

# 香港專業攝影師公會認可攝影工作聘用標準條款和條件

在攝影工作聘用標準條款和條件（「條款和條件」）和隨附的攝影作品特許和聘用標準確認書（「確認書」）的規限下，攝影師就確認書指明的目的、地區、媒介和期限，授予客戶展示、發佈、刊登和複製攝影作品的特許（「特許」）。

## 1. 授予客戶的特許

- 1.1. 「特許」指攝影師在特許文件（「特許文件」指本條款和條件、確認書或其他規管特許的文書）的規限下，就確認書所指明的目的、地區、媒介和期限，授予客戶[展示、發佈和刊登]攝影作品（「攝影作品」包括攝影師製作的、菲林正片、負片、照片、數碼影像或電子或任何其他方式或媒體的影像及包括根據第3.2條製成的創作）的權利。
- 1.2. 攝影作品將按特許文件（以在確認書內的檢視空格上標示的「X」號，表示該項提供為專屬或非專屬性）供客戶作展示、發佈、刊登和複製用途。
- 1.3. 為免生疑問，特許文件所指的複製，包括將平面作品製成立體的複製品以及將立體作品製成平面的複製品；並指以任何實質形式複製該作品，包括藉電子方法將作品貯存於任何媒體。

## 2. 特許的條件

- 2.1. 使用攝影作品的特許起始於攝影師開始進行拍攝工作之日。在悉數付款之前，除非取得攝影師的事先書面同意，否則不得使用任何攝影作品。
- 2.2. 在本文第5條的規限下，未經攝影師事先書面同意，不可將授予客戶的特許轉讓予任何第三方。
- 2.3. 除非特許文件另有明文指明，否則客戶不得竄改、扭曲攝影作品或對其作出其他修改。
- 2.4. 除非為了達成特許的目的，否則客戶未經攝影師事先書面同意，於攝影作品展示、發佈或刊登後，客戶須或促使任何為達成特許的目的直接或間接經由客戶獲得攝影作品的硬本或軟本的第三方（包括製作公司），在切實可行的情況內盡快刪除及銷毀所有攝影作品的硬本及軟本。
- 2.5. 儘管在特許文件中的任何條款，攝影師一直保留為以下目的以任何方式、於客戶把攝影作品公開展示、發佈或刊登後，於全球任何地方使用攝影作品作為個人推廣宣傳的權利：
  - (a) 安排攝影作品參加攝影比賽或競逐獎項，並就該等比賽或獎項的推廣而印發的任何材料中使用攝影作品；
  - (b) 以任何方式推廣攝影師的攝影作品；及
  - (c) 在任何藝廊或其他範圍展出攝影作品。
- 2.6. 除非特許文件另有說明，客戶對任何攝影作品的使用必須附有致謝說明，以確認攝影師的姓名及其對版權的擁有。

## 3. 攝影作品的版權

- 3.1. 除本文件第5條所規定外，特許下的所有攝影作品的版權和產權為攝影師擁有。
- 3.2. 在條款及條件第5條的規限下，茲因攝影作品的版權必定為攝影師所擁有，所以所有經過任何竄改、變更、扭曲或套印攝影作品的版本，既不會造成一個新攝影作品，亦不會產生任何新的版權。
- 3.3. 因履行本聘用條款和條件項下的攝影師必然產生的所有版權，攝影師仍為攝影作品的唯一作者及第一擁有人。
- 3.4. 作為攝影作品的作者，除特許文件項下的權利外，攝影師擁有有關攝影作品的精神權利（「精神權利」包括被識別為作者、反對作品受貶損處理及其他適用法例所賦予的權利）。
- 3.5. 客戶無權享有下列任何一項的產權：
  - (a) 攝影師為支援攝影作品而創造的任何原創或藝術作品；或

- (b) 在攝影師的委託下創造的原創或藝術作品在製作圖樣或繪圖時使用的任何材料；或
- (c) 為支援攝影作品而購買以供使用的任何物品。 - 除非攝影師和客戶另有協議，否則該等物品、材料、原創或藝術作品為攝影師的財產。

#### 4. 使用的限制及收費方法

4.1. 除非客戶及攝影師另有書面協定外，首次授予特許的期限為壹個公曆年，限於一個指定媒介，使用範圍只限於一個指定地區。

(a) 地區之解釋如下：

- (i) 香港特別行政區
- (ii) 澳門特別行政區
- (iii) 台灣
- (iv) 任何一個國家 - 上述(i)至(iv)項，均視為獨立的地區，須分別獨立收費。

(b) 媒介的分類如下：

- (i) 印刷媒介 (例如：報章、雜誌、宣傳冊子等)
- (ii) pop媒介 (例如：旗幟、標貼等)
- (iii) 戶內媒介 (例如：地下鐵路、商場內等)
- (iv) 戶外媒介 (例如：巴士站廣告、車身廣告、外牆廣告等)
- (v) 電子媒介 (例如：互聯網等)
- (vi) 電視及電影媒介

4.1.3. 在第4.1條的規限下，客戶須就增加特許使用期限、地區及媒介支付額外費用，詳細額外費用則按確認書所訂明，而期限、地區及媒介的計算方式則如下：

- (a) 期限 - 增加期限按每壹個公曆年算，不足一公曆年亦作一公曆年計。
- (b) 地區 - 增加地區按第4.1(a)條項下的(i)至(iv)的每一個地區逐一分別計算。
- (c) 媒介 - 增加媒介按第4.1(b)條項下的(i)至(vi)的每一個媒介逐一分別計算。

4.1.4. 如授予特許的(a)期限為永遠及／或(b)地區為全球及／或(c)媒介為無限制，費用則須按照確認書內所訂明。

#### 5. 攝影作品版權的轉讓

5.1. 如特許文件指明客戶悉數支付攝影作品的款項後，該攝影作品的版權會根據特許文件的規定轉讓給客戶，則攝影師須依據特許文件，將攝影作品的全部或部份版權轉讓給客戶。

5.2. 作為轉讓的條件，客戶必須就有關使用轉讓攝影作品的版權所引致的任何責任向攝影師作出彌償。

#### 6. 攝影費和相關開支

6.1. 攝影費（包括按金及餘額）和相關開支應按確認書規定的方式及時間支付。在繳清按金以前，攝影師保留開始工作的權利。

6.2. 逾期繳付的攝影費和相關開支須附加每月2.5厘的利息，並從確認書或發票中指明的到期日起至清償日止按日計算。

#### 7. 夜間和公眾假期的拍攝

7.1. 攝影師可就於委託在星期一至六凌晨零時至上午0600時以及於星期日和香港特別行政區政府刊憲的公眾假期凌晨零時至2359時拍攝的攝影作品，徵收附加費用。

## 8. 海外拍攝工作

8.1. 若拍攝工作在香港特別行政區（「香港」）以外的地區進行，客戶須於攝影師開始任何工作之前支付予攝影師的最少50%的攝影費。客戶須負責支付或償付該等拍攝工作的全部住宿費、差旅費、餐費、保險費及其他相關開支。

## 9. 保險

9.1. 客戶須為攝影師及所有其他每一位參與攝影工作的人員購買保險（包括意外、海外醫療、人身安全、殘疾及財物保險等）。有關保險費用應由客戶負責，而保險金額則由雙方另行議訂。

9.2. 若客戶沒有按照第9.1條履行購買保險的責任，攝影師將可自行購買第9.1條項下的保險，而有關保險費應由客戶負責。在此情況下，客戶不得對攝影師所購買的任何保險提出異議。

9.3. 購買保險的一方須於另一方要求時，出示根據上述第9.1及9.2條所購買的保險單正本作查閱及／或提供該保險單之副本。

## 10. 取消／延期費用

10.1. 預訂一經確認，客戶隨即負上向攝影師悉數付款的責任，而攝影師亦須負上完成委託製作攝影作品的責任。

10.2. 若客戶：

(a) 於預訂的拍攝日前少於48小時內取消預訂，客戶必須支付該項拍攝工作產生的所有相關開支和攝影費的100%的款項；

(b) 在預訂的拍攝日前48小時取消預訂，客戶必須支付該項拍攝工作產生的相關開支的100%和攝影費的50%的款項。

10.3. 若客戶：

(a) 於預訂的拍攝日前48小時內延遲或改變預訂，其後客戶須於原定日期起14天內進行拍攝，否則視作取消論；或

(b) 作出超過14天的延期。 - 則第10.2條所載的付款條款適用。

10.4. 就此第10條而言（第10.3(b)條除外），小時或天並不計算香港政府不時刊登於憲報的公眾假期及公眾假日在內。

## 11. 緊迫的工作時間表

11.1. 若客戶要求在緊迫的時間內提供攝影作品，包括因應客戶的更改要求提前完成攝影作品，而攝影師因期限緊迫而無法進行拍攝或無法修改的已拍攝影作品，攝影師毋須就其未能進行拍攝工作所產生的任何損失或損害承擔責任。

11.2. 客戶須承擔已產生的相關開支(見9.2條)。

## 12. 估計費用的變更

12.1. 攝影費和相關開支的報價表純屬估計，而非確切的報價，並可予以變更。攝影師必須就估計費用的任何變更提請客戶注意。

12.2. 客戶的工作規範如有任何變更，估計費用和相關開支可因而變更，包括超時工作的所有相關費用。

## 13. 天氣情況

13.1. 客戶和攝影師必須在拍攝工作之前議定天氣允許的預訂安排。在客戶確認因天氣惡劣而將拍攝工作取消後，客戶必須向攝影師支付該項拍攝工作產生的所有相關開支及攝影費的100%的款項。

#### **14.無法控制的事件（不可抗力事件）**

14.1. 雙方同意，任何一方無須為因天災、火災、地震、勞工糾紛、戰爭、戰爭法、政府命令、騷亂、革命、傳染性疾病（包括嚴重急性呼吸道綜合症及禽流感）或任何其他超出雙方合理控制範圍的原因（「無法控制的事件」）而導致延遲或不履行特許文件下的責任而負上法律責任。

14.2. 當任何無法控制的事件發生時，各方應通知對方該情況存在的問題，及應與各方研商達成替代安排。在此種情形下，客戶須負責支付應急款項，並盡力保障全體工作人員人身安全；同時，如為海外拍攝者，須盡力保障全體工作人員安全回港。

#### **15.攝影作品的保障**

15.1. 拍攝時應有客戶的代表在場，由該代表負責核准工作。該代表接受該作品，即視為確認攝影師已經滿足拍攝工作的要求。如果在拍攝時並無客戶的代表在場，則攝影師本人所理解的客戶指示及要求將被當作為最終及被接受的。

15.2. 如果攝影師和客戶就攝影作品發生爭議，而經談判後亦未能獲得解決，爭議須提交香港專業攝影師公會，由該會委任具備適當資歷的人士作出仲裁。

#### **16.對客戶的保密責任**

16.1. 如果為攝影目的而傳達給攝影師的任何材料或資料須予保密，客戶必須明確通知攝影師。攝影師必須將任何該等機密材料或資料作絕對保密，除非該項攝影工作違反香港特別行政區之法例。

#### **17.承包商的責任**

17.1. 客戶負責清付所有付款（包括延期償付的費用），並履行其對任何就拍攝工作提供任何產品或履行任何服務的人士（「承包商」）所負的任何其他義務。

17.2. 如客戶要求攝影師代表客戶與承包商安排並訂立合同，攝影師即為擔任客戶的代理人。攝影師應收取確認書指定的附加款項作為代理費。客戶須就攝影師因擔任客戶的代理人而產生的所有費用、相關開支和其他義務，向攝影師作出彌償。

#### **18.照片許用和批准**

18.1. 如果攝影師安排及／或訂約模特兒，攝影師須負責取得任何必需的模特兒許可。

18.2. 如果客戶安排及／或訂約模特兒或工作場地，客戶須負責取得所有相關批准，包括但不限於攝影師按規定進行確認書所述工作的任何相關工作場地的進入權及／或照片拍攝權，並須就此有關各方面使攝影師不受損害。

18.3. 客戶須負責就客戶使用所授特許有關的攝影作品的版權取得所需的許可及豁免（如模特兒許可、精神權利和私隱豁免）。

#### **19.聘用模特兒的費用**

19.1. 如客戶要求經攝影師安排向模特兒代理公司聘用模特兒，客戶除需負責支付一切與聘用模特兒相關的費用外，並須向攝影師支付模特兒代理公司總收費之10%為攝影師之代理費。

19.2. 就攝影作品的使用而言，所有未經或超出模特兒代理公司同意的地區、媒介、期限及／或用途相關或引致的責任（包括金錢方面的責任），攝影師恕不負責。攝影師及模特兒代理公司保留追究責任的權利。

19.3. 為免生疑問，第17條項下的承包商責任適用於此19條，即承包商的涵義包括模特兒及模特兒公司在內。

## **20. 侵犯知識產權的彌償**

20.1. 在攝影師不知情的情況下，客戶須就任何為客戶製作的非法或具誹謗性的攝影作品，以及對任何人士的知識產權的任何侵犯所產生的任何索賠、費用或開支等，客戶須向攝影師作出全數彌償。客戶須負責取得合法使用任何第三方知識產權作品所必需的所有授權、批准、使用許可或其他方式的批准。

## **21. 客戶財物和供應的材料**

21.1. 凡持有客戶或客戶的代表提供給攝影師的所有財物和材料，相關風險由客戶承擔，對該等物資的保險，攝影師一概不承擔責任。

21.2. 客戶須支付攝影師因處理或貯存客戶或客戶的代表所提供的物資而收到的任何款項。完成攝影後，客戶可把物資留於攝影場地最多七日，期間攝影師可收取相關費用。七日期屆滿後，則視作客戶自動放棄該等物資論，攝影師可全權負責處理該物資。攝影師亦可向客戶索取處理物資的相關費用。

## **22. 攝影師毋須為損失承擔責任**

22.1. 攝影師毋須為下列各項負責（除非因攝影師的不誠實或疏忽所導致的）：

- (a) 因攝影作品的完成有任何延遲而導致的任何損失或損害；
- (b) 任何利潤損失；
- (c) 任何性質的間接或繼起損失；
- (d) 因攝影師或其僱員的任何疏忽而直接或間接產生的任何損失；或
- (e) 任何第三方責任。

## **23. 對攝影師責任的規限**

23.1. 攝影師就客戶因特許所產生或與之有關的事項而蒙受的任何及所有費用、損失或損害（不論此等費用、損失或損害如何發生）而須向客戶承擔的併合責任，不超過客戶就該項工作支付給攝影師的收費的全部價值。

## **24. 口頭確認**

24.1. 若客戶並無簽署確認書，客戶對委託攝影師製作攝影作品的口頭或行動上的確認將被視為有效的及最終的，而有關特許文件亦被視為對雙方具有法律效力及約束力。

## **25. 特許的終止、處理和延期**

25.1. 特許於確認書指明的期限屆滿時自動終止。

25.2. 客戶如欲繼續使用特許，必須以書面形式通知攝影師，然後另行商議延期使用特許的費用。

## **26. 可分割性**

26.1. 如果特許文件的任何條文被任何具司法管轄權的法院裁斷為無效、失效或不可強制執行，該項條文須從特許文件分割。特許文件的其餘條款應繼續維持完整的効力及作用，但特許文件須由各方合理地修改，以不違反法律為原則，以滿足各方在簽訂該項被分割的條文時的原意。

## **27. 進一步保證**

27.1. 各方須作出及簽立或促成作出及簽立所有為使特許生效而合理需要的行為、事情、文件和事宜。

## **28. 語言**

28.1. 若特許文件的中英文版本的任何條文或條件有任何矛盾，則以中文版本為準。

## **29. 管轄法律和司法管轄權**

29.1. 特許文件受香港的法律管轄，並須據其解釋。就特許文件所產生或與之有關的任何法律程序，各方特此不可撤回地願受香港法院的[非專屬]司法管轄。

## **30. 其他**

30.1. 特許文件構成各方有關特許的主題事項的全部協議，並取代在這方面的所有先前協議。

30.2. 如果特許文件和其他文件的規定互有抵觸或互不一致，則以特許文件為準。

30.3. 特許文件的任何變更，除非以書面作出並經各方或其代表簽署，否則概為無效。

30.4. 未能行使或延遲行使特許文件項下的一項權利或補救措施，概不構成對該項或可其他權利或補救措施的放棄。對特許文件項下任何權利或補救措施的一次或部分行使，概不妨礙對該項權利或任何其他或補救措施的進一步行使。

30.5. 除特許文件明文規定者外，特許文件的權利或補救措施為累積性，並不排除法律規定的任何權利或補救。

## **31. 保留權利**

31.1. 凡攝影師並無於特許文件具體或明示授予客戶的權利均由攝影師保留。

## **STANDARD PHOTOGRAPHIC TERMS AND CONDITIONS OF ENGAGEMENT APPROVED BY THE HONG KONG INSTITUTE OF PROFESSIONAL PHOTOGRAPHERS LTD.**

Subject to this standard photographic terms and conditions of engagement (“Terms & Conditions”) and that of the Standard Photographic Licence and Engagement Confirmation attached (“Confirmation”), the Photographer grants to the Client a licence (“Licence”) to display, publish, distribute and copy the Photographic Works for the purposes, territories, media and time period specified in the Confirmation.

### **1. LICENCE GRANTED TO CLIENT**

- 1.1. “Licence” means the rights to display, publish and copying the Photographic Works for the purpose, territories, media and time period specified in the Confirmation (“Photographic Works” includes films, negatives, prints, digitised images or images in electronic or any other form or medium produced by the Photographer and those new creations made pursuant to clause 3.2) granted by the Photographer to the Client under the Licensing Documents (“Licensing Documents” means this Terms & Conditions, Confirmation and other documents governing the Licence).
- 1.2. The Client shall be supplied with the Photographic Works for displaying, publication, distribution and copying on the basis of the Licensing Documents, marked by ticking the checkbox as either Exclusive or Non-exclusive.
- 1.3. For the avoidance of doubt, for the purpose of the Licensing Documents, copying shall mean reproducing the work in any material form, which includes storing the work in any medium by electronic means and the making of a copy in 3 dimensions of a 2-dimensional work and the making of a copy in 2 dimensions of a 3-dimensional work.

### **2. CONDITIONS OF LICENCE**

- 2.1. The Licence to use the Photographic Works begins from the date of commencement of work by the Photographer. No use may be made of any Photographic Works before full payment is made unless the Photographer’s prior written consent is obtained.
- 2.2. Subject to clause 4 herein, the Licence granted to the Client must not be assigned to any third party without the Photographer’s prior written consent.
- 2.3. Unless otherwise specified in the Licensing Documents, the Client shall not manipulate, distort or make other alterations (including overprinting by text or by other Photographic Works) to the Photographic Works.
- 2.4. The Client shall or shall procure any third party which acquired, directly or indirectly, any hardcopy or softcopy of the Photographic Works through the Client in the course of accomplishing the purpose of the Licence to, erase or destroy all hardcopy and softcopy of the Photographic Works as soon as practically possible after displaying, publishing, distributing or copying such Photographic Works, except when it is done within the purpose of the Licence or with the Photographer’s prior consent.
- 2.5. Notwithstanding any clauses the Licensing Documents, the Photographer always retains the right to use the Photographic Works in any manner and in any part of the world after displaying, publishing, distributing or copying of such Photographic Works for the purposes of:
  - (a) Entering the Photographic Works into photographic competitions or awards and for their use in any material published in connection with promoting such competitions or awards;
  - (b) promoting the Photographer’s Photographic Works in any manner; and
  - (c) Displaying the Photographic Works at any art galleries or other premises.
- 2.6. Unless otherwise indicated in the Licensing Documents, use of any Photographic Works by the Client must be accompanied by an adjacent credit line acknowledging the Photographer’s name and ownership of the copyright.

### **3. COPYRIGHTS IN THE PHOTOGRAPHIC WORKS**

- 3.1. Except as provided for under clause 5 herein, the copyright and proprietary rights in all Photographic Works under the Licence belong to the Photographer, and the Photographer shall remain the sole author and first owner of the Photographic Works.
- 3.2. Subject to clause 5 herein, while the copyright in the Photographic Works must remain with the author, the Photographer, all photographic works created from any manipulation, alternation, distortion or overprinting shall result neither in another photographic work nor any new copyright.

- 3.3. With respect to the copyright works which result from or arising from or in connection with the Photographer's performance of his obligations under the Licencing Documents, the Photographer shall be the author and the first owner of such copyright works.
- 3.4. As the author of the Photographic Works, the Photographer shall have, other than the rights under the Licensing Documents, all Moral Rights ("Moral Rights" includes the right to be identified as author or director, right to object to derogatory treatment of work and other rights given by other applicable laws) related to the Photographic Works.
- 3.5. The Client is not entitled to any property in:
  - (a) any authored or artistic works created by the Photographer to support the Photographic Works, or
  - (b) any materials used for the creation of an authored or artistic work, as a result of plans or drawings, which are commissioned by the Photographer, or
  - (c) any acquisition of goods for use in supporting the Photographic Works. - Such goods, materials, authored or artistic works shall remain the property of the Photographer, unless otherwise agreed between the Photographer and the Client.

#### **4. LIMITATIONS ON AND FEES FOR THE PHOTOGRAPHIC WORKS**

- 4.1. Except as agreed in writing otherwise, the territories, media and time period specified for the initial grant of Licence shall be one calendar year, one medium and one territory.
  - (a) The meaning of territory is as follows:
    - (i) The Hong Kong S.A.R. ("Hong Kong")
    - (ii) The Macao S.A.R
    - (iii) Taiwan
    - (iv) any one country - Each of (i) to (iv) above shall be regarded as an independent territory.
  - (b) Media are classified as follows:
    - (i) Printed media (e.g. newspaper, magazines, brochures etc.)
    - (ii) POP media (e.g. flags, signs, labels etc.)
    - (iii) Indoor media (e.g. MTR, malls etc.)
    - (iv) Outdoor media (e.g. bus stop and panel advertisements, external wall advertisements etc.)
    - (v) Electronic media (e.g. internet etc.)
    - (vi) Television and movie media
- 4.2. Subject to clause 4.1 herein, Client shall pay additional fee for extending the time period, territories or media for the Licence. Details of the fee shall be stipulated in the Confirmation while time period, territories and media are treated in the following manner:
  - (a) Time period - Each additional time period shall be one calendar year, and part of a year is regarded as a complete calendar year.
  - (b) Territory - Each additional territory as listed as (i) to (iv) under clause 4.1(a) herein shall be regarded as an independent and separate territory.
  - (c) Media - Each additional medium as listed as (i) to (v) under clause 4.1(b) herein shall be regarded as an independent and separate medium.
- 4.3. For Licence granted (a) with perpetual time period, (b) worldwide and/or (c) with unlimited media, the relevant fee shall be stipulated in the Confirmation.

#### **5. ASSIGNMENT OF COPYRIGHTS IN PHOTOGRAPHIC WORKS**

- 5.1. Where the Licensing Documents specify that copyright in the Photographic Works on the basis of the Licensing Documents is to be assigned to the Client in consideration of the Client's full payment for such Photographic Works, the Photographer assigns to the Client all or a part of the copyright in Photographic Works pursuant to the Licensing Documents.
- 5.2. As a condition of this assignment the Client shall indemnify the Photographer in respect of any liability to the Photographer arising from any use of the assigned copyright material.

## **6. PHOTOGRAPHER'S FEES AND RELEVANT EXPENSES**

- 6.1. Photographer's fees (including deposit & balance) and relevant expenses are payable in the manner and at the times as stipulated on the Confirmation. The Photographer reserves always the right to commence work before payment of deposit.
- 6.2. Interest at the rate of 2.5% per month calculated on a daily basis, shall be charged on any unpaid amount from the due date [specified on the Confirmation or invoices] until settlement.

## **7. NIGHT AND GENERAL HOLIDAYS SHOOTS**

- 7.1. Additional fee may be levied for commission of Photographic Works between midnight and 0600 hour on Mondays to Saturdays and between midnight and 2359 hour on Sundays and general holidays as is gazetted by the government of Hong Kong.

## **8. OVERSEAS SHOOTING**

- 8.1. Where a shooting is to take place out of territory of the Hong Kong, the Client shall pay at least 50% of the Photographer's fee before the Photographer commences any work. The Client shall be responsible for payment or reimbursement of all expenses in connection with such overseas shooting, including accommodation, traveling, food & beverages, insurance and other relevant expenses.

## **9. INSURANCE**

- 9.1. Client shall take out insurance in respect of the Photographer and each crew member taking part in the production of the Photographic Works (including accident, overseas medical, personal safety, disability and property insurance). All relevant insurance premium shall be borne by the Client, and the insured sum shall be determined between the parties.
- 9.2. If the Client did not perform its obligation of taking out insurance coverage under clause 9.1 herein, the Photographer may take out such insurance under clause 9.1 himself. Under such circumstances, the Client may not dispute over any matter of the insurance taken out by the Photographer.
- 9.3. Upon the request of either party, the other party shall make available the original of the insurance policies for inspection by and/or provide copies of the same to the party making such request.

## **10. CANCELLATION / POSTPONEMENT FEES**

- 10.1. When a booking is confirmed as definite, the Client becomes liable for the full payment to the Photographer and the Photographer becomes liable to complete the Photographic service.
- 10.2. Where the Client cancels the booking:
  - (a) within 48 hours of the booked shoot day, the Client must pay 100% of all relevant expenses incurred for that shoot and 100% of the Photographer's fees,
  - (b) 48 hours before the booked shoot day, the Client must pay 100% of all relevant expenses incurred for that shoot and 50% of the Photographer's fees.
- 10.3. Where the Client postpones or changes the booking:
  - (a) within 48 hours of the booked shoot day, such shoot must be carried out within the next 14 days, failing which, such shoot shall be regarded as a cancellation; or
  - (b) for more than 14 days, - clause 10.2 shall apply.
- 10.4. For the purpose of this clause 10 (save and except 10.3(b)), hours and days shall not include general holidays and public holidays as gazetted by the Government of Hong Kong from time to time.

## **11. URGENT WORK**

- 11.1. Where the Client demands Photographic Works on an urgent basis, including where the Client requests for production of Photographic Works ahead of the original agreed deadline and the Photographer is unable to carry

out a shoot or correct a shot because of such urgent deadline, the Photographer shall not be liable for any losses or damages arising out of the inability to carry out a shoot but shall bear all relevant expenses that have already been incurred.

11.2. The Client shall bear all relevant expenses that have been incurred (clause 9.2).

## **12. CHANGE OF FEE ESTIMATE**

12.1. Statements of fees and relevant expenses are estimates and not firm quotations and are subject to alteration. The Photographer must bring to the Client's attention of any change to the estimate.

12.2. Any change to the job specifications made by the Client may alter the fee estimate and Disbursement, including all expenses relating to working overtime.

## **13. WEATHER CONDITIONS**

13.1. weather-permitting booking must be agreed between the Client and Photographer prior to the shoot. Upon confirmation by the Client of any cancellation of a shoot due to bad weather, the Client must pay the Photographer all expenses incurred and 100% of the Photographer's fee which was to be charged for the shoot.

## **14. UNCONTROLLABLE EVENTS (FORCE MAJEURE)**

14.1. It is agreed that neither party shall be liable for delay or failure to perform any of obligations under the Licensing Documents if such delay or failure is due to acts of god, fire, earthquake, labour dispute, war, martial law, government order, riot, revolution, outbreak of epidemic diseases (including SARS and avian flu) or any other cause beyond the reasonable control of the parties hereto ("Uncontrollable Events").

14.2. On the occurrence of any Uncontrollable Event, each party shall inform the other the problem of the existence of such condition and shall discuss with each other to arrive at some alternative agreements. Under such circumstances, the Client must be liable to pay all amounts as required to meet the emergency, and shall exercise its best endeavour to safeguard the personal safety of all crew members; in addition, the Client shall, when in the case of an overseas shooting, exercise its best endeavour to escort all crew members back to Hong Kong.

## **15. GUARANTEE AS TO PHOTOGRAPHIC WORKS**

15.1. A representative of the Client should be present and such at the shoot and such representative is responsible for approving the work. Acceptance of the work by this representative deems to be the Client's confirmation that the Photographer has satisfied the requirements of the shoot. Where there is no representative at the shoot, the Photographer's own interpretation of the Client's instructions and requirements shall be deemed to be conclusive and acceptable to the Client.

15.2. If there is a dispute over the Photographic Works which is unresolved after negotiations between the Photographer and the Client, the dispute shall be referred to the Hong Kong Institute of Professional Photographers who shall then appoint suitably qualified persons to conduct an arbitration.

## **16. CLIENT CONFIDENTIALITY**

16.1. The Client must advise the Photographer if any material or information communicated to the Photographer for the purpose of the photography is confidential. The Photographer must keep any such confidential material or information strictly confidential, except wheresuch work under the engagement is in violation of the laws of Hong Kong.

## **17. RESPONSIBILITY FOR CONTRACTORS**

17.1. The Client is responsible for settling all payments (including rollover fees) and fulfilling all other obligations to person(s) who supply any product or perform any service in respect of the shoot ("Contractors").

- 17.2. Where the Client requests the Photographer to arrange and enter into contracts with Contractors on behalf of the Client, the Photographer acts as agent for the Client and charge an additional sum as agent's fee as stated in the Confirmation. The Client shall indemnify the Photographer against all costs, relevant expenses and other obligations arising from the Photographer acting as an agent for the Client.

## **18. PERMITS AND APPROVAL**

- 18.1. Where the Photographer arranges and/or contracts models, the Photographer is responsible for obtaining any necessary model releases.
- 18.2. Where the Client arranges and/or contract models or shooting venue, the Client shall be responsible for obtaining all relevant approval, including but not limited to, the right of access and/or the right of photo shooting in any place where the Photographer is required to carry out his job described in the Confirmation and shall hold the Photographer harmless in all respects in relation thereto.
- 18.3. It is the responsibility of the Client to obtain all permits and approvals (e.g. model releases and moral rights and privacy waivers) necessary for the use of assigned copyright in the Photographic Works by that Client.

## **19. ARRANGEMENT FEE FOR ENGAGING MODELS**

- 19.1. Should the Client request the Photographer to arrange for models with model agencies, in addition to being liable to pay for all fees related to the engagement of models, the Client shall pay to the Photographer 10% of the total invoiced sum payable to the model agencies as arrangement fee.
- 19.2. In respect of the Photographic Works, the Photographer shall not be responsible for any liability (including monetary liabilities) in relation to or arising from the use of Photographic Works outside the territories, media and time period as agreed by the models or model agencies. The Photographer and model agencies hereby reserve all rights thereunder.
- 19.3. For the avoidance of doubts, responsibility of contractors under clause 17 herein applies to this clause 19, that is, models and model agencies are within the meaning of contractors.

## **20. INDEMNITY FOR BREACHES OF INTELLECTUAL PROPERTY**

- 20.1. The Client shall fully indemnify the Photographer against any claims, costs, or expenses arising out of any illegal or defamatory Photographic Works produced for the Client and any infringement of any intellectual property right of any person. The Client is responsible for obtaining any authorisation, clearance, licence or other form of approval necessary for the lawful use of any third party intellectual property works.

## **21. CLIENT PROPERTY AND MATERIALS SUPPLIED**

- 21.1. All property and material supplied to the Photographer by or on behalf of the Client are held at the Client's risk and the Photographer takes no responsibility for the insurance of such material.
- 21.2. The Client must pay any sum charged by the Photographer for handling or storing material supplied by or on behalf of the Client. The Client may leave the material at the shooting scene for a maximum of 7 days after shooting during which time the Photographer may charge fees in relation thereto. Upon expiry of the 7 days, all material shall be deemed to be abandoned by the Client and the Photographer shall have the absolute right of disposal thereof. The Photographer also charges the Client for all costs for disposal of the material.

## **22. PHOTOGRAPHER NOT LIABLE FOR LOSSES**

- 22.1. Photographer shall not be liable for (other than that caused by the dishonesty or negligence of the Photographer):
- (a) Any loss or damage caused by any delay in the completion of the Photographic Works;
  - (b) Any loss of profits;
  - (c) Any indirect or consequential loss of whatever nature; or
  - (d) Any loss arising directly or indirectly due to any negligence on the part of Photographer or its employees.
  - (e) Any third party's liability

## **23. LIMITATION OF THE PHOTOGRAPHER'S LIABILITY**

23.1. The Photographer's aggregate liability to the Client for any and all costs, loss or damage suffered by the Client, howsoever caused, arising out of or in connection with the Licence and/or this terms and conditions, shall not exceed the full value of the Photographer's fee payable by the Client for that job.

## **24. VERBAL CONFIRMATION OR CONFIRMATION BY CONDUCT**

24.1. Where the Client did not sign the Confirmation, all verbal confirmation or confirmation by conduct in respect of the engagement of the Photographer to produce Photographic Works shall be deemed to be effective and final, and all relevant Licensing Documents shall be deemed to be legally effective and binding upon the parties.

## **25. TERMINATION, TREATMENT AND EXTENSION OF LICENCE**

25.1. The Licence shall be terminated upon the natural expiry of the expiry date as stated on the Confirmation.

25.2. Should the Client wish to continue to use the Licence, it must notify the Photographer in writing of such intention and period of extension and the licence fee thereof shall be determined through further negotiation between the parties.

## **26. SEVERABILITY**

26.1. If any provision of the Licensing Documents is found invalid, void or unenforceable by any competent authority, such provision shall be severed from the Licensing Documents and the remaining provisions of the Licensing Documents shall continue in full force and effect. The Licensing Documents shall, however, be amended by the parties in such reasonable manner so as to achieve, without illegality, the intention of the parties with respect to that severed provision.

## **27. FURTHER ASSURANCE**

27.1. Each party shall do and execute or procure to be done and executed all necessary acts, deeds, documents and things as may be reasonably necessary to give effect to the Licence.

## **28. LANGUAGE**

28.1. If there is any conflict between a term or condition of the English and Chinese versions of the Licensing Documents, then the [Chinese] version shall prevail.

## **29. GOVERNING LAW AND JURISDICTION**

29.1. The Licensing Documents shall be governed by and construed in accordance with the laws of Hong Kong and the parties hereto hereby irrevocably submit to the [non-exclusive] jurisdiction of the Hong Kong courts in relation to any proceedings arising out of or in connection with the Licensing Documents.

## **30. MISCELLANEOUS**

30.1. The Licensing Documents constitute the entire agreement between the parties relating the subject matter hereto and supersede all previous agreements in this regard.

30.2. If there is any conflict or inconsistency between the provisions of the Licensing Documents and other documents, the Licensing Documents shall prevail.

30.3. No variation of the Licensing Documents shall be valid unless it is in writing and signed by or on behalf of each of the parties.

30.4. The failure to exercise or delay in exercising a right or remedy under the Licensing Documents shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies. No single or partial exercise of any

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right or remedy under the Licensing Documents shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.

- 30.5. Except as expressly provided in the Licensing Documents, the rights and remedies contained in the Licensing Documents are cumulative and not exclusive of any rights or remedies provided by law.

### **31. RESERVATION OF RIGHTS**

- 31.1. All rights not specifically and expressly granted to the Client by the Licensing Documents are reserved to the Photographer.