



# **PHOTOGRAPHER'S REPRESENTATION AGREEMENT**

## **BETWEEN**

### **1 PHOTOGRAPHER**

**[name and address of Photographer, Telephone (including mobile) and email]**

("the Photographer"/ "You") which expression shall, where the context admits, include the photographer's executors, administrators, heirs and assigns or successors in business.

*Please note that Flowerphotos will contact you at the address and on the telephone numbers shown here unless you have given any other information. As rights requests are often urgent, you should notify Flowerphotos of any change of contact details, however temporary.*

**Photographer's VAT Number (if appropriate) .....**

### **2 THE LIBRARY**

**[Flowerphotos, 65 Brighton Road, Shoreham-by-Sea, West Sussex BN43 6RE. Telephone 01273 452252. Email sales@flowerphotos.com]**

("Flowerphotos"/ "We"/ "Us") which expression shall, where the context admits, include Flowerphotos's executors, administrators, heirs and assigns or successors in business.

### **Special Terms**

**Territory:** World.

**Initial Duration:** 5 years (see Clause 15)

**Agreement Type:** Exclusive (we are the only licensee of the Images)

**Commission Rate** 40% (see Clause 8)

**Any Other Special terms**

We agree to the attached terms.

DATED

SIGNED .....  
The Photographer

SIGNED .....  
The Library

## **THE AGREED TERMS:**

### **1. APPOINTMENT**

The Photographer wishes to appoint Flowerphotos to exclusively exploit all rights in the Images throughout the Territory in all media.

### **2. THE IMAGES**

#### **2.1 "Images" means**

all [**photographic**] material, including transparencies, negatives, prints or any physical or electronic material including captions and other rights management information which at any time during the term of this agreement You deposit or have already deposited with Flowerphotos.

2.2 You undertake to deliver the Images correctly and properly captioned to Flowerphotos.

2.3 The Images remain Your Property and You should, at Your discretion, insure their replacement value. While proper care will be taken of the Images, Flowerphotos shall not be responsible for any loss or damage to the Images however caused.

2.4 Flowerphotos may at any time return Images which it considers outdated or surplus to its requirements and any such material will no longer form part of the Agreement.

### **3. WARRANTIES**

You warrant that :-

3.1 The Images are and will be Your original work;

3.2 All captions or rights management information pertaining to the Images are and will remain full and accurate and all duplicate Images are identified as such;

3.3 You are and will remain during the term of this Agreement, the exclusive owner of the whole copyright in the Images;

3.4 You are the exclusive owner of the rights to grant, market, license, sell or assign all rights in the Images, including but not limited to the rights to grant reproduction rights in the Images for print, motion picture, television, video, cable, computer, radio, cartoon, merchandising and/or Internet, to make the Images available on electronic equipment, CD-ROM, DVD and other similar media or via the Internet, and to include them in any catalogue, Internet sites or marketing in any form ("the Rights");

3.5 You hold all permissions needed for the exploitation by third parties of the Rights, including, without limitation, from subjects or owners of products or property depicted in the Images and/or original clients for whom the Images may have been created. Any exercise by Flowerphotos of the Rights shall not violate the rights of

any third party (including, without limitation, the rights of the subject of the Images), in particular with regard to laws relating to trade mark, copyright, privacy, publicity and defamation within the UK, USA or elsewhere;

- 3.6 You have not entered into any agreement in respect of the Images which would adversely affect the Rights **EXCEPT** arrangements and restrictions specifically noted to Flowerphotos and set out in Schedule A;
- 3.7 There are and will be no claims by any other party in connection with the use or reproduction of any of the Images;
- 3.8 You will maintain accurate records and send Flowerphotos copies of all rights granted by You in any of the Images;
- 3.9 You will reply to any requests by Flowerphotos for information or rights clearances within 3 days of the request. If you do not respond within three days, the rights will be deemed cleared.

#### 4. **INDEMNITIES**

You will indemnify, defend (at the request of Flowerphotos) and hold Flowerphotos and its sub-licensees and assigns harmless against any prejudice, damage, liability or costs (including reasonable lawyers' fees) which any of the indemnified parties incur arising from or in respect of any claim that there has been a breach of Your representations and warranties in this Agreement. This paragraph will remain in force after the termination or expiration of this Agreement.

#### 5. **RIGHTS**

- 5.1 You hereby appoint Flowerphotos as Your exclusive licensee to exploit all Rights in the Images in the Territory in all media whether current or yet to be developed.
- 5.2 For the avoidance of doubt, if the Territory is not the World, Flowerphotos may grant any Rights, including world-wide Rights to clients within the Territory.
- 5.3 Unless otherwise notified in advance and set out in Schedule A, Flowerphotos has full authority to negotiate all terms of commissions and licences and reproduction rights in the Images including the fee, duration and scope of any licence. You authorise Flowerphotos to agree to any cropping, manipulation, combining and creation of derivative images and also the negotiation of credit lines. Flowerphotos is free to negotiate licences for terms capable of exceeding the Duration of this Agreement.
- 5.4 For the avoidance of doubt, Flowerphotos has the right to scan or make prints or duplicates of any Images and store and deliver them digitally. Flowerphotos reserves the right to charge You the cost (plus VAT if applicable) of scanning or making prints or duplicates of Your Images any such charge to be agreed with You in advance in the Special Terms or otherwise.
- 5.5 You retain the Rights to display and sell art prints of the Images to personal buyers. Any Business sales of the Images must be referred to Flowerphotos.

#### 6. **EXCLUSIVITY**

- 6.1 You undertake not to authorise, license, assign or permit any party to use the Images or any images confusingly similar to them including outtakes or images

showing similar subject matter which for any reason may cause confusion or may derogate from the Rights nor to exercise any of the Rights in any way which would conflict with Flowerphotos's exercise of the Rights or the commercial exploitation of any of the Images.

## 7. **APPOINTMENT**

7.1 Flowerphotos shall act as Your independent licensee in respect of the Images and does not act as an agent. Flowerphotos will invoice in respect of all commissions or licences granted.

7.2 Flowerphotos reserves the right to use subagents or licensees in overseas territories or to sublicense Your work through portals or other such electronic agencies and to negotiate commission payable to such agencies.

7.3 When commissions for work are received as a result of an introduction by Flowerphotos, 25% of the fee paid will be paid to Flowerphotos. Flowerphotos pledge to help with advice, arrangements & billing as you require.

## 8. **COMMISSION RATE**

8.1 For the purposes of this clause;

8.1.1 "Commission Rate" means the proportion of the Net Revenue which Flowerphotos will pay You under this Agreement.

8.1.2 "Net Revenue" means the gross income derived from the exploitation of the Rights, less

8.1.2.1 any amounts deducted by subagents or licensees, whether overseas or electronic;

8.1.2.2 expenses paid by the client;

8.1.2.3 Value Added Tax.

8.2 Flowerphotos shall pay you as Commission Rate

8.2.1 The proportion of the Net Revenue specified in the Special Terms as Commission Rate; plus

8.2.2 If applicable, VAT at the currently prevailing rate. You must inform Flowerphotos whether You are registered for VAT and must inform Flowerphotos if at any time the position changes.

## 9. **PAYMENT**

Flowerphotos will provide You not later than 30 days after the end of each quarter with a statement setting out all payments received for use of the Images in the preceding quarter and will pay You all monies due. However, if the amount due is under £75 no statement will be sent or payment made and the amount shall be carried forward to the following quarter.

## 10. **BOOKS AND RECORDS**

You or Your [professionally qualified] financial adviser shall be entitled to inspect the books and records of Flowerphotos relating only to the Images at the offices of Flowerphotos during normal business hours provided You give reasonable notice of at least seven days to

Flowerphotos and there is no more than one inspection in any calendar year. Flowerphotos shall forthwith pay You any sums found due on such examination.

**11. ADVERTISING AND PROMOTION**

11.1 You agree that the Images may be used at Flowerphotos's option without charge in any catalogue, CD-ROM or website, advertising or PR activities designed to promote either You or Flowerphotos and agree that any such promotional items may be distributed by Flowerphotos worldwide for up to 10 years, notwithstanding the earlier termination of the Agreement for any reason.

**12. LOSS OF IMAGES**

In case of any loss, damage or destruction to any physical Images, any money that is received either by You or Flowerphotos by way of compensation, damages or otherwise from any third party shall, after deduction of legal costs and expenses, be shared between Flowerphotos and You in the proportions in which Net Revenue is split between us as specified in the Special Terms.

**13. LITIGATION**

Each party shall promptly inform the other of any actual or suspected infringement of copyright, loss of Images, breach of moral rights or other matter giving rise to threat of proceedings or claims or demands in respect of any of the Images. You and Flowerphotos shall negotiate in good faith with a view to cooperating in any proposed legal proceedings but Flowerphotos shall be under no obligation to institute any legal proceedings nor take steps for the recovery of any fees payable in respect of use of the Images whether permitted or unauthorised.

**14. DURATION**

14.1 This Agreement shall continue for the Duration set out in the Special Terms and thereafter until terminated by either party giving at least 12 months' written notice to the other. The termination shall not prejudice any licences then existing or any negotiations which Flowerphotos has properly entered into with any third party prior to the date of termination.

14.2 Either party may terminate this Agreement immediately by notice in writing to the other if the other;

14.2.1 is declared bankrupt or goes into liquidation or receivership or an administrative receiver is appointed over all or any part of its assets or a meeting of creditors is called; or

14.2.2 breaches any terms of this Agreement which breach is not capable of effective remedy; or

14.2.3 breaches any term of this Agreement which is capable of remedy but which is not remedied within 30 days of the date of the notice specifying the breach and requiring that party to comply with that term.

14.3 After termination;

14.3.1 no further licences shall be granted, and

14.3.2 Flowerphotos shall return to You by a safe method affording proof of delivery any Images and any scans, prints or duplicates for which you

have paid pursuant to clause 5.4 or 15.3.2, as soon as reasonably practical. All reasonable endeavours will be made by Flowerphotos to return the Images within 6 months of termination; and

14.3.3 Flowerphotos shall delete any digital images within 28 days.

14.3.4 If Flowerphotos has scanned or made prints or duplicates of any Images pursuant to Clause 5.4 above and has not charged You the cost then it will delete or destroy any such material within 28 days. However, Flowerphotos may, at its option, offer such material to you for purchase on payment to Flowerphotos of the cost of making the material.

15. **COMMISSION AFTER TERMINATION**

Following termination for any reason, Flowerphotos shall pay You Commission on all exploitations of Rights negotiated during the term or on extensions or renewals thereof, irrespective of whether such income is received during the term or at any time thereafter.

16. **ENTIRE UNDERSTANDING**

This Agreement supersedes any previous agreement between the parties relating to the Images and constitutes the entire understanding between the parties and is binding upon them, their executors, successors or assigns. It may not be varied except in writing signed by both parties.

17. **DISPUTES AND GOVERNING LAW**

This Agreement shall be governed by and interpreted in all respects in accordance with the laws of England and Wales. If any dispute shall arise between You and Flowerphotos in connection with or in relation to this Agreement the matter shall be resolved by the Courts of England and Wales.

SCHEDULE A  
RESTRICTIONS ON USE OF THE IMAGES