



CircumerroStockAgency

## **Contract between Photographer and the Circumerro Stock Agency**

Agreement made this \_\_\_\_<sup>th</sup> day of June, year 200\_,  
by and between \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_.

(hereinafter referred to as “Photographer”) and the Circumerro Stock Agency

(hereinafter referred to as “Agency”)

### **Recitals**

Photographer is engaged in the business of creating photographic images (hereinafter referred to as “Images”). Agency is in the business of arranging for license of such images to interested clients (hereinafter referred to as “Clients”). Photographer and Agency have determined that it is in their mutual interest to enter into this Agreement whereby Agency shall represent certain Images of Photographer for license to Clients upon the terms and conditions, which are set forth herein.

### **1. Grant of Authority**

- (a) Photographer hereby appoints Agency, and Agency hereby accepts such appointment as Photographer’s agent in respect to the license of Photographer’s Images. As used herein the term “Images” shall be limited to those Images created by the Photographer as shall be delivered by Photographer to Agency and accepted by Agency pursuant to paragraph 3. below.
- (b) Except as may otherwise be provided herein, Agency shall have discretion regarding the terms and conditions of any license of the images.
- (c) Photographer may maintain existing and/or enter into new agent relationships, with the exception of entering into relationships with directly competing agencies.
- (d) Unless otherwise provided, nothing contained herein shall in any way be deemed to prevent the photographer from engaging in assignment photography.
- (e) Unless otherwise provided, nothing contained herein shall in any way be deemed to prevent the photographer from engaging in the sale or license of images directly to Clients.

- (f) The accounts listed on Exhibit "A", attached hereto, shall be deemed "house accounts" and serviced exclusively by Photographer for all purposes, and all fees attributable to "house accounts" shall be Photographer's sole and exclusive property.
- (g) Agency may not transfer any all or part of the rights to an image, nor provide an "exclusive" to an image unless granted prior approval by Photographer.
- (h) Agency acknowledges that it will not license the use of any single image for less than \$50.00 without photographer's prior written approval.

## **2. Term**

- (a) This agreement shall commence as of the date first set forth above and shall continue for a period of 1 years thereafter (the "Initial Period"). Agency shall have the right, at least thirty days (30) prior to the date of expiration of the Initial Period, to notify Photographer of its desire to renew the Agreement for an additional period of 1 year commencing upon the expiration of the Initial Period. Agency shall thereafter have a continuing right, upon thirty (30) days' written notice prior to the expiration of each successive renewal period, to elect to extend the term of the Agreement for a one (1) year period. Notwithstanding the foregoing, Photographer may, upon receipt of any such thirty (30) days' notice, notify Agency of its desire to terminate this Agreement, and the Agreement shall thereafter terminate at the expiration of the then current Term. The Initial Period and each renewal period are collectively referred to herein as the Term.

## **3. Delivery of Images**

- (a) Promptly after the execution of this Agreement, Photographer shall deliver to Agency such images as Photographer deems will further the purpose of this Agreement. Promptly upon receipt of such material Agency will review the same and within thirty days (30) select those images Agency deems appropriate for licensing. Agency will return all unused images to the Photographer at this time.
- (b) All Images kept by the Agency for use pursuant to the terms of this Agreement shall remain the exclusive property of Photographer.
- (c) Agency will maintain a record of all Images supplied to the Agency by the Photographer.

## **4. Obligations of Photographer**

- (a) Photographer will assume all responsibility and expenses for processing exposed film for the purpose of creating Images for use pursuant to the terms of this Agreement.
- (b) Photographer shall accurately caption all Images and affix proper copyright notice in Photographer's name to such Images. Photographer shall indicate those Images for which a "model release" has been obtained. Upon Agency's request, Photographer will deliver a copy of any release to Agency. In the event an Image does not contain a notation concerning the

existence of a model release, Agency acknowledges that no such release shall be deemed to exist and Agency assumes full responsibility for the subsequent use of such Images, and releases and indemnifies Photographer from any and all damages incurred by Agency, Photographer, or third parties in connection with such cases.

## **5. Warranties of Photographer**

Photographer represents and warrants to Agency as follows:

- (a) Photographer is the sole and exclusive owner of the Images and of the right to license such images.
- (b) The Images do not knowingly infringe copyright, trademark, right of privacy, or publicity, and do not knowingly defame any third party.
- (c) Photographer has the right to enter into this agreement and perform Photographer's obligations hereunder.

## **6. Obligations of Agency**

- (a) Agency shall supply a suitable environment for long-term storage, care and retrieval of images, including protection from dust, heat, damp, and overexposure to light.
- (b) Agency shall use its best efforts to license the Images and to maximize the prices received by Agency for same.
- (c) Agency shall diligently and carefully fulfill requests for Photographer's Images so as to avoid loss or damages
- (d) Agency will index Photographers Images such that they can be easily and quickly retrieved for timely fulfillment, while promptly refiling such images to insure ready access for subsequent licensing or renewal.
- (e) Agency shall require, in all agreements with Clients, that Photographer's Images shall be protected by copyright in all uses, pursuant to all applicable law or regulation.
- (f) Agency shall promptly notify the Photographer in the event it discovers unauthorized or infringing use of or damage to any of the images. Upon receipt of such notice, Photographer shall control any legal action and shall notify the Agency as to the manner in which Photographer wishes to proceed in respect of such infringement, loss, or damage. Photographer shall have the right to cause Agency to be joined as a party concerning any litigation concerning the Images. Any recovery from such action, shall, after payment of all costs (including reasonable attorney's fees), be divided, as set forth in Paragraph 7, below.
- (g) Agency agrees to conduct itself in all its dealings with clients in an ethical and reputable fashion.

- (h) Agency acknowledges the Images are of a unique, fragile, and extraordinary artistic nature, which cannot be easily duplicated, and the loss or damage to any such material will result in irreparable harm to Photographer, not readily compensable by monetary reimbursement. Accordingly, Agent will use its best efforts to protect and preserve the Images, and exercise all due care in the handling of the Images.

## **7. Compensation**

- (a) In consideration of the services furnished by Agency hereunder and the performance of its obligations hereunder, Agency shall be permitted to retain 50% percent of all payments received in connection with the license of the Images.
- (b) Photographer is exempt from receiving payments for service and other non-image fees billed to Clients for items such as scanning, shipping and handling, taxes, etc.
- (c) The only permissible deductions from payments are the following:
  - (i) bad debt and other uncollectable sums actually incurred.
- (d) Agency shall provide Photographer with payment (via company check drawn on company account) for the licensing of Photographer's Images on the first day of the month of each calendar quarter, those dates being January 1, April 1, July 1, and October 1.
- (e) Payments will be accompanied by a report showing date of sale, Client, Images licensed, sale price of Images.
- (f) Agency will aggressively pursue payments for outstanding Client balances.

## **8. Retrieval of Images**

- (a) Upon the expiration or termination of the Agreement, Agency shall use all reasonable efforts to promptly retrieve and return to Photographer all Images then in Agency's inventory. In no event should the return of inventoried Images require more than 30 days from the date of expiration or termination, nor more than six months in the case of Images which are in possession by Client(s) at the date of expiration or termination of Agreement. If Images remain in the possession of Client after six months of the date of contract termination, Agency shall provide Photographer with written notification specifically setting forth: (i) Identification of Image; (ii) Name of Client in whom possession of Image(s) is held; (iii) Address of Client.

## **9. Default**

- (a) Agency may be deemed to be in default of its obligations upon any of the following circumstances:

- (i) Breach of any of its representations of warranties contained herein or any other undertaking on its part to be performed hereunder and failure by Agency to cure such breach within ten (10) days after receipt of notice from Photographer specifying same.
  - (ii) Any activity by Agency outside the limited scope of the authorization issued by Agency hereunder.
  - (iii) If a petition of bankruptcy or for reorganization is filed by or against Agency; or if Agency makes an assignment for the benefit of its creditors; or if Agency fails to timely pay its general creditors; or if a receiver, liquidator, trustee, or custodian is appointed for all or a substantial part of Agency's property, and order of appointment is not vacated within thirty (30) days; or if Agency assigns or encumbers this agreement contrary to the terms hereof.
  - (iv) Agency ceases to conduct its business or sells or mergers substantially all of its assets.
- (b) In the event of any act of default as set forth above, in addition to any other remedy Photographer may have, Photographer shall be entitled to immediately terminate Agency's authorization under this Agreement and shall thereupon be relieved of any continuing obligation it may have to Agency. Upon such termination all business activity in respect of the Images shall immediately cease, and Agency will promptly retrieve and deliver to Photographer all Images as required pursuant to paragraph 8 (Retrieval of Images) above.

## **10. Death or Disability of Photographer**

In the event Photographer shall die during the term hereof, or shall become disabled or incompetent, Photographer, or in the case of death or incompetency, the Photographer's personal representative, shall have the right exercisable by sixty (60) days' prior written notice to agency, to cause this agreement and Agency's authorization hereunder to terminate.

## **11. Indemnity**

- (a) Each of the parties hereto agrees to indemnify and hold the other party harmless from and against all final judgements and settlements with consent (hereafter collectively referred to as "Claims") which may arise as a result of a breach or alleged breach of the party granting the indemnity (hereinafter the "Indemnitor") of any representation warranty or undertaking to be performed by such Indemnitor. The party being indemnified (hereinafter the "Indemnatee") shall promptly notify the Indemnitor of any such claim. The Indemnatee shall have the right, but not the obligation, to be represented by counsel of its choice and to participate in its defense at its sole cost and expense. The indemnatee shall not settle any such claim without the prior written approval of the indemnitor.
- (b) Anything to the contrary contained herein notwithstanding, in the event the Photographer is called upon to indemnify Agency pursuant to the foregoing indemnity, Photographer may not be liable for any monetary sums in excess of the share of gross billings heretofore received by Photographer from Agency pursuant to this agreement.

**13. Miscellaneous**

The parties hereto acknowledge that this Agreement is one of agency only and does not constitute an employment agreement. The Agency is acting in the limited capacity of an independently retained agent on Photographer’s behalf.

- (a) Agency may not assign this Agreement without prior written consent of Photographer. Any assignment in contravention of the foregoing prohibition shall be deemed null and void.
- (b) Except as may otherwise be provided herein, This Agreement shall be binding upon and shall inure to the benefit of the respective heirs, executors, administrators, successors, and assigns of the parties hereto.
- (c) This Agreement incorporates the entire understanding of the parties concerning the subject matter contained herein and may not be modified, amended, or otherwise changed in any respect except by a separate writing signed by the party to be changed therewith.
- (d) This agreement and all matters collateral thereto shall be construed according to the laws of the State of Wyoming and Teton County.
- (e) Promotion: The Jackson Hole Stock Agency retains the right to use any images in its collection of the sole purpose of promoting the agency without compensation to photographers.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and date first set forth above.

**Agency:** The Circumerro Stock Agency  
PO Box 4980 Jackson, WY 83001.

Agreed to by: \_\_\_\_\_

**Photographer:** \_\_\_\_\_

**Address:** \_\_\_\_\_  
\_\_\_\_\_

**City, State, Zip** \_\_\_\_\_

**Phone** \_\_\_\_\_

Agreed to by: \_\_\_\_\_



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