

# Contributors' Agreement

The following provisions record the legal terms and conditions upon which Footprint Images, hereafter referred to as Footprint, acts as an agent in the licensing of Images by Contributors to Third Parties.

## 1. Background

1.1 Footprint owns and manages an online picture library at [www.footprintimages.com](http://www.footprintimages.com). You are licensing the images to Footprint to be featured on and licensed principally, though not necessarily exclusively, via the Footprint website.

1.2 These terms and conditions will form a binding agreement between the Contributor and Footprint and apply to any dealings the Contributor has with the company.

1.3 No other party's permission is required for the Contributor to enter into this contract or for Footprint to perform the services envisaged by this contract and the Contributor is entitled to supply all Images to Footprint free from any claims by Third Parties of any nature.

## 2. Definitions

In this Agreement, the following terms shall have the meaning set forth below:

'Commission' means Footprint's commission on the Net Licence Fee.

'Commission Schedule' means the table set out in the Guidelines for Contributors which lists the fees and commissions payable.

'Contributor' means the contributing photographer and Copyright Owner of Images supplied to Footprint.

'Copyright Owner' means the person who is represented as owning the copyright in any Image.

'Customer' means any third party individual, partnership, company, corporation or other entity who may be intermediaries or end-users and to whom a Licence is or is proposed to be granted by Footprint.

'Database' means the storage of the Selected Images supplied by Contributors, including, but not limited to, the Website.

'Developments' mean any alterations and amendments of or modifications to the Selected Images created by Footprint or the customer.

'Image' means a photograph or visual representation obtained by camera or computer, or any other means, and recorded on a transparency, negative, print, any other photographic material, or on digital or electronic media, which, in each case, is now known or which may become known in the future, provided by the contributor for its eventual selection and exploitation.

'Licence' means any tailored Licence as defined and granted by Footprint on behalf of a Photographer during the period of this contract in respect of any Selected Image and combining rights defined by: territory, period, media, industry, print run and other relevant criteria.

'Model Release' means any written release signed by or on behalf of any living person or the estate of a deceased person or an infant whose likeness is incorporated in whole or in part in any Image.

'Net Licence Fee' means any sum or sums actually received by Footprint from any Customer or Third Party in respect of the Licence of an Image whether a single payment or a royalty paid over time.

'Prior Rights' means, in respect of any Selected Image, any exclusive Licence or other right granted by or on behalf of the Copyright Owner for the use of that Image in any territory, media or otherwise.

'Promotional Material' means promotional or advertising material which contain a Selected Image or a compilation of Selected Images that are produced, published or edited by or for the benefit of Footprint in order to promote Footprint or any Selected Images.

'Property Release' means any written release from the owner and/or occupier of any property whose permission is necessary or desirable for Images incorporating in whole or in part that property to be published in any jurisdiction in the world.

'Releases' means a Model Release, Property Release or any other release of a third party right including without limitation any copyright, trade mark or other intellectual property right, which it is necessary or desirable to obtain in respect of any Image.

'Selected Image' means an Image which is provided to Footprint by the Contributor and accepted by Footprint.

'Third Party' means any third party other than the Contributor or Footprint.

'Website' means the domain address at [www.footprintimages.com](http://www.footprintimages.com) owned, managed and controlled by Footprint.

### **3. Grant of Licence**

3.1 The Contributor hereby grants a non-exclusive right to Footprint in the Selected Images for the purposes of granting licences to any number of Customers. These Customers can make commercial use of the images for the duration of the Licence granted by Footprint.

3.2 Under this agreement Footprint is authorised to deduct a 35% Commission from the Net Licence Fee as set out in the Commission Schedule in the Guidelines for Contributors.

3.3 The Licence granted under this clause 3 includes the right to carry out Developments so long as the Developments are not obscene, defamatory or racist in nature.

3.4 The Contributor agrees to supply their Selected Images on a non-exclusive basis under this agreement and may therefore sell their Images in any other way they wish, with the

exception of making any Selected Images available for sale through an agent or other outlet which requires the exclusive right to license or otherwise exploit these Selected Images.

#### **4. Payments**

4.1 Sales Statements: On or around the thirtieth (30th) of each month, Footprint shall remit to the Contributor a Sales Statement detailing the activity for the prior month. Upon receipt of the Sales Statement, the Contributor shall issue the corresponding invoice to Footprint, which Footprint agrees to pay within thirty (30) days of its receipt. A Sales Statement shall only be sent to the Contributor when Net Licence Fees have been collected within the previous month.

4.2 Where the Contributor is registered for Value Added Tax (VAT) in the UK, a full VAT invoice must be supplied to Footprint including the Contributor's VAT number together with all other details that constitute a full VAT invoice.

4.3 Method of Payment: Payments may be made by cheque, direct bank transfer or some other means.

4.4 Deductions for Cancellation: In the event that a refund of any part of a payment received or accrued from a Third Party is required, Footprint is specifically authorized to deduct the Contributor's share of this overpayment from any subsequent amount due to the Contributor.

4.5 Audit: The Contributor shall be entitled, once during any twelve (12) month period, at his or her expense, upon at least three (3) weeks written notice and during regular business hours, to have an independent audit performed of Footprint's books and records solely as they pertain to the Contributor's Selected Images within the two year period prior to the audit. If Footprint has underpaid the Contributor by 5% or more, Footprint shall reimburse the Contributor for the cost of the audit. This right is subject to Footprint's approval of the auditor and, if satisfied, execution of a confidentiality agreement by the auditor.

4.6 It is agreed that all income taxes applicable on payments effected by Footprint to the Contributor shall be borne by the Contributor.

#### **5. Warranties and Obligations**

5.1 The Contributor represents, warrants and undertakes that:

- a) The Contributor is the sole and exclusive copyright holder of all images and has not assigned the copyrights on any Image to any Third Party.
- b) The Contributor has obtained all permissions necessary for Footprint to lawfully distribute, publish, market and license the images to customers, including any Model Releases and Property Releases that may be required.
- c) All Prior Rights that have been assigned on any exclusive basis will be notified to Footprint in writing at the time of the supply of the Selected Images.
- d) As long as the Selected Images are available for sale through Footprint, the Contributor will inform Footprint in writing in respect of any sale on exclusive terms not made via Footprint.
- e) All Images are the Contributor's original expressions of the subject matter.
- f) Any Image submitted to Footprint shall not:
  - i) infringe on any copyright or trademark right or any right of privacy;
  - ii) defame any third party;

iii) nor give rise to any existing or potential claim by any Third Party in respect of any such image.

g) A Release, either Model and/or Property, has been obtained where necessary and is appropriate for each Image and the Contributor will provide Footprint with true copies of all relevant releases at the time of delivery of Selected Images. If no Release is available this will limit the licenses Footprint will be able to grant to Customers and Third Parties.

h) The Contributor shall be solely responsible for any damage suffered by any Third Party as a result of an erroneous description or identification of any Image.

i) The Contributor will indemnify and keep Footprint indemnified against all costs (including but without limitation of legal costs), damages, loss and liability incurred by Footprint as a result of any action based on any intellectual property in the images brought by a Customer or any other Third Party.

j) The Contributor confirms that the Images supplied have not previously been sold on a Royalty Free (RF) basis, and are not currently on sale as RF images. While Selected Images are available for purchase to Customers via Footprint these images may not be sold on a RF basis.

k) The Contributor will not supply to Footprint any Image which is the same or similar to any of the Contributor's Images that have been supplied to a third party where the supply of such Image would conflict with any exclusive arrangement between the Contributor and a Third Party. These parties may include, but are not limited to, agencies and Customers.

l) The Contributor will supply an accurate, brief caption for all Selected Images describing the content and location.

m) The Contributor will supply relevant and appropriate keywords with the Selected Images to enable buyers to locate the Contributor's Selected Images in the Database.

n) Footprint shall have the right to add, amend or delete any keywords for a Selected Image if in Footprint's opinion this would be likely to increase the sales potential for that Image.

## 5.2 Footprint represents, warrants and undertakes that:

a) Footprint will inform the Contributor immediately in writing in respect of any sale on exclusive terms made via Footprint.

b) Footprint will not produce any Developments that are obscene, defamatory or racist in nature and will demand the same from any Customers or Third Parties to whom it will grant a Licence to publish Selected Images.

c) Footprint will maintain effective online security in place in accordance with current industry standards as long as the Selected Images are featured on the Website.

d) Footprint will pay all fees due to the Contributor under the terms of this agreement.

e) Footprint will use reasonable commercial endeavours using the Database to obtain reasonable Licence fees for the publication and/or commercial exploitation of Selected Images supplied by Contributors. The Contributor agrees that pricing is at the sole discretion of Footprint. Footprint will negotiate on behalf of the Contributor for the best possible price.

## **6. Termination of this Agreement**

6.1 The Contributor may terminate this contract:

- a) on 30 days prior notice to Footprint at any time;
- b) immediately by written notice to Footprint if Footprint:
  - i) is in material breach of any provision of the contract having (if the breach is capable of remedy) failed to comply with a 30 days' notice in writing requiring Footprint to remedy such breach;
  - ii) enters into insolvent liquidation;
  - iii) ceases to carry on its business.

6.2 Footprint may terminate the contract immediately on written notice to the Contributor if:

- a) the Contributor is in material breach of this contract having (if the breach is capable of remedy) failed to comply with a 30 days' notice in writing requiring the Contributor to remedy such breach;
- b) remittances by Footprint shall not have been cashed in any 2 year period in which case Footprint may remit the balance owed to the Contributor to a charity of Footprint's choice;
- c) it decides to terminate its operation of the Database.

6.3 Footprint may terminate the contract at any time on giving 6 months' written notice to the Contributor.

6.4 On termination Footprint shall:

- a) delete from its Database each Selected Image provided by the Contributor in respect of a terminated contract;
- b) cease to grant Licences for the Selected Images so deleted (but without prejudice to any Licences already granted before termination);
- c) continue to account to the Contributor in respect of Licences granted before termination.

6.5 Following termination the Contributor will not enter into any Licence or disposal which conflicts with any Licence granted during the period of this contract with Footprint.

6.6 Where a Selected Image has been used in a printed promotional piece by Footprint then the Contributor agrees that the Image will remain available for sale through Footprint's Database for a period of two years from the date of publication/distribution of the promotional material, unless the Image has been sold exclusively for world rights otherwise than via Footprint. This clause is to stand even if the Contributor terminates their contract.

## **7. Miscellaneous Provisions.**

7.1 Due to the nature of server provision, downtime and lost transmissions may occur. In recognition of this it is agreed that Footprint shall have no liability to any Contributor for the loss of any Image or for any deterioration or damage to any Image in the Database. Contributors shall be responsible for maintaining original and digital back-up copies of all Images submitted to Footprint and will provide replacement digital copies to Footprint on

request at any time. Where Contributors make a submission of digital images by disk or any physical medium, Footprint shall be under no obligation to return such disk or other property. If original transparencies are supplied for scanning, these will be returned to the Contributor. Footprint accepts no liability for loss or damage to any original transparencies.

7.2 All Selected Images supplied to Footprint are available to be used free of charge by Footprint in Promotional/Marketing Material designed to promote sales of Selected Images and/or to enhance awareness of the name/brand of Footprint or that of the individual Contributor. Images may be used in any media format, including but not limited to print and other offline or online media, without prior consent or approval from the Contributor.

7.3 Footprint shall have the right to offer Customers promotions on Selected Images to promote Footprint's service without Footprint having to consult Contributors. For example promotions may include, but are not limited to, acquiring new Customers or stimulating buying from existing Customers by offering discounts.

7.4 Acceptance of an Image by Footprint shall be at Footprint's sole discretion and Footprint shall be entitled to reject or delete any Image or Selected Image if Footprint considers that the Image has ceased to be sufficiently marketable or is unsuitable for any other reason.

7.5 The Contributor recognises that Footprint shall have no obligation to conduct any verification or check of the character, standing or financial position of any Customer. In the event of any alleged breach of any Licence by a Customer or any other infringement of intellectual property or other rights in an Image, the Contributor may either take action themselves against the Customer or alternatively request Footprint to take action.

7.6 No person who is not a party to this contract may enforce any term or condition of it and the Contracts (Rights of Third Parties) Act 1999 shall not apply.

7.7 This contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English Courts.

7.8 In accordance with the Data Protection Act 1998 Footprint will only process the Contributor's personal data to carry out its services to the Contributor. Footprint will never sell or distribute the Contributor's personal data to unrelated Third Parties.

Signed: .....

Print Name: ..... (Contributor)

Date:

Signed: .....

Print Name: ..... (Footprint Images)

Date: