



Dear Tangible Media Contributor,

Please find attached a review of the Tangible Media 'Standard Terms of Engagement – Photography' as conducted by Clendons, legal counsel for the AIPA.

We would encourage you to read this document in its entirety before deciding whether or not to accept the Tangible Media contract. It is vital that you understand your obligations under this agreement, and the implications that may arise as a result of working under what the AIPA considers to be **extremely onerous** terms.

While the Tangible Media contract provides that you own the copyright in your Work (Clause 4), the license on which the Work is provided to the publisher, Image Centre Holdings (ICH), is practically unlimited. The Tangible Media contract leaves the photographer with virtually no usage rights whatsoever, which will negate any future revenue-earning capacity for the images created.

Even more concerning is the fact that the Tangible Media contract places all liability for any misuse of the photos with the photographer, even though that photographer has absolutely no control over how the images will be used by ICH, its subsidiaries, or any other person/company that ICH chooses to sub-licence or transfer the image rights to.

Please take particular note of the following items, which summarise the opinion of the AIPA on this contract:

- The Tangible Media license allows indiscriminate **worldwide** publication in **any format** (including online media) by Image Centre Holdings, its subsidiaries, **or any other person/company** that ICH chooses to sub-licence or transfer the image rights to (Clause 5). Usage is not limited to publication in New Zealand, or in the publication for which a photograph was taken. This includes unlimited future **advertising use, without payment of any additional fee**. [NB: Advertising rates for photography should be *significantly* higher than editorial rates.]
- The Tangible Media contract provides that ICH has the **exclusive** right to use the all of images created for an **unlimited** period of time (Clause 5). Therefore ICH can prevent you from re-licensing the photos to anyone, for any purpose, at any stage in the future. This effectively negates any future revenue-earning potential the images may have brought to your business.
- Clause 1 (and Clause 19c) of the contract provides that the these Terms of Engagement would **retrospectively apply to all work previously supplied** to ICH, potentially negating any rights retained by you when shooting work for Tangible Media in the past. This is an *extremely* inappropriate way of acquiring unlimited image usage rights.

- Clause 8 of the contract provides that ICH **does not have to pay** for your work unless it is accepted for publication. For example, this means that Tangible could engage you to complete a shoot then choose to reject the photos (at their sole discretion) for failing to meet their “Story Brief”. As a result they would not have to pay you, even if your work was of an exceptional quality. Alternatively they could force you to reshoot the assignment again at your expense.
- Although Clause 10 implies that ICH will pay you an additional reuse fee when a photo is used in a separate publication, the same clause also states that Tangible can choose not to pay you a reuse fee at their entire discretion. So not only is the amount of any reuse fee uncertain (Clause 2), Tangible may unreasonably refuse to pay a reuse fee altogether.
- By accepting this contract you will be waiving important moral rights (Clause 14). Note that moral rights include the right of a photographer not have his or her work subjected to **derogatory treatment**. Under this agreement you will have no control over how or where your images will be used (either initially or in the future), and you consent to editing and publishing of your work by Tangible Media (or persons/companies authorised by ICH) in ways which may infringe any moral rights in the works. Proper and fair industry agreements protect your moral and intellectual property rights, and your ability to recover losses where they are breached – this contract does the opposite.
- You are expected to provide extensive warranties (Clause 12) that your works will not infringe the law or rights of any other person - including the commercial and privacy rights of your subjects. This is despite the fact that you have no control over how or where the photos will be used, and often no control over the subject matter of the photos you are requested to shoot.
- You are also expected to provide an indemnity to ICH (and all its subsidiaries) both against breach of the warranties (Clause 13) and all costs and expenses that they might incur due to your work. This is despite the fact that Tangible Media accepts virtually no responsibility for your losses, and expects an indemnity for warranties even though you cannot legitimately provide such warranties – essentially putting you in a position where you are liable to ICH for an **unlimited sum** for any costs/losses, even where the losses in question may be beyond your control.
- Additionally, the Tangible Media contract omits important clauses that should normally be found in an engagement agreement. For example there are no clauses which detail the various parties rights and obligations with regard to:
 - changes to fee estimates;
 - client confidentiality;
 - late payment charges;
 - cancellation or postponement fees;
 - weather conditions and weather insurance;
 - damage to/misuse of your intellectual property;
 - damage to your reputation by Tangible Media;
 - preservation of electronic rights information (e.g. metadata);
 - creation of derivative works from your Work;
 - your right to terminate the contract and/or license to use a Work.

It would be fair to say that these 'Terms of Engagement' represents one of the most unjust and one-sided contracts ever encountered by the AIPA. In our view Tangible Media obtains extraordinary benefit under this contract while photographers are denied basic rights and burdened with unreasonable responsibility for inadequate compensation.

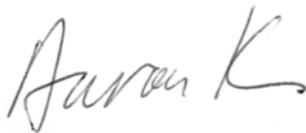
Please remember that as an independent freelance photographer you have the right to determine the terms and conditions under which your business operates. Furthermore, you are not an employee of Image Centre Holdings and therefore it is completely unreasonable for them to treat you as such, which is essentially what their contract seeks to do by failing to allow for you to charge for cancellations/postponements, assert your moral rights, or allow you to take advantage of future licensing opportunities.

Protecting your rights will enable the long term viability and growth of your business, preserve an archive available for your future use or stock availability, and ensure that editorial photography has a future in New Zealand.

It is for these reasons that the AIPA strongly recommends that professional photographers refuse to work under the Tangible Media 'Standard Terms of Engagement – Photography' and instead implement fair and reasonable terms and conditions that will protect both the client and the photographer. Please continue to use the AIPA Standard Photographic Terms and Conditions of Engagement (available as a free download from the AIPA website). We advise you to licence your work in a fair and reasonable manner that reflects the fees being offered in return.

For the sake of your own business, and the industry at large, we strongly urge you to say **no** to this **very bad deal**.

Best regards,

A handwritten signature in black ink, appearing to read "Aaron K". The signature is fluid and cursive, with a large initial 'A' and 'K'.

Aaron K
AIPA Executive Director

TANGIBLE MEDIA

STANDARD TERMS OF ENGAGEMENT - PHOTOGRAPHY

- 1 **Acknowledgement:** The Photographer acknowledges that all Photos and Services supplied or submitted by the Photographer to the Company will be governed by these Terms, including any Photos or Services taken or provided to the Company before the date the Photographer first received these Terms.

This clause provides that the Tangible Terms would retrospectively apply to all work previously supplied to Tangible by the Photographer, potentially cancelling any rights that the photographer had previously contracted for in their terms and conditions of engagement. This is reiterated in Clause 19(c) below. If you do not accept these terms, you should make it clear that these terms do not apply, and advise which terms and conditions apply to your work (e.g. AIPA Standard Photographic Terms and Conditions).

- 2 **Definitions:** In these Terms:

“Company” means Image Centre Holdings Limited and all its subsidiaries;

“Fees” means the fees set out in the relevant Story Brief;

Normally a photographer's terms of engagement will allow for reasonable variance in fees (e.g. the AIPA Standard Terms and Conditions Clause 7 provides that any change to job specifications by the client may result in a change to fee and costs estimates, but that the Client will be informed of an increase of more than 10%). Due to the “fees” definition, and the inflexible Story Brief provisions in Clauses 9 and 18, usual fee protections for photographers are not found in this contract.

“Infringement Claim” means any infringement or potential infringement of any copyright in any of the Photos, or any claim, legal proceeding or other action that is brought by a third party alleging that any of the Photos infringes a third party's intellectual property or other rights;

“Photographer” means the person named as the photographer in the Story Brief;

“Photos” means the photographic works described in the relevant Story Brief;

“Publication” means any magazine, print, digital and any other medium, whether that medium exists now or in the future;

“Reuse Fee” means for editorial use \$NZ50 per photo, or the standard Reuse fee that the Company has in place at the time the relevant Photo is reused; means for advertorial use the fee negotiated between the Photographer and the Company with reference to the advertiser in question;

This provision does not allow for the negotiation of a fee greater than \$50 per photo where the photo is used for editorial use. In addition to being inflexible, this may also cause loss to photographers for historical works, because Clause 1 gives this contract retrospective effect. Where a photographer has taken an editorial photo pursuant to a prior agreement that provides for a higher reuse fee, that fee would be reduced by these terms, and the photographer would now only be entitled to the bare \$50 fee.

Additionally, the “standard Reuse fee that the Company has in place at the time the relevant photo is used” could be changed at any time without notice to the photographer, and could be even less than the bare \$50 currently stipulated.

Under Clause 10 of this Agreement, the Reuse Fee is only payable when Tangible Media – in its discretion – decides the re-use fee is due. Tangible Media may completely refuse to pay a reuse fee.

“Services” means the photography and related services described in the Story Brief;

“Shoot” means the time(s), date(s) and location(s) for the creation of the Photos specified in the Story Brief, as may be amended by written agreement of the parties;

It may be unrealistic to expect that the shoot locations, dates and times will only be varied by written agreement, rather than oral agreement.

“Story Brief” means the story brief describing the details of the Photos and Services to be provided by the Photographer to the Company. The story brief may specify the relevant publication, the expected publication date, the deadline for delivery of the Photos, the Shoot details and any other requirements of the Company for the Photos or Services; and

“Terms” means these Standard Terms of Engagement – Photography, as may be amended by the Company from time to time.

Because Clause 1 provides that these “Terms” will apply retrospectively, this clause purports to allow ICH/ Tangible Media to change this contract without the Photographer's knowledge or consent, and for those changes to also have retrospective effect. This is an unusual and extraordinary clause, of doubtful legal effect.

3 **Shoot:**

- (a) In consideration of the Fees, the Photographer will create the Photos at the Shoot, and provide any other Services needed to deliver the Photos to the Company by any deadline in the Story Brief. The Photographer will ensure that all Photos meet all of the requirements of the Story Brief, including any requirements as to the shot list, delivery format, size of the Photos, image resolution, delivery of thumbnails to accompany the Photos, and
- (b) The Photographer will follow all reasonable instructions given by the Company in relation to the Shoot, the Photos or the Services.

4 **Photographer to own copyright:** The Company acknowledges that the Photographer will own all copyright in and to the Photos. However, the Company will own the physical medium (if any) upon which the Photos are delivered. Risk and title to such physical medium will pass to the Company on delivery.

While this agreement technically provides that the copyright is retained by the photographer, the rights conferred upon Tangible Media/ICH are very broad, with virtually no copyrights retained by the photographer (see comments below).

Additionally, due to the restricted definition of 'Photo' in Clause 2 above, this copyright retention clause may not cover works that fall outside the description "in the relevant Story Brief".

5 **Exclusive licence to the Company:** The Photographer now grants to the Company an exclusive, perpetual, irrevocable, transferable and sub-licensable right to use and copy the Photos and any part of them, as the Company sees fit, including by using the Photos in any publication made at anytime, anywhere in the world and in any medium.

This license to the work is extremely broad, including:

- This photographer cannot grant any other licenses to any other party to use their photographic works;
- Tangible Media / ICH may grant further licenses to use the Photos to anyone they choose – this sublicense right is unusual as there are no controls or restrictions on the use (see also Clause 19(e) below).
- Tangible Media/ICH can continue to use a photographer's images then re-use them in any publication in the future, (this includes, international, online, and advertising use);
- Even where photographs were taken for editorial purposes, they may be used for any advertising purpose, without further payment of license fees;
- The licence allows for worldwide publication in any Tangible Media / ICH publication, including online publications, and also publications by third parties. It is not limited to use in the publication for which a photograph was taken (Clause 4). It is not restricted to a certain type of publication, and therefore, even if a photographer were to license a photo that is intended for one specific magazine, that same photo could be used online, in numerous magazines by Tangible Media / ICH, and even for advertising purposes.
- See comments on Clause 7 also (below).

6 **Use of the Photos by the Company:** The Photographer expressly agrees that the rights granted to the Company include the rights to:

- (a) use and reuse the Photos in print, digital and any other medium, whether that medium exists now or in the future;
- (b) edit, change, crop, enlarge, alter, manipulate, distort, digitise, reproduce and copy the Photos; and
- (c) print, publish, transmit, market, distribute, sell, and sub-licence the Photos, as the Company sees fit.

Although it may be necessary for Tangible Media / ICH to modify images in order to make them publishable, it is worth noting that this clause (in combination with the perpetual license) means that a photographer has very little control over how the Work will be edited or used (either initially or in the future).

7 **Use of the Photos by the Photographer:** Where the photos were commissioned for a specific issue of a publication they are embargoed from any other use by the Photographer until the off-sale date of that publication. If the Photographer wants to use any of the Photos for its own purposes (whether for marketing, awards, exhibitions or in its own publications) it may do so without the Company's consent; however, if the Photographer wants to permit anyone else to use any of the Photos for any purpose, then they will not do so without the Company's prior written consent. The Photographer will also not assign, transfer, licence or otherwise deal with the copyright in any of the Photos without the Company's prior written consent.

This clause (combined with Clause 5, and other contents) effectively usurps the photographer's copyright (which appears to be a token gesture). Tangible Media / ICH has reserved rights over all of the main

copyright entitlements held by the photographer. It is very unusual for a copyright owner to face a perpetual restriction on dealing with his or her own property.

- 8 **Acceptance or rejection:** Within 7 days of receiving the Photos, the Company will advise the Photographer whether the Photos are accepted for publication, or rejected. The Company may reject the Photos if any of them do not meet the requirements of the Story Brief or any other requirements of these Terms. If the Company rejects any of the Photos, the Company may at its discretion:
- (a) require the Photographer to promptly remedy the Photos at the Photographer's cost, and the Photographer will immediately follow the Company's instructions in relation to remedying the Photos;
 - (b) reject the Photos, in which case no Fees will be payable to the Photographer for the Photos; or
 - (c) engage a third party to create new replacement photos, in which case the Fees will not be paid to the Photographer, but used to pay the third party for creating the new photos.

Most industry contracts, including the AIPA Standard Terms & Conditions (Clause 16.1), would instead allow Tangible Media / ICH to reject work where it is of an unsuitable technical quality, adequately protecting Tangible Media / ICH's interests.

9 **Payment and taxes:**

- (a) The Photographer acknowledges that the Fees and Reuse Fees are fixed and no other amounts will be paid by the Company in relation to the Photos or the Services now or in the future, except as expressly provided in clause 9(d) or 10.

This does not provide for late payment interest, which is a normal clause in a contract for services.

- (b) The Photographer will send an appropriate tax invoice for the applicable Fees at the time specified in the Story Brief. The Company will pay all undisputed Fees at the time specified in the Story Brief.
- (c) The Company may withhold or make a deduction from the Fees or Reuse Fees:
 - (i) if any of the Photos or Services are not provided in accordance with the Story Brief or these Terms; or
 - (ii) if required to do so by law for withholding tax, or any other applicable taxes, charges or duties.
- (d) All costs and expenses relating to the Shoot or creating the Photos will be the responsibility of the Photographer, unless the Story Brief expressly states that the Company will reimburse the Photographer for any such costs and expenses.

Photographers will need to take care when deciding to accept a "Story Brief" to ensure that all relevant expenses are recorded.

- (e) All sums payable to the Photographer under these Terms:
 - (i) exclude any GST, sales tax or value added tax which, where applicable, will be payable by the Company, provided that the Photographer has previously provided an appropriate tax invoice; and
 - (ii) will be paid in New Zealand dollars to the credit of a bank account specified by the Photographer.

- 10 **Payment of Reuse Fee:** In addition to the Fees, the Company will pay the Reuse Fee to the Photographer, each time the Company itself uses a Photo in a separate publication. The Company will be entitled to determine whether a Reuse Fee is payable under this clause 10 in its entire discretion. As an example (but without limiting the Company's rights under this clause 10), a Reuse Fee will be paid if a Photo is later published in a different the Company publication to that described in a Story Brief, but not paid if a Photo from a printed publication was also published in an online version of that publication.

The Company will be entitled to determine whether a Reuse Fee is payable under this clause 10 in its entire discretion.

Not only is the amount of any reuse fee uncertain, Tangible Media may unreasonably refuse to pay a reuse fee (refer comments on Clause 2, above). Most industry terms of engagement would ensure that a photographer's ongoing right to reuse fees (and the amount of those fees) are certain. This agreement does not.

- 11 **Confidentiality:** The Photographer will maintain as secret and confidential, all information provided by the Company or relating to the Shoot, the Photos or the Services, and will not disclose such information except as necessary to enable it to perform the Services. The Photographer's obligation of confidence does not apply where the information becomes publically available or if the Photographer is required by law to disclose the information.

- 12 **Warranty:** The Photographer warrants that:

The warranties in Clause 12 are very broad, often outside of the photographer's control (particularly given the very broad terms of the license under this contract, and the fact that Tangible Media / ICH may choose how to use a photographer's Work), and practically impossible for a photographer to provide in many circumstances. In most industry agreements, photographers would, at most, confirm that some of the warranties are true "to the best of their knowledge", rather than providing such extensive warranties.

- (a) all Photos will be original;
In so far as this relates to copyright, a Work created pursuant to a story brief would normally fulfil the threshold of originality, provided that Tangible Media has not designed the Story Brief to re-create an existing work.
- (b) none of the Photos have been previously published;
This warranty is inflexible, meaning that photographers cannot relicense photographs/components of photographs to Tangible Media /ICH under this agreement.
- (c) it (or its employee) is the sole author of the Photos;
“Author” is not defined, and this clause does not provide for situations where the photographer is a collaborator/sub licensor etc. This clause may also prevent the subcontracting out of shoots, or the use of contractor assistants.
- (d) all Photos will meet the requirements set out in the Story Brief;
- (e) all Services will be provided in a professional manner using a high level of skill and care;
- (f) it has the full capacity and authority to enter into these Terms, and grant to the Company, the rights described in these Terms;
- (g) it not previously granted, assigned or transferred to any other person, any copyright or other rights in any of the Photos;
This warranty is inflexible, meaning that photographers cannot relicense photographs/components of photographs to Tangible Media /ICH under this agreement.
- (h) each of the Photos, and each use of the Photos by the Company, will not infringe any intellectual property or other rights or interests of any third party; and
This warranty is very broad, and often outside of the photographer’s control, particularly given that Tangible Media / ICH will (a) create the Story Brief, and (b) choose how to use a photographer’s Work.

Additionally, it would be difficult (if not impossible) for a photographer to provide this warranty, particularly where they are working on a shoot organized by Tangible/ICH. Additionally, any third party consents will be very difficult to obtain where the photographer cannot inform those third parties (e.g. models) how the work will be used, given the extensive license that Tangible/ICH seeks to obtain.

It would be imprudent for a photographer to give such a broad warranty where they are working a shoot organized by Tangible Media / ICH, as many aspects are outside of a photographer’s control. A photographer should also limit any warrant to their own acts- e.g. “To the best of your knowledge, no illegal acts have been committed by you in the creation of the Work”.

- (i) none of the Photos are defamatory, obscene or are in anyway unlawful in any country where those Photos are likely to be published.
This warranty is very broad, and outside of the photographer’s control and knowledge (particularly given the incredibly broad nature of the license under this contract, and the fact that Tangible Media/ICH/a third party may choose how to use a photographer’s Work). It is impossible for a photographer to provide this warranty without extensive international legal knowledge, and full details of international publication plans.

It would also be imprudent for a photographer to give such a broad warranty where they are working on a shoot organized by Tangible Media / ICH, as many aspects are outside of a photographer’s control. A photographer should also limit any such warrant to their own acts- e.g. “To the best of your knowledge, no illegal acts have been committed by you in the creation of the Work”.

13 Indemnity: The Photographer will indemnify the Company from and against any and all liability, losses, damages, costs and expenses awarded against, incurred or suffered by the Company, arising out of the non-performance or breach by the Photographer of any of its warranties or obligations under these Terms or any Story Brief.

This clause essentially puts the photographer in a position where he/she is liable to Tangible Media/ICH for any **unlimited sum** for any costs/losses, even where those costs/losses may be beyond a photographer’s control, as they are subject to business and publishing decisions by Tangible Media / ICH, and unrealistic warranties imposed on the photographer.

It is preferable that indemnity is limited to a maximum amount, such as the value of the invoice related to that Work. Such a limit is standard practice in industry agreements, including in the AIPA Standard Photographic Terms and Conditions of Engagement (Clause 20).

14 Moral rights:

- (a) If the Photographer is an individual, the Photographer waives all moral rights arising anywhere in the world in relation to all of the Photos, except for the right to be attributed as the author of the Photos, to the extent permitted by applicable law. The Company will use best endeavours to ensure correct attribution on all uses of the Photos.
- (b) If the Photographer is not an individual, the Photographer will ensure the author of the Photos has waived all of his or her moral rights arising anywhere in the world in relation to all of the Photos, except for the right to be attributed as the author of the Photos, to the extent permitted by applicable law. The Photographer will provide a copy of such waiver to the Company if requested. The Company will use best endeavours to ensure correct attribution on all uses of the Photos.

Although moral rights cannot be transferred, they can be waived: s 107, Copyright Act 1994. However, moral rights may be inalienable in other jurisdictions.

The principal moral rights under Part 4 of the Copyright Act 1994 include:

(i) The right of a Photographer not to have his/her copyright work subjected to derogatory treatment: s99; and

(ii) The right as the creator of a copyright work to be identified: s 94.

Unless Tangible Media/ ICH's use of the work is prescribed, it will not be possible to provide an "informed waiver" of these moral rights. Fundamentally, it is unclear why the photographer is being asked to "waive all moral rights" despite retaining copyright.

15 Other obligations: The Photographer will:

- (a) allow the Company to control, defend, settle and otherwise deal with any Infringement Claim as the Company sees fit;
- (b) assist the Company in relation to any Infringement Claim as requested by the Company, including (without limitation) by allowing the Company to use the Photographer's name in any proceedings; and
While infringement claim clauses are relatively common in intellectual property licences, this paragraph does not require Tangible Media/ICH to bear the Photographer's legal or other costs for participating in the proceedings, which could be significant, nor is there a (usual) requirement for Tangible Media / ICH to preserve the photographer's reputation, to indemnify the photographer, or to act in the best interests of the photographer.
- (c) comply with all laws, regulations, codes of practice and policies applicable to the creation of the Photos or the provision of the Services, including any health and safety policies for any location of any Shoot.
Again, it would be imprudent for a photographer to give such an undertaking unless first given written notice of the Company's health and safety policies prior to each shoot.

16 Termination:

- (a) The Company may terminate the provision of any of the Photos at any time without cause prior to the Shoot;
Cancellation a few hours before the shoot will cause significant loss and should be covered by compensation. Industry standards recognise appropriate compensation for short-notice cancellation.
- (b) The Company may amend these Terms at any time without cause by providing to the Photographer at least 14 days' prior written notice; (refer comments on Clause 2, above)
- (c) The Company may immediately terminate the provision of any of the Photos or these Terms by giving written notice to the Photographer if:
 - (i) the Photographer breaches any of these Terms;
 - (ii) the Photographer is adjudged bankrupt, enters into liquidation or receivership, ceases to carry on business or becomes subject to any other insolvency event;
 - (iii) the Photographer is unwilling, unable or incapable of providing the Services in accordance with the Story Brief; or
 - (iv) the Services are not capable of being performed in the manner anticipated by the Company.The termination provisions should be two-way, allowing the photographer to terminate the agreement also.
- (d) For the avoidance of doubt, if the Company terminates the provision of any of the Photos or the Terms under this clause 15, the Company will not pay any Fees or Reuse Fees to the Photographer.
- (e) Upon termination of these Terms for any reason, clauses 4 to 7, 11 to 16 and 18 will remain in full force and effect.

17 Disputes: If a dispute arises in relation to any of the Photos, the Services or these Terms, the parties will work together in good faith to resolve the dispute. If the parties cannot resolve the dispute within a reasonable time the dispute will, at the election of either party (by written notice to the other party) be determined by arbitration in New Zealand by one arbitrator under the Arbitration Act 1996.

18 Variations: Once a Story Brief has been accepted by a Photographer, it may only be varied by written agreement of both parties. The Company may vary or amend these Terms at any time by giving at least 14 days prior written notice of the variations or amendments to the Photographer. All such variations and

amendments will take effect at the end of the 14 day period, but only in relation to Story Briefs accepted by the Photographer after that date.

The process by which a "Story brief" is "accepted" by a Photographer is not clear.

19 General:

- (a) The parties will perform their obligations as independent contractors to each other. These Terms and the Story Briefs do not create or evidence any partnership, joint venture, agency, trust or employer/employee relationship between the parties.
- (b) The Photographer is responsible for and will pay all taxes (including income taxes), and levies (including ACC or workers compensation) relating to it, or any other person employed or contracted by the Photographer from time to time.
- (c) These Terms and the relevant Story Briefs embody the entire agreement of the parties in relation to the subject matter of these Terms and those Story Briefs, and supersede all prior understandings, communications and agreements between the parties, whether verbal or written.
- (d) In the event of any conflict or inconsistency between these Terms and any Story Brief, the provisions of the Story Brief will prevail to the extent of any conflict or inconsistency.
- (e) The Company may assign, transfer, sub-license or sub-contract any of its rights relating to the Photos or any of its rights or obligations under these Terms as it sees fit.

Tangible Media / ICH may grant further licenses to use the Photos to anyone they choose – this sublicense right is unusual in an intellectual property as there are no controls or restrictions on the use, meaning that few of the benefits of copyright ownership are retained by the Photographer.

- (f) The Photographer may not assign, transfer, sub-license or sub-contract any of its rights or obligations under these Terms without the Company's prior written consent.
- (g) If any provision of these Terms or any Story Brief is held invalid, unenforceable or illegal for any reason, these Terms and the relevant Story Brief will remain otherwise in full force apart from such provisions, which will be deemed deleted.
- (h) These Terms will be governed by the law of New Zealand and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.

Additionally, this Agreement contract omits important clauses that would normally be found in a photographic services licence agreement, for example:

- Changes to fee estimates;
- Late delivery
 - To protect the Photographer, it is generally preferable for delivery dates to be indicative-only, as there are external risks that may need to be taken into account – for example, a shoot may be weather-dependent.
- Confidentiality;
- Late payment charges;
- Cancellation or postponement fees;
- Weather conditions and weather insurance;
- Damage to/misuse of the Photographer's intellectual property;
- Damage to the Photographer's reputation by Tangible Media / ICH;
- Preservation of electronic rights information (e.g. metadata)
- Creation of derivative works from the Photographer's Work;
- Termination of the contract and/or license to use a Work by the Photographer.