full force and effect.

17 Costs

Subject to any provisions to the contrary each Party to the Agreement shall pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of the Agreement.

18 Set-Off

Neither Party shall be entitled to set-off any sums in any manner from payments due or sums received in respect of any claim under the Agreement or any other agreement at any time.

19 Assignment and Sub-Contracting

19.2.1 Subject to sub-Clause 19.2 the Agreement is personal to the Parties. Neither Party may assign, mortgage, charge (otherwise than by floating charge) or sub-licence or otherwise delegate any of its rights thereunder, or sub-contract or otherwise delegate any of its obligations thereunder without the written consent of the other Party, such consent not to be unreasonably withheld.

19.2.2 Subject to the provisions of Clause 14, the Photographer shall be entitled to perform any of the obligations undertaken by him through any other member of his group or through suitably qualified and skilled sub-contractors. Any act or omission of such other member or sub-contractor shall, for the purposes of the Agreement, be deemed to be an act or omission of the Photographer.

20 Time

The Parties agree that all times and dates referred to in the Agreement shall be of the essence of the Agreement.

21 Relationship of the Parties

Nothing in the Agreement shall constitute or be deemed to constitute a partnership, joint venture, agency or other fiduciary relationship between the Parties other than the contractual relationship expressly provided for in the Agreement.

22 Non-Solicitation

22.2.1 Neither Party shall, for the term of the Agreement and for a period of 12 months after its termination or expiry, employ or contract the services of any person who is or was employed or otherwise engaged by the other Party at any time in relation to the Agreement [without the express written consent of that Party.

22.2.2 Neither Party shall, for the term of the Agreement and for a period of 12 months after its termination or expiry, solicit or entice away from the other Party any customer or client where any such solicitation or enticement would cause damage to the business of that Party without the express written consent of that Party.

23 Third Party Rights

23.2.1 No part of the Agreement is intended to confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Agreement.

23.2.2 Subject to this Clause 23 the Agreement shall continue and be binding on the transferee, successors and assigns of either Party as required.

24 Notices

24.2.1 All notices under the Agreement shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.

24.2.2 Notices shall be deemed to have been duly given:

24.2.2.1.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or

24.2.2.1.2 when sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated; or

24.2.2.1.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or

24.2.2.1.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid.

In each case notices shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

## 25 Entire Agreement

- 25.2.1 Subject to the provisions of Clause 14, the Agreement contains the entire agreement between the Parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.
- 25.2.2 Each Party acknowledges that, in entering into the Agreement, it does not rely on any representation, warranty or other provision except as expressly provided in the Agreement, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

## 26 Counterparts

The Agreement may be entered into in any number of counterparts and by the Parties to it on separate counterparts each of which when so executed and delivered shall be an original, but all the counterparts together shall constitute one and the same instrument.

## 27 Severance

In the event that one or more of the provisions of the Agreement is found to be unlawful, invalid or otherwise unenforceable, that / those provision(s) shall be deemed severed from the remainder of the Agreement. The remainder of the Agreement shall be valid and enforceable.

## 28 Dispute Resolution

- 28.2.1 The Parties shall attempt to resolve any dispute arising out of or relating to the Agreement through negotiations between their appointed representatives who have the authority to settle such disputes.
- 28.2.2 If negotiations under sub-Clause 28.1 do not resolve the matter within 60 days of receipt of a written invitation to negotiate, the parties will attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution (“ADR”) procedure.
- 28.2.3 If the ADR procedure under sub-Clause 28.2 does not resolve the matter within 30 days of the initiation of that procedure, or if either Party will not participate in the ADR procedure, the dispute may be referred to arbitration by either Party.
- 28.2.4 The seat of the arbitration under sub-Clause 28.3 shall be England and Wales. The arbitration shall be governed by the Arbitration Act 1996 and Rules for Arbitration as agreed between the Parties. In the event that the Parties are unable to agree on the arbitrator(s) or the Rules for Arbitration, either Party may, upon giving written notice to the other Party, apply to the President or Deputy President for the time being of the Chartered Institute of Arbitrators for the appointment of an arbitrator or arbitrators and for any decision on rules that may be required.
- 28.2.5 Nothing in this Clause 28 shall prohibit either Party or its affiliates from applying to a court for interim injunctive relief.
- 28.2.6 The decision and outcome of the final method of dispute resolution under this Clause 28 shall be final and binding on both Parties.

## 29 Law and Jurisdiction

- 29.2.1 These Terms and Conditions and the Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 29.2.2 Subject to the provisions of Clause 28, any dispute, controversy, proceedings or claim between the Parties relating to these Terms and Conditions or the Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.