

307 Fifth Avenue, New York, NY 10016-6517

# RIGHTS-MANAGED END USER LICENSE AGREEMENT

THIS IS A LEGAL AGREEMENT BETWEEN YOU ("LICENSEE") AND PHOTO RESEARCHERS, INC. d/b/a SCIENCE SOURCE ("PR" or "LICENSOR"). BY ACCEPTING AND USING THE IMAGES YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT.

#### 1 Definitions.

"Images" means all types of visual content, including without limitation still photography, motion film or video and may have an audio component, whether generated optically, electronically, digitally or by any other means, and shall include all metadata, keywords, descriptions and captions associated therewith. Any reference to Images includes the whole or the part.

"Invoice" means the agreement provided by PR or an authorized distributor that includes among other terms, the permitted scope of use of the Images selected, any limitations on the use of the Images and the licensee fee that corresponds to the use. The Invoice shall be incorporated into this Agreement and all references to the Agreement shall include the Invoice.

## 2 Grant of Rights.

Unless stated otherwise in the Invoice, PR grants to Licensee a non-exclusive, non-sub-licensable and non-assignable right to reproduce, display, broadcast, transmit, or create a derivative work (collectively "use") the Images identified in the Invoice, solely to the extent the use is explicitly stated in the Agreement. Image(s) licensed for editorial purposes may be cropped for placement purposes, provided that the editorial integrity of the image is not compromised, but shall not, under any circumstances, otherwise be rotated, altered, changed or manipulated, or combined with other Image(s) without PR'S prior written permission.

If Licensee is obtaining rights on behalf of a client, it may permit the client to exercise the rights granted, provided the client or any subcontractor or employee agrees to use the Image(s) as limited in the Invoice and agrees to be bound by the terms of the Agreement. Notwithstanding the foregoing, Licensee and client remain jointly and severally liable and responsible for all uses. No ownership or copyright in any Image shall transfer to Licensee by the grant of the license contained in this Agreement or Invoice. All rights not expressly granted to the Licensee are reserved to PR and the copyright holder.

# 3 Restrictions As To Use.

The use of the licensed Image(s) is strictly limited to the use, medium, period of time, print run, placement, size of image, territory and any other restrictions specified in the Invoice. Licensee may not use nor permit the use of the licensed Image(s) beyond the terms of the limited license Agreement without first obtaining an additional license, including any electronic reproduction or promotional rights.

Licensee may not use any Image in a manner that is defamatory, pornographic or obscene, whether directly or in context or juxtaposition with specific subject matter.

Licensee may not incorporate the licensed Image in any logo, trademark or service mark.

Licensee may not make the Image(s) available in any medium in a manner intended to allow or invite a third party to download, extract or access the Image(s) as a standalone file.

212-758-3420 800-833-9033 fax 212-355-0731

WWW.SCIENCESOURCE.COM

Science Source is a registered trademark of Photo Researchers Inc.

Licensee may not archive, republish or transmit any Image(s) on any database or to a network, social networking site or bulletin board or otherwise distribute or allow any of the Images to be distributed to or used by anyone other than the authorized users, without prior written consent from PR.

Unless otherwise expressly licensed, Image(s) may not be modified, reconfigured or repurposed for use in any mobile-directed web sites or mobile applications that are specifically created for viewing of Image(s) on mobile devices.

Licensee may not use the Image(s) contrary to any restriction on use provided to Licensee prior to or at the time the Image is delivered to Licensee. Restrictions may be provided with the Image information located on PR'S or any authorized distributor's website or otherwise communicated.

Licensee may not use any of the Images in any manner prohibited by any export laws, restrictions or regulations.

#### 4. Sensitive Use Disclaimer.

Licensee may not use the Images in any manner that would be deemed offensive to the model. Offensive uses include but are not limited to the use of an Image that involves or implies illegal activities, adverse medical conditions or procedures, other adverse health or mental health issues, substance abuse, welfare or economic aid, dating agencies, sexual preference, teen pregnancy, abortion and adoption, political or religious affiliation, smoking or alcohol usage, feminine hygiene, incontinence or impotence.

If any Image featuring a model is used in:

- (i) a manner that would lead a reasonable person to believe that the model personally uses or endorses a product or service; or
- (ii) in connection with a subject that would be unflattering or controversial to a reasonable person, Licensee must accompany each such use with a conspicuous statement that indicates that the person so pictured is a model and the Image is used for illustrative purposes only.

## 5 Editorial Credit.

If any Image is used in an editorial manner, the credit line, "[Photographer's name]/SCIENCE SOURCE", must appear adjacent to the Image or as otherwise indicated by PR. If the Image(s) consist of footage or audiovisual material, credit shall be provided, in equal size and comparable placement to credit(s) accorded to licensors of other similar content, substantially in the form "[Footage] [Imagery] supplied by [Collection Name]/SCIENCE SOURCE".

If Licensee omits the credit, an additional fee equal to two (2) times the original amount invoiced shall be payable by Licensee at PR'S discretion. The foregoing fee shall be in addition to any other rights or remedies that PR may have at law or in equity. It is understood that Images used for advertising purposes do not require credit.

### 6 Releases/Captions.

PR will notify Licensee if it has obtained a model release and/or a property release for Image(s), either in the release status information accompanying the Image(s) on PR's website, in the Invoice or by other means. If no such notification is given, then no such model or property release has been obtained. PR grants no rights and makes no warranties with regard to the use of names, people, trademarks, trade dress, registered, unregistered or copyrighted designs or works of art or architecture depicted in any Image(s). Licensee shall be solely responsible for determining whether a release is sufficient for the proposed use or is required in connection with any proposed use of such Image(s). Licensee acknowledges that some jurisdictions provide legal protection against a person's

image, likeness or property being used for commercial purposes without their consent. PR used commercially reasonable efforts to identify the caption for each Image, but cannot be held responsible for erroneous or incomplete caption information.

### 7 Termination and Revocation.

PR reserves the right to automatically terminate or revoke the license contained in this Agreement and invoice without notice if Licensee or its client fails to comply with any provision of this Agreement. Upon termination, Licensee and its client must immediately stop using the Image(s), delete the Image(s) and all copies from all magnetic media and destroy all other copies. PR reserves the right to discontinue the use of any Image(s) for any reason and elect to replace the Image(s) with an alternate Image(s). Upon notice of any discontinuance of the use of a particular Image, Licensee, its employer and its client, if applicable, agree not to use the Image(s) in the future.

## 8 Electronic Storage.

For all Image(s) that Licensee takes delivery of in electronic form, Licensee must retain the copyright symbol, the name of PR and the image number, all metadata or other identification number associated with the Image(s) that may be included as part of the electronic file. Licensee will take all reasonable measures to safeguard against unauthorized third-party access to the Image(s). Licensee may make one (1) high-resolution backup copy of the Image(s) for security reasons only. Upon the expiration or earlier termination of this Agreement, Licensee shall promptly delete the Image(s) from its computer or other electronic storage systems and shall ensure that any client authorized to use the Images deletes the Image(s) as well.

## 9 Payment Terms and Cancellation Policy.

Time is of the essence in the performance by Licensee of its obligations for payments. Payment of the Invoice is to be net thirty (30) days. Any claims for adjustment or rejection of terms must be made to PR within ten (10) days after receipt of invoice.

**Cancellation Policy**: Rights are being reserved for Licensee when an Invoice is created. If Licensee does not use the Invoiced Image(s), it must notify PR within ten (10) days from receipt of Invoice. If Licensee fails to do so, it is responsible for full payment of the Invoice.

### 10 Warranty and Disclaimers.

PR warrants that: (i) it has all necessary rights and authority to enter into and perform this Agreement; and (ii) the Image(s) will be free from defects in material and workmanship for 30 days from delivery (Licensee's sole and exclusive remedy for a breach of this warranty being the replacement of the Image(s)).

## **General Disclaimers and Limitation of Liability**

PHOTO RESEARCHERS MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE IMAGES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. PR SHALL NOT BE LIABLE TO LICENSEE OR ANY OTHER PERSON OR ENTITY FOR ANY GENERAL, PUNITIVE, SPECIAL, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES, OR LOST PROFITS OR ANY OTHER DAMAGES, COSTS OR LOSSES ARISING OUT OF LICENSEE'S USE OF THE IMAGES OR OTHERWISE, EVEN IF PR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, COSTS OR LOSSES.

PR'S MAXIMUM LIABILITY ARISING OUT OF OR IN CONNECTION WITH LICENSEE'S USE OF OR INABILITY TO USE THE IMAGES (WHETHER IN CONTRACT, TORT OR OTHERWISE) SHALL, TO THE EXTENT PERMITTED BY LAW, BE LIMITED TO THE VALUE OF THE LICENSE PAID BY THE LICENSEE FOR THE IMAGE(S).

212-758-3420 800-833-9033 fax 212-355-0731

WWW.SCIENCESOURCE.COM

THE REPRESENTATIONS AND WARRANTIES MADE BY PR IN THIS AGREEMENT APPLY ONLY TO THE IMAGE(S) AS DELIVERED BY PR AND WILL BE INVALID IF THE IMAGE(S) IS USED BY LICENSEE IN ANY MANNER NOT SPECIFICALLY AUTHORIZED IN THIS AGREEMENT OR IF LICENSEE IS OTHERWISE IN BREACH OF THIS AGREEMENT.

YOU MAY HAVE ADDITIONAL RIGHTS UNDER SOME STATE LAWS.

# 11 Indemnity

<u>Licensor Indemnity.</u> Provided Licensee is not otherwise in breach of this Agreement and subject to Section 10, as Licensee's sole and exclusive remedy for any breach of the representations and warranties above, Licensor shall defend, indemnify and hold harmless Licensee and its parent, subsidiaries and commonly owned or controlled affiliates and their respective officers, directors and employees from all damages, liabilities and expenses (including reasonable outside attorney fees), arising out of or connected with any actual lawsuit or legal proceeding alleging that PR is in breach of its warranties set forth above. No other indemnification is offered by Licensor under the Agreement

<u>Licensee Indemnity</u>. If Licensee's use of the Image(s) is not authorized by this Agreement, Licensee shall defend, indemnify and hold PR and its officers, directors and employees harmless from all damages, liabilities and expenses (including reasonable attorneys' fees and costs), arising out of or connected with any actual or threatened lawsuit, claim or legal proceeding relating to the use of such Image(s) by Licensee, to the extent that such claim relates to the absence of a release or the Licensee's unauthorized use of the Image(s).

### 12 Unauthorized Use/Retroactive License Fee:

Any use of Image(s) in a manner not expressly authorized by this Agreement or in breach of a term of this Agreement constitutes copyright infringement, entitling PR to exercise all rights and remedies available to it under copyright laws around the world. Licensee shall be responsible for any damages resulting from any such copyright infringement, including any claims by a third party. In addition and without prejudice to PR'S other remedies under this Agreement, PR reserves the right to charge and Licensee agrees to pay a fee equal to five (5) times PR normal license fee for use of the Image(s).

## 13 Miscellaneous.

<u>Notification of Misuse</u>. Licensee will immediately notify PR if it becomes aware or suspects that any third party that has gained access to the Licensed Material through Licensee is wrongfully using the Image(s), in whole or in part, or is violating any of PR's intellectual property rights, including, but not limited to, trademarks and copyrights.

<u>Audit and Compliance</u>. Upon reasonable notice, Licensee shall provide sample copies of Images as used by Licensee. In addition, upon reasonable notice, PR may, at its discretion, either through its own employees or through a third party, audit Licensee's records directly related to this Agreement and use of Image(s) in order to verify compliance with the terms of this Agreement. If any such audit reveals an underpayment by Licensee to PR of five percent (5%) or more of the amount Licensee should have paid for the time period that is the subject of the audit, in addition to paying PR the amount of such underpayment, Licensee shall also reimburse PR for the costs of conducting such audit. Where PR reasonably believes that Image(s) are being used outside of the scope of the license granted under this Agreement, Licensee shall, at PR's request, provide a certificate of compliance signed by an officer of Licensee, in a form to be approved by PR.

<u>Jurisdiction and Attorney's Fee</u>. Any and all disputes, with the exception of copyright claims, arising out of, under or in connection with this Agreement, including, without limitation, the validity, interpretation, performance and breach hereof, shall be settled by arbitration in New York, New York pursuant to the rules of the American Arbitration Association. Judgment upon the award

212-758-3420 800-833-9033 fax 212-355-0731

WWW.SCIENCESOURCE.COM

Science Source is a registered trademark of Photo Researchers Inc.

rendered may be entered in the highest court of the forum, State or Federal, having jurisdiction. This agreement, its validity and effect, shall be interpreted under and governed by the laws of the State of New York. If Licensee is an agent for or an employee of a non-U.S. Company but operates in a place of business in the United States or its territories, Licensee expressly agrees that any dispute regarding this contract shall be adjudicated within the United States in the manner described here. Copyright claims shall be brought in the Federal Court having jurisdiction. Licensee agrees to be subject to the jurisdiction of the Federal Court of the Southern District of New York. If PR is caused to present claims or suit as a result of any breach of the above terms set forth, it shall be made whole for such reasonable legal fees or costs by Licensee.

No Assignment. This Agreement is not assignable or transferable on the part of Licensee.

<u>No Waiver</u>. No action of PR, other than express written waiver, may be construed as a waiver of any provision of this Agreement. A delay on the part of PR in the exercise of its rights or remedies will not operate as a waiver of such rights or remedies. A waiver of a right or remedy on any one occasion will not be construed as a bar to or waiver of those rights or remedies on any other occasion.

Entire Agreement: This Agreement and the Invoice contains all the terms of the agreement between PR and Licensee and no term or conditions may be added or deleted unless made in writing and signed by both parties. In the event of any inconsistency between the terms contained herein and the terms contained on any purchase order or other writing sent by Licensee, the terms of this Agreement shall govern.

Last edit: April 10, 2015