

THIS AGREEMENT is made on 26th July 2016

PARTIES:

- (1) **TRAVEL PHOTOGRAPHER OF THE YEAR LIMITED** (company number: 6545216) 20 Yew Tree Court Yard, Earl Soham, Suffolk IP13 7SG ("TPOTY").
- (2) **HULL UK CITY OF CULTURE** (the "**Client**"), Pacific Exchange, 40 High Street, Hull, HU1 1PS.

BACKGROUND:

- (A) TPOTY is the owner of the Exhibition titled Travel Photographer of the Year, a description of which is found at Schedule 1 ("**Exhibition**").
- (B) TPOTY has agreed to grant a licence to Client for display of the Exhibition only at Princes Quay, Hull (the "**Venue**") for the period of this Agreement.

AGREED TERMS:

1. EXHIBITION

- 1.1 TPOTY agrees to grant a licence to the Client, for the Client to display the Exhibition for six weeks starting in 18th May 2017 and running until 30th June 2017 ("**Exhibition Period**") on the terms and conditions set out in this Agreement.

2. EXHIBITION FEE

- 2.1 The Client shall pay to TPOTY a licensing fee of £10,800 (plus VAT) for the six week exhibition, plus £3,000 (plus VAT) for the TPOTY exhibition at Hull International Photography Festival 2016, which shall be payable:
 - (a) **£8,400 (plus VAT)** - to include the £3,000 (plus VAT) fee for Hull International Photography Festival 2016 - on the date of signature of this Agreement; and
 - (b) *The balance of £5,400 (plus VAT)* on or before 1st May 2017, prior to the date of installation of the Exhibition at the Venue on 15th May.
- 2.2 Payment shall be made electronically to bank account (Sort Code: 53-61-24, Account No: 64466310). [The Fee shall be inclusive of value added tax, which shall be payable by the Client in addition to the Fee on receipt of a valid VAT invoice for it.]

- 2.3 If Client fails to make any payment due to TPOTY under this Agreement by the due date for payment, then without limiting TPOTY's remedies under clause 9, the Client shall pay interest on the overdue amount at the rate of 4% per annum above The Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. Client shall pay the interest together with the overdue amount.

3. PACKING, TRANSPORTATION AND REMOVAL

- 3.1 At the beginning of the Exhibition Period, TPOTY shall arrange for transportation of the Exhibition to the Venue. All transportation costs are included in the Fee.
- 3.2 TPOTY, in liaison with Client and in accordance with Client's reasonable directions shall be responsible for unpacking and installing the Exhibition at the Venue.
- 3.3 TPOTY shall be responsible for insuring the Exhibition during its packing and transport, and responsibility shall pass to Client on delivery of the Exhibition.
- 3.4 At the end of the Exhibition Period TPOTY shall take down or dismantle the Exhibition and arrange and pay for the removal of the Exhibition from the Venue on agreed dates (to be confirmed) and within a period of 7 days from the last day of the Exhibition Period.

4. CLIENT'S OBLIGATIONS

- 4.1 Throughout the Exhibition Period, the Client shall:
- (a) maintain the Exhibition on display throughout the Exhibition Period at the Venue unless otherwise agreed by both parties;
 - (b) hold, exhibit and handle the Exhibition during the Exhibition Period with reasonable skill, care and diligence;
 - (c) obtain all necessary licences and permissions to display the Exhibition to the public;
 - (d) promote the Exhibition at its own cost;
 - (e) obtain TPOTY's prior written consent to all key press releases regarding the Exhibition;
 - (f) provide TPOTY with such access to the Venue as reasonably required in order to deliver and install the Exhibition;
 - (g) maintain in force with a reputable insurance company:
 - (i) public liability insurance; and
 - (ii) contents insurance covering the prints, panels, frames, display stands and other contents of the Exhibition,and shall, on TPOTY's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium.

- (h) implement reasonable security and safety procedures to secure the Exhibition;
- (i) check the condition of the Exhibition daily and immediately report any change in the condition of the Exhibition to TPOTY in writing and where appropriate to Client's insurers;
- (j) not lend or licence any part of the Exhibition to third parties without TPOTY's prior written consent;
- (k) not make any representation or warranty to any person about the Exhibition or TPOTY or engage in negotiations with any person on behalf of TPOTY in relation to the Exhibition without TPOTY's written consent;
- (l) display the following credit line at all times alongside the Exhibition and in any printed material published by it reproducing the Exhibition:

Exhibition © Travel Photographer of the Year (TPOTY). All images © the photographer as stated.

and comply at all times with TPOTY's terms of usage for the Images.

5. DAMAGE TO THE EXHIBITION

- 5.1 If the Exhibition is damaged, lost or stolen while it is on loan to the Client, the Client shall immediately inform TPOTY and its own insurer in writing.

6. COPYRIGHT AND IMAGE RIGHTS

- 6.1 No copyright or image rights in the Exhibition shall pass to the Client under this Agreement.
- 6.2 TPOTY is fully authorised by the photographers and legally entitled to enter into this Agreement on behalf of such photographers and has secured all the necessary permissions and authority to do so.
- 6.3 TPOTY hereby permits Client, the non-exclusive right to produce, during the Exhibition Period, one or more images of the Exhibition ("**Images**") and grants to the Client a non-exclusive licence to use and reproduce the Images (including on Client's website, its social networking and other online pages and sites that mention or promote the Exhibition) during the Exhibition Period for the following purposes:
 - (a) to support or enhance promotion of the Exhibition including the production of printed exhibition catalogue;
 - (b) archival and education purposes only, including the inclusion of Images in teachers' packs and support materials; and
 - (c) to publicise and promote the Client;

provided that in the case of all uses all Images shall be appropriately watermarked, referenced and size restricted and TPOTY shall be entitled to approve (such approval not to be unreasonably delayed or withheld) the

quality of the Images, the context of any such use and the content of any text appearing with the Images.

- 6.4 TPOTY hereby waives in favour of the Client all so-called moral rights in the Images to which it is or may become entitled to the extent necessary to enable Client's exploitation of the Images under this agreement and hereby grants it all other rights necessary to exploit the rights granted to it in clause 6.3.
- 6.5 TPOTY further hereby warrants and undertakes that it owns or has obtained all necessary rights and permissions from all, if any, third-party holders of rights in and to the Exhibition in order to grant the rights in clause 6.3 including a full waiver of any so-called moral rights in the Images owned by or accruing to such third party.

7. SALE OF THE IMAGES AND MERCHANDISE

- 7.1 The Client shall display the fact that the Images are for sale, together with the price and TPOTY's contact details, in any exhibition or festival catalogue which it may (but shall not be obliged to) publish. The Client shall promptly redirect to TPOTY any expressions of interest it receives from prospective purchasers.
- 7.2 TPOTY will supply merchandise, produced for the Exhibition, to the Client at a discounted cost as detailed in Schedule 2. TPOTY will be responsible for all royalty payments to contributing photographers. All revenue from merchandise sales above and beyond the agreed wholesale price from TPOTY to the Client will be retained by the Client. Payment for merchandise supplied to the Client shall be made by the Client according to an agreed schedule, both in advance and during the Exhibition Period. Payment shall be made by the Client to TPOTY within 30 days of the invoice date, unless otherwise agreed. Merchandise will be supplied on a sale or return basis.
- 7.3 If Client wishes to retain any of the Images after the Exhibition Period a royalty payment shall be payable on or before the last day of the Exhibition Period.

8. CONFIDENTIALITY

- 8.1 Each party undertakes that it shall not at any time during this Agreement, and for a period of two years after termination of this Agreement, disclose to any person any confidential details of the content of this agreement nor issue any publicity or press statements about its contents or the other party without the prior written approval of the other, except as permitted by clause 8.2.
- 8.2 Each party may disclose confidential details of the content of this Agreement:
- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses such information comply with this clause 8; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

9. TERMINATION

9.1 This Agreement may be terminated by either party:

- (a) on 30 days' written notice;
- (b) immediately if the other commits a material breach of any term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified to do so; or
- (c) with immediate effect if any order is made or resolution passed for the liquidation, winding up or dissolution of the other party (otherwise than for the purposes of reconstruction or amalgamation) or if it becomes unable to pay its debts as they fall due.

9.2 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

9.3 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.

9.4 On termination, TPOTY shall immediately arrange for collection of the Exhibition in accordance with clause 3.4 above.

10. ASSIGNMENT

Neither party may at any time assign, transfer, mortgage, charge or deal in any other manner with any or all of its rights and obligations under this agreement..

11. NO PARTNERSHIP OR AGENCY

11.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

11.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

12. THIRD-PARTY RIGHTS

A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

13. ENTIRE AGREEMENT

13.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances,

warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

- 13.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Agreement.

14. VARIATION

No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

15. WAIVER

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

16. NOTICES

- 16.1 Any notice given to a party under or in connection with this Agreement shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by fax to its main fax number.

- 16.2 Any notice or communication shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting.
- (c) if sent by fax, at 9.00 am on the next Business Day after transmission.
- (d) If sent by email, receipt acknowledge by recipient.

- 16.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

17. GOVERNING LAW AND JURISDICTION

- 17.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

17.2 The courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

18. SIGNATORIES

Signature of Acceptance on Behalf of Venue:

..... Date

Executed by Sam Hunt, Executive Producer, For and on behalf of Hull UK City of Culture

Witness signature _____

Witness Name _____

Witness Address _____

Witness Occupation: _____

Signature of Acceptance on Behalf of TPOTY:

26th July 2016

..... Date

Chris Coe, Director, For & on behalf of Travel Photographer of the Year Ltd.

Schedule 1

EXHIBITION PROPOSAL

Type of Exhibition

Prints plus TPOTY display stands.

Number of Images

Approximate 140 to 170 (To be determined)

Size of Images

Variable - As per stand and display designs

Schedule 2

Merchandise

Supplied at discounted price (to be discussed)