

# TriTopics Photo Usage Agreement

This agreement (this "Agreement") shall be binding upon TriTopics and any photographer providing photographs, illustrations, or images to TriTopics. This agreement acknowledges and agrees that TriTopics be bound by the terms and conditions of this Agreement.

## 1. No Sale

TriTopics acknowledges and agrees that this Agreement does not effectuate any sale of the Work for use on any non TriTopics products. Except for the rights specifically sublicensed under this Agreement, TriTopics shall not have any right, title or interest in or to, and in any event shall have no ownership of, the Work, including any copyright and other intellectual property rights.

## 2. Sublicense

Subject to the terms and conditions of this Agreement, the photographer hereby grants to TriTopics a non-exclusive, perpetual, worldwide, non-transferable sublicense to use, reproduce, modify or display the Work an unlimited number of times in the authorized media solely for the right to sell or distribute for sale the Work or any reproductions or modifications thereof, if incorporated or together with or onto any item of merchandise or other work of authorship, in any media or format now or hereafter known. TriTopics shall have no right to grant further sublicenses. TriTopics shall have the right to transfer files containing the Work or permitted derivative works to employees, or have the Work reproduced by subcontractors, provided that such employees and subcontractors agree to abide by the restrictions of this agreement. In the normal course of workflow, TriTopics may also convey to a third party (such as a printer) temporary copies of the Work that are integral to the work product and without which the work product could not be completed. Third parties, employees and subcontractors shall have no further or additional rights to use the Work and cannot access or extract it from any other file provided. TriTopics may create a digital library, network configuration or similar arrangement to allow the Work to be viewed by their employees, partners and clients. TriTopics shall pay to the photographer a sublicense fee of a 10% royalty of sale price of merchandise. Notwithstanding anything to the contrary contained in this Agreement, with respect to electronic formats, TriTopics reproduction, distribution or display of the Work shall be limited to a resolution of 1,000 x 1,000 pixels in website uses (regardless of the resolution of the Work received from the photographer).

For clarification purposes but subject to the foregoing restrictions, it is intended that this sublicense shall permit TriTopics to use, reproduce, distribute or display the Work in connection with design template applications intended for resale and use, reproduce, distribute or display the Work in connection with any goods or services intended for resale or distribution, including, without limitation, mugs, t-shirts, greeting cards, posters or other merchandise.

## 3. Restrictions

Notwithstanding anything to the contrary contained in this Agreement, and without limitation to any aforementioned restrictions, TriTopics acknowledges, agrees and warrants that we shall not:

(a) sublicense, sell, assign, convey or transfer any of its rights under this agreement. Sell, license or distribute the Work or any modified Work as stand-alone files or as part of an online database or any

other database, or any derivative product containing the Work in such way that would allow a third party to download, extract or access the Image as a stand-alone file;

(b) share the Work with any other person or entity except as expressly permitted under this Agreement;

(c) post the Work online in a downloadable format, post the Work on an electronic bulletin board;

(d) use, reproduce, distribute or display the Work (including, without limitation, by itself or in combination with any other work of authorship) in any manner that is libelous or slanderous or otherwise defamatory, obscene or indecent;

(e) incorporate the Work into a trademark or service mark;

(f) take any action in connection with the Work that violates any law, regulation or statute in an applicable jurisdiction;

(g) Use the Work in an editorial manner, without the following credit adjacent to the Image: "© [Photographer's name] / [Name of the agency providing the Image].";

(h) take any action in connection with the Work that violates or infringes the intellectual property or other rights of any person or entity, including, without limitation, the moral rights of the creator of the Work and the rights of any person who, or any person whose property, appears in the Work; or

(i) take any action in connection with the Work that associates it or the creator of the Work, or the persons or property appearing in the Work (if any), with any political, religious, economic or other opinion-based movements or parties; provided however that a Work may be used in connection with such movements or parties if it is made clear (by a written statement appearing prominently alongside the Work) that the Work is being used for illustrative purposes only, and that the creator of such Work, along with the persons and property appearing in such Work, do not necessarily endorse such movements or parties.

## **4. Payments**

As indicated above, TriTopics shall pay to the photographer a sublicense fee of 10% of the merchandise resale price. Payments are made on a quarterly basis through PayPal.

## **5. Ownership and Retention of Rights**

TriTopics acknowledges and agrees that the photographer and/or its licensor retains all rights, title and interest in and to the Work (except for the rights granted pursuant to this Agreement), and that neither title nor any ownership interest in or to the Work is transferred to TriTopics by virtue of this Agreement. The photographer and/or its licensor (as applicable) shall also retain the right to use, reproduce or display the Work solely to demonstrate the Work as part of his or her professional portfolio.

## **6. Representations and Warranties**

In addition to the representations and warranties made by the agreement above, each of photographers and TriTopics hereby represent and warrant that it, or he or she, has the right to enter into this Agreement.

## **7. Indemnification**

TriTopics agrees to indemnify, defend and hold harmless the photographer and its affiliates, and their respective officers, directors, employees, owners, agents, representatives, licensors and (sub)licensees (collectively, "Indemnitees") from and against all claims, expenses (including attorney fees) or other liability arising from TriTopics breach of any of his or her representations, warranties or obligations under this Agreement, and from any and all uses of the Work, including, without limitation, any claims or actions based on infringement or violation of intellectual property rights, libel or slander or other defamation, right of privacy or "false light", right of publicity or blurring or distortion or alteration whether or not intentional. TriTopics shall have the right, in its sole discretion, to control the defense of any claim, action or matter subject to indemnification with counsel of its own choosing.

## **8. Limitations and Disclaimer**

TriTopics agrees that neither the photographer nor its affiliates, nor any of their respective officers, directors, employees, owners, agents, representatives, licensors and (sub)licensees, shall be liable for any damages, whether direct, incidental, indirect or consequential, arising from any use or non-use of the Work, even if such parties have been advised, or advised of the possibility, of such damages.

TriTopics acknowledges that the photographer generally does not have releases for the trademarks, logos or other intellectual property of other parties that may be depicted in some Works. The procuring of such releases is the responsibility of TriTopics.

TriTopics acknowledges that the photographer generally does not have releases from property owners, manufacturers or designers of commercial products such as (without limitation) automobiles, aircraft, packaged products, designer clothing, etc. that are depicted in some Works. It is generally not possible for any stock image library or artist to get blanket releases for such products, but they can often be obtained on a case-by-case basis. The procuring of such releases is the responsibility of TriTopics.

THE WORK IS PROVIDED "AS IS" AND, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

## **9. Term and Termination**

This Agreement shall continue in perpetuity unless terminated in accordance with this Section 9. The photographer may at any time terminate this Agreement with respect to any Work in the event of any breach by TriTopics of any of his or her representations, warranties or obligations under this Agreement. TriTopics may at any time terminate this Agreement. Each of TriTopics and the photographer shall notify the other in the event it, he or she terminates this Agreement. Upon termination of a license for any particular Work, the TriTopics shall immediately cease using such Work, destroy, or upon the request of the photographer to return the Work to him or her, delete or remove the Work from its permises, computer systems and storage (electronic and physical), and shall ensure that its clients and customers do likewise.

## 10. Effect of Termination

Upon the termination of this Agreement, the TriTopics shall cease using the Work and destroy all copies of the Work, and all derivative works and related materials (if any), in his or her possession or control. At the photographer's request, TriTopics shall certify in writing to such destruction of the Work, derivative works and/or related materials. Termination of this Agreement shall not relieve the TriTopics from any payment obligations that may have arisen prior to such termination. The provisions of Sections 1, 4, 5, 6, 7, 8, 10 and 11 shall survive the termination of this Agreement.

## 11. Miscellaneous

This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to any conflict of laws principles. Any legal action, suit or proceeding arising out of or relating to this Agreement shall be instituted in a court of competent subject matter jurisdiction in the federal or state courts of the State of California, and the photographer and TriTopics each submit to the personal jurisdiction of such court and waive any right each might otherwise have to claim lack of personal jurisdiction or inconvenience of forum.

The relationship between TriTopics and the photographer under this Agreement is that of independent contractors. For clarification purposes, the parties are not joint ventures, partners, principal and agent, or employer and employee. Neither party shall have the power to bind or obligate the other in any manner.

TriTopics agrees that he or she shall be responsible for all use, sales, value-added and similar taxes and duties imposed by any governing authority in any jurisdiction in connection with the license granted to him or her under this Agreement.

Except with respect to any trademark rights, all rights and licenses granted by the photographer under or pursuant to this Agreement are for all purposes of Section 365(n) of Title 11 of the United States Code ("Title 11"), licenses of rights to "intellectual property" as defined in Title 11. The photographer agrees that, in the event of commencement of bankruptcy proceedings by or against the photographer under Title 11, the TriTopics, as licensee of such rights under this Agreement, shall retain and may fully exercise all of its rights under this Agreement (including the license granted under this Agreement) and all of its rights and elections under Title 11.

Whenever the context so requires, the singular number shall include the plural and vice versa, and the masculine, feminine and neutral genders shall include each other.

If any term or provision of this Agreement is invalid, illegal or unenforceable, all other terms and conditions of this Agreement shall nevertheless remain in full force and effect.

The underlined headings contained in this Agreement are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement.

Print Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_