



## STOCK FOUNDRY IMAGES PHOTOGRAPHER AGREEMENT

This Agreement between Stock Foundry Images Inc. ("Stock Foundry", "we", "us", and "our"), PO Box 78089, Nepean, Ontario K2E 1B1 and [ \_\_\_\_\_ ], with principle offices located at [ \_\_\_\_\_ ] ("Photographer", "you", "your" and "yours") is effective as of [ \_\_\_\_\_ / \_\_\_\_\_ ].

### 1. Definitions.

- 1.1 "Accepted Image" means an Image supplied by you to and accepted by Stock Foundry for representation, with or without any caption or related textual information.
- 1.2 "Image" means an image, photograph, composite, or collection of images, film, or illustration, whether in analog or digital form.
- 1.3 "Party" means either Stock Foundry or you, and "Parties" means Stock Foundry and you collectively.
- 1.4 "Revenue" means the gross amount received by Stock Foundry from its customers, distributors, resellers, agents, or international subagents for licenses of Accepted Image(s), less any actual shipping costs, taxes, duties, returns or credits.
- 1.5 "Similar Image" means an Image, whose principal elements are depicted in a way that, when compared side by side to an Accepted Image, would cause an industry professional to believe they are substantially the same.

### 2. Obligations & Deliverables.

- 2.1 Photographer Deliverables. Unless otherwise agreed to by both parties, the Photographer shall deliver Image(s) and any related materials to Stock Foundry in the form of original high quality JPEGs, no less than eleven inches (11") on the shortest side, scanned or shot at 300dpi. Image files must be clear, color corrected, free of visual artifacts and saved as CMYK.
- 2.2 Stock Foundry Obligations. Stock Foundry, at its sole discretion, shall ensure that Accepted Images are properly captioned, keyworded and incorporated into broader CD, DVD or Virtual collections. For collections incorporating Accepted Images, Stock Foundry assumes final responsibility for creating the branding, titles, artwork and necessary support materials. Stock Foundry will make commercially reasonable efforts to advertise, promote and distribute your images. Stock Foundry shall adopt and abide by guidelines prohibiting sensitive subject uses and contractually require its customers to abide by such guidelines as a condition of licensing the Accepted Images.

### 3. Usage of Accepted Images

- 3.1 Exclusive Accepted Images. In this Agreement, "Exclusive Accepted Images" means all: (i) Accepted Images produced by you ("Content"); and (ii) descriptive and other information, documents (such as model or property releases) or software relating to Content or otherwise required to enable Stock Foundry to realize the commercial potential of the rights granted in the Content ("Descriptive Information"); but shall not include (a) Content that is produced as "work for hire" within the meaning of United States federal copyright legislation or is otherwise the result of a specific commission by a bona fide client of the Supplier evidenced by written agreement

where the Content deliverable from such commission is for the personal use of the client and not for resale or license to any other person or entity, except to the extent you retain in such Content any royalty free rights of the type outlined in Stock Foundry' then current customer end-user license agreement; (b) Content that is produced for "Editorial" purposes except to the extent the you retain in such Content any royalty free rights of the type outlined in Stock Foundry' then current customer end-user license agreement, where "Editorial" means visual reporting to illustrate general interest and specialty stories for information, documentary or photojournalism (but not advertorial) purposes only; (c) Content that is "Rights Managed", which is defined as Content produced by you and licensed for a fee that is based on one or more limited uses and for which usage history is tracked; (d) Content that is of a category not currently offered for sale by Stock Foundry; or (e) other Content specifically designated by the you and agreed by Stock Foundry as being non-exclusive Accepted Images. Notwithstanding the definition of Exclusive Accepted Images and the exclusive license granted in this Agreement, nothing shall restrict you from (i) establishing or maintaining a personal portfolio web-site on which Exclusive Accepted Images is posted for the purposes of art display but not the sale or licensing or giving away of rights to the digital Content; or (ii) using Exclusive Accepted Images in connection with the sale of prints, t-shirts and other merchandise where the sale or licensing or giving away of rights to the digital images or other Content beyond such merchandising use is not involved.

3.2 Exclusive License. You hereby appoint Stock Foundry as your exclusive agent and sole distributor to sell or license Exclusive Accepted Images to third parties within the jurisdictions of Stock Foundry's business and to collect and remit funds in connection with those endeavours on the terms set forth in this Agreement. For all Exclusive Accepted Images, you grant Stock Foundry:

- (a) the exclusive right and license to use, reproduce, distribute, redistribute, publish, republish, upload, post, transmit, crop, package, repackage, produce and sell prints or Similar Image products, or publicly perform or display the Exclusive Accepted Images to prospective purchasers and licensees through: (i) Stock Foundry' website; (ii) other venues owned or operated by Stock Foundry or its affiliates from time to time, or (iii) third party distributors and alliance or channel partners of Stock Foundry; and
- (b) the right to grant perpetual, world-wide, non-exclusive and non-transferable licenses or sub-licenses to customers in accordance with the terms of Stock Foundry's then current customer end-user license agreement used by Stock Foundry from time to time that the Supplier hereby acknowledges having reviewed and approved and, where such purchase or license is through one of the venues described in (ii) or (iii) above, to other purchasers and licensees on terms and conditions substantially similar to such customer end-user license with such reasonable modifications as Stock Foundry may agree.

3.3 Own Use. In addition to the foregoing grant, Stock Foundry may post, reproduce, modify, display, make derivative works or otherwise use any Exclusive Accepted Images for its own business purposes relating to the promotion of its website and its distribution programs, and the sale or licensing of Exclusive Accepted Images (including, without limitation, the use of the Exclusive Accepted Images and your registered and unregistered trademarks for marketing, sales and promotional efforts whether on its website or through third parties). You agree that Stock Foundry shall have exclusive rights to design marketing literature for the Exclusive Accepted Images, at its own expense, and you agree to cooperate in that regard. In addition, you acknowledge that Stock Foundry shall have the right to take actions to protect its proprietary technology and its archive of images, including, without limitation, registration of compilation copyrights and appropriate use of the symbol ©. No compensation shall be due to you for use of Exclusive Accepted Images for such business purposes.

3.4 Term. Where you have undertaken the sole responsibility for sourcing and paying for all aspects of production, including, but not limited to, securing of model rights, property rights, travel costs, scanning, retouching and other related expenses, Exclusive Accepted Images that you produce and are accepted by Stock Foundry shall be licensed to Stock Foundry for a period of five years from

the date of acceptance, and shall be renewed for successive terms of one year, unless earlier terminated in accordance with the terms hereof. Where Stock Foundry has contributed to the sourcing and paying for any aspect of production, including but not limited to, securing of model rights, property rights, travel costs, scanning, retouching and other related expenses, Stock Foundry shall have a perpetual license to any Exclusive Accepted Image produced under this Agreement, subject to the terms and conditions of this Agreement.

3.5 Ownership. The Parties agree that all rights, including title and copyright, in and to the Exclusive Accepted Images will be retained by you, and no title or copyright is transferred or granted in any way to Stock Foundry or any third party except as provided in this Agreement and license agreements which Stock Foundry is authorized to enter into on your behalf.

#### **4. Payments.**

4.1 Fees. Subject to the terms hereof, you shall be entitled to a portion of Revenues relating to Accepted Images, calculated in accordance with the terms of Schedule "A". Stock Foundry shall make monthly payments to you within thirty (30) days (forty-five (45) days if you are located outside of Canada or the United States) from the end of each month. All payments shall be made via cheque (or if agreed to separately, wire transfer to your bank account), based on U.S. dollar amounts and converted at the U.S. dollar-to-[ \_\_\_\_\_ ] purchase rate of Stock Foundry's banking institution on the day of the transfer. Stock Foundry shall provide you with a written statement which shall include the Revenue from the sale of the Accepted Image(s). All payments shall be made and calculated in U.S. dollars. Stock Foundry may withhold taxes and other fees from payments to you if required by applicable law. Such payments shall be your sole compensation for the licensing of rights relating to a specific Accepted Image by Stock Foundry under the terms of this Agreement.

4.2 Non-payment. The Parties further agree that Stock Foundry shall not be required to pay royalties or fees to you if Stock Foundry is restrained or otherwise prevented from using rights granted under this Agreement relating to Exclusive Accepted Images because those rights are found to be an infringement or contravention of the intellectual or other property rights of a third party, or if Stock Foundry discovers or determines in its reasonable discretion that the Exclusive Accepted Images provided by you appears for sale or license or give-away elsewhere in contravention of this Agreement.

#### **5. Right to Audit**

You may, upon sixty (60) days prior written notice to Stock Foundry and no more than once during any twelve (12) month period, at your own expense, employ an independent certified chartered accountant, who is acceptable to Stock Foundry (such acceptance not to be unreasonably withheld), to make an examination and audit ("Audit") during normal business hours at Stock Foundry's head office, of only such books, records and accounts necessary to verify the accuracy of the Revenues, for the period in question. At its own expense, Stock Foundry may, within 30 days of receipt of the Audit report prepared by such accountant conduct an independent review of the Audit report ("Audit Review"). Subsequently, prompt adjustment shall be made by the proper party to compensate for any errors or omissions disclosed by the Audit and/or the Audit Review. For any amount owing by Stock Foundry, Stock Foundry shall pay you the actual dollar amount of such deficit ("Deficiency") and any interest payable, which will be lesser of the prime rate and ten percent (10%) per annum, for the Deficiency amount. Stock Foundry shall pay reasonable audit costs when the Audit reveals an error of more than ten percent (10%) of funds due by Stock Foundry. You shall not be entitled to sums, interest, or any other form of financial or equitable relief beyond that provided under this section. For any amounts owed by you, you shall pay the actual dollar amount of such deficit and any interest payable, which will be lesser of the prime rate and ten percent (10%) per annum.

#### **6. Warranties/Indemnification**

6.1 Warranties. You hereby represent and warrant to Stock Foundry to the best of your knowledge that:

- (a) you are the sole originator and have all right, title and interest in of each Accepted Image and any copyright related thereto and that no third party has any right, including, without limitation, moral rights, title or interest to the Accepted Image;
- (b) you have the full right and authorization to grant Stock Foundry the licenses hereunder upon all of the terms and conditions herein stated;
- (c) you do not hold membership in any trade group or collective society that would otherwise impair your obligations or impose additional requirements on Stock Foundry under this Agreement;
- (d) Neither the granting of any license nor the Accepted Images review, use or posting thereof, will violate any personal or property rights of any third party, including but not limited to, copyright, privacy, moral or other intellectual property rights, nor shall the Accepted Image or the review thereof constitute defamation, libel or slander against any third party;
- (e) no party other than you created the Accepted Image nor do any parties other than you have any rights in such Accepted Image inconsistent with your agreement hereunder;
- (f) Stock Foundry may use the Accepted Images as provided herein without obtaining any additional consents or permissions or the payment of additional fees to third parties, except for,
  - (i) restrictions regarding the use of Accepted Images provided by you at the time of submission, or
  - (ii) uses involving sensitive subject topics, unless Accepted Images are specifically released for sensitive subject topics;
- (g) any caption information that you may be required to submit for the Accepted Images is accurate and complete; and
- (h) you expressly waive any moral rights under Section 14.1(2) of the *Copyright Act* (Canada) that you have in the Accepted Images.

6.2 Indemnification. You agree to indemnify, defend, and hold harmless Stock Foundry and its officers, directors, shareholders, employees, agents and successors from any and all claims, demands, losses, damages or expenses (including reasonable attorneys' fees and costs) arising out of or in connection with any claim by a third party which results in a bona fide settlement, claim, or adjustment which if proved true would constitute a breach of the representations and warranties set forth in Section 6.1 above, provided that such indemnity shall not apply to Accepted Images that have been modified by Stock Foundry or its customers without your authorization if such claim would not have arisen but for such modification(s). Stock Foundry reserves the right, at your expense, to assume the exclusive defence and control of any matter otherwise subject to indemnification by you, and in such case, you agree to cooperate with Stock Foundry' defence of such claim. Notwithstanding the foregoing, given the prevalence of royalty free content, Stock Foundry cannot take responsibility for the compliance by its customers of the terms of Stock Foundry' then current customer end-user license agreements. Accordingly, you acknowledge and agree to the possibility of Accepted Images being used in a manner that is not contemplated in this Agreement or the customer end-user license agreement, and you agree that notwithstanding any rights you may have to pursue the licensees of such Accepted Images, Stock Foundry shall have

no liability to you or any person claiming through you for any breach by a licensee of the terms of any agreement respecting Accepted Images.

## **7. Protection of Accepted Images.**

7.1 Compilation Copyrights. Stock Foundry may register a compilation copyright in the compilation of various non-image elements included in the digital files in order to protect its proprietary technology and its online archive. Stock Foundry may also use its compilation registration to help it to pursue infringers of the images. For greater certainty, the compilation copyright registration does not permit Stock Foundry to use any of your Accepted Images except as you have permitted under this Agreement.

7.2 Claims. Stock Foundry, at its sole discretion and without obligation to do so, shall have full and complete authority to make and settle claims or to institute proceedings in Stock Foundry's or your name, at Stock Foundry's expense, to recover damages for Accepted Images lost or damaged by customers or other parties and for the unauthorized use of Accepted Images. You agree to provide reasonable assistance in Stock Foundry's efforts in connection with such claims or proceedings and notify Stock Foundry of any infringements you become aware of during the term of this Agreement. Any recovery, after payment of all costs and expenses including outside attorneys' fees, shall be treated as Revenue and you shall receive the appropriate royalty Revenues (as set forth in Section 14 of this Agreement), or 100% in the case of lost/damaged images. Following your notification of an infringement, if Stock Foundry declines to bring such a claim within sixty (60) days of your notification, you may bring actions in your own name at your own expense and retain all recoveries.

## **8. Limitation of Liability.**

**YOU AGREE THAT STOCK FOUNDRY IS NOT LIABLE FOR ANY LOSS OR DAMAGE TO DIGITAL IMAGES OR DIGITAL MATERIAL SUBMITTED TO STOCK FOUNDRY AND YOU ARE REQUIRED TO PROVIDE OR MAINTAIN YOUR OWN BACKUP FILES FOR ANY DIGITAL IMAGE SUBMITTED TO STOCK FOUNDRY. UNDER NO CIRCUMSTANCES SHALL STOCK FOUNDRY LIABILITY (WHETHER IN TORT, NEGLIGENCE, CONTRACT, OR OTHERWISE) FOR LOSS OR DAMAGE TO ANY ANALOG ACCEPTED IMAGES OR OTHER ANALOG IMAGES OR ANALOG MATERIALS PROVIDED TO STOCK FOUNDRY BY YOU EXCEED \$100 PER IMAGE OR THE AGGREGATE OF \$5,000, REGARDLESS OF THE NUMBER OF CLAIMS. IF THESE AMOUNTS ARE NOT ADEQUATE TO COVER THE VALUE OF YOUR ACCEPTED IMAGES, YOU SHALL BEAR SOLE RESPONSIBILITY FOR OBTAINING AND MAINTAINING ADEQUATE INSURANCE FOR PROTECTION OF THE ACCEPTED IMAGES, OTHER IMAGES, OR MATERIALS PROVIDED TO STOCK FOUNDRY. NO ACTION, REGARDLESS OF FORM, MAY BE BROUGHT BY YOU MORE THAN ONE (1) YEAR AFTER THE DATE OF THE ALLEGED LOSS OR DAMAGE. FOR ANY CLAIM UNDER THIS AGREEMENT, STOCK FOUNDRY SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR SPECIAL DAMAGES, EVEN IF STOCK FOUNDRY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. YOU ACKNOWLEDGE THAT STOCK FOUNDRY WILL NOT BE RESPONSIBLE FOR MISUSE BY END-USERS OF THE ACCEPTED IMAGES.**

## **9. Confidentiality.**

You acknowledge that the Confidential Information (defined below) which it obtains through the entering into of this Agreement, the use of Stock Foundry's website and the provision of Accepted Images constitutes valuable, confidential, proprietary information of Stock Foundry and its licensors, and agrees that during the term of this Agreement and thereafter it shall not, without the express written consent of Stock Foundry, use or disclose to any other person any such Confidential Information, except as specifically authorized under this Agreement. For the purposes of this Agreement, "Confidential Information" means any and all data, information, documents, software or materials relating to the business

and management of Stock Foundry, its members, affiliates, licensors or licensees, that is designated as confidential or ought reasonably to be considered confidential, including but not limited to: their business model and operations, processes, products, designs, pricing, promotions, business plans, business opportunities, alliances, Content, graphics, documentation, finances, research, development, know-how, trade-secrets, training materials, personnel, clients, methodologies, website content belonging to others and other intellectual property.

## **10. Termination.**

10.1 Material Breach. In the event of any material breach of this Agreement, the non-breaching Party may terminate this Agreement (i) by giving sixty (60) days prior written notice to the other Party; provided, however, that this Agreement will not terminate if the other Party has cured the breach prior to the expiration of such sixty (60) day period, or (ii) within a thirty (30) day period with respect to amounts due to a Party hereunder (except in the case of a bona-fide dispute regarding amounts due).

10.2 Other Events of Termination. Either Party may terminate this Agreement if the other Party:

- (a) becomes the subject of a voluntary or involuntary petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if that petition or proceeding is not dismissed within sixty (60) days after filing;
- (b) suspends the operation of its present business or liquidates its business assets; or
- (c) generally fails to pay its debts as such debts become due or admits in writing its inability to pay its debts.

10.3 Effect of Termination.

- (a) In the event of termination under this Agreement, Stock Foundry shall use commercially reasonable efforts to recall and destroy duplicates of Accepted Images, and shall remove and destroy any digital versions from its databases and systems. If Stock Foundry has retained any original negatives of Accepted Images, Stock Foundry shall return such originals to you not more than nine (9) months following termination. Stock Foundry's liability for all lost/damaged originals shall be covered by Section 8.
- (b) Sections 6, 8, 9 and all other attachments shall survive termination or expiration of this Agreement. Any licenses that Stock Foundry has granted prior to the expiration or termination of this Agreement shall survive its expiration or termination.

## **11. Disputes**

Any and all disputes or claims in connection with or arising out of this Agreement shall be referred to and finally determined by arbitration before a single arbitrator in Ottawa, in the English language, and in accordance with the provisions of the *Arbitrations Act, 1991* (Ontario) (the "Act"). The arbitrator shall be agreed upon by the parties, or in the absence of agreement, the arbitrator shall be appointed by the Ontario Superior Court of Justice under the provisions of the Act. The award or determination made by the arbitrator shall be final and binding upon the parties hereto, and not subject to appeal under Section 45 of the Act. The parties hereto further agree that the award or determination made by the arbitrator may be enforced by any court of competent jurisdiction. Any decisions made by the arbitrator shall be kept confidential.

## **12. Notices.**

Any notice, consent or any other communication required in this Agreement (the "Notice") shall be in writing and shall be sufficiently given if delivered (whether in person, by courier service or other personal

method of delivery) or if transmitted by facsimile or email (followed by hardcopy delivered via mail service), to the addresses, or fax numbers set forth in the Agreement, or to such other addresses or fax numbers as either party shall have specified by notice in writing to the other party. Any Notice delivered or transmitted to either Party shall be deemed to have been given and received on the day it is delivered or transmitted, provided that it is delivered or transmitted on a business day prior to 5:00 p.m. local time in the place of delivery or receipt, else Notice shall be deemed to be given the next observed business day. Any Notice mailed shall be deemed to be given ten (10) business days after the date of mailing.

### **13. General**

- 13.1 Independent Contractor. You shall operate an independent business apart from Stock Foundry. Nothing in this Agreement creates a partnership, employer-employee relationship, or a joint venture between the parties. You are solely responsible for obtaining and maintaining all applicable business licenses and insurance, and for timely payment of all income, payroll, and employment-related taxes and withholdings, including without limitation all unemployment, workers compensation, income tax withholding, social security, and any other taxes or public charges of any nature whatsoever.
- 13.2 Assignment. Your obligations hereunder are personal and may not be assigned without Stock Foundry's prior written consent, not unreasonably withheld if assigned to a bona-fide legal entity organized and acting solely on your or your heir's behalf. Stock Foundry may assign its rights and obligations under this Agreement to any Stock Foundry affiliate or to any surviving party as part of a corporate reorganization, consolidation, merger, or sale. This Agreement shall be binding upon and shall inure to the benefit of the parties' heirs, executors, administrators, successors, and permitted assigns.
- 13.3 Proper Law. This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario, Canada.
- 13.4 Entire Agreement. This Agreement, including all attachments and other documents that are incorporated herein by reference, incorporates the entire understanding of the parties concerning the subject matter contained herein and may not be modified or amended except by a separate writing signed by both parties. Any and all prior agreements, oral or written, between the parties concerning the subject matter contained herein are hereby terminated, superceded, and are of no further force or effect, except that Stock Foundry and you agree that any and all materials or Images supplied by you to Stock Foundry and accepted by Stock Foundry under any prior agreements, except for assignment/work-for-hire agreements (that is, agreements that transferred ownership of the work product to Stock Foundry or its predecessor-in-interest), shall be deemed Accepted Images under this Agreement, and, except as specifically provided for to the contrary, all rights and obligations relating to such Accepted Images under such prior agreements shall be governed solely by the terms and conditions of this Agreement. Stock Foundry acknowledges that Images submitted and accepted under prior agreements may have been licensed to Stock Foundry on a non-exclusive basis and/or may have been submitted with listed restrictions and, except as specifically agreed to by you, Stock Foundry agrees to honor those prior restrictions and nothing in this Section shall be construed as granting to Stock Foundry an exclusive license to such prior Images.
- 13.5 Interpretation. The headings and numbering shall not be considered or given effect in construing this agreement. This Agreement shall not be interpreted against the party causing this agreement to be drafted. The English language version of this Agreement shall be used for interpretation of this Agreement, and any foreign language translations of this Agreement are provided by Stock Foundry solely for convenience.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed on its behalf on the date below by their respective duly authorized representatives.

**Stock Foundry Images Inc.**

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

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

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

Date: \_\_\_\_\_

[ \_\_\_\_\_ ] (Photographer's Name)

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

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

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

Date: \_\_\_\_\_