

HIGHLANDS AND ISLANDS ENTERPRISE PHOTOGRAPHY TERMS AND CONDITIONS

1 Introduction:

- 1.1 This document set out the terms and conditions on which Highlands and Islands Enterprise ("**HIE**") will purchase Photography Services from the Photographer.
- 1.2 In these terms, some words have particular meanings. These are set out in Clause 15 below.
- 1.3 The following rules of interpretation apply in these terms:
- 1.3.1 A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time, and shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- 1.3.2 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.3.3 A reference to writing or written includes email.

2 Commencement and term

- 2.1 The Contract shall commence upon acceptance of the Photography Commission Form by the Photographer (in accordance with the acceptance methods narrated therein) and shall continue, unless terminated earlier in accordance with its terms, until the Completion Date (the "**Term**").

3 Photographer Obligations

- 3.1 The Photographer will perform the Services and provide the Finished Product(s) to HIE's reasonable satisfaction and will act at all times in a diligent and professional manner.
- 3.2 The Services and Finished Product(s) must conform fully with the requirements set out in the Contract Details.
- 3.3 The Photographer will perform the Services and provide the Finished Product(s) on and by the dates set out in the Contract Details and, where time of delivery or performance is specified in the Contract Details, then the time of such delivery or performance shall be of the essence in the Contract.
- 3.4 The Photographer will not incur any liability on HIE's behalf nor enter into any contracts or agreements on HIE's behalf without its prior approval in writing.
- 3.5 In performing its obligations under the Contract, the Photographer shall:
- 3.5.1 comply with all applicable laws, statutes, regulations and codes in place from time to time;
- 3.5.2 perform the Services with the best care, skill and diligence in accordance with best industry practice;
- 3.5.3 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that its obligations are fulfilled in accordance with the Contract;
- 3.5.4 co-operate with HIE in all matters relating to the Services and the Finished Product(s),

and comply with all of its reasonable instructions;

- 3.5.5 observe all reasonable health and safety rules and regulations and security requirements applicable to the Commission Location; and

- 3.5.6 comply with the Mandatory Policies and ensure that it has the Permissions in place.

- 3.6 HIE may request a change to any of its requirements for the Services or the Finished Product(s) at any time. The Photographer will notify HIE in writing if such change results in a Price increase or decrease and parties will agree the scope of, and charges for, such change in writing.

- 3.7 If, at any time, the Photographer considers its performance of any of the obligations under this Contract may conflict with other relationships or obligations, it must inform HIE of this. HIE may then decide (at its sole discretion acting reasonably) to terminate the Contract immediately by notice in writing and shall be entitled to serve that notice at any time.

- 3.8 The Photographer will ensure that it maintains the Permissions throughout the Term, and shall notify HIE immediately in the event that it loses a particular Permission.

4 Finished Product(s)

- 4.1 The Photographer shall provide the Finished Product(s) to a standard deemed acceptable by HIE, which shall include the following requirements:
- 4.1.1 clean and without marks;
- 4.1.2 clear and in focus;
- 4.1.3 containing correct and up to date meta-data;
- 4.1.4 produced in JPEG's highest quality or resolution; and
- 4.1.5 not containing any branding unconnected to the Commission.

- 4.2 The Photographer shall supply the Finished Product(s) by the Delivery Date(s).

5 Re-scheduling and Cancellation

- 5.1 The Photographer will provide HIE with no less than twenty-four (24) hours' notice if it is no longer able to provide the Services on the Commission Date(s).
- 5.2 Where the Photographer gives notice in accordance with clause 5.1, it shall use reasonable efforts to procure the re-scheduling of the Commission Date(s) which shall be subject to the prior approval of HIE.
- 5.3 In the event that the Commission Date(s) cannot be re-scheduled to the reasonable satisfaction of HIE in accordance with clause 5.2, HIE shall be entitled to terminate the Contract with immediate effect.

6 Price and Payment

- 6.1 The Price for the Services shall be as stated in the Contract Details and shall be deemed to be inclusive of any and all VAT and/or other applicable taxes, all expenses and charges.
- 6.2 No increase to the Price may be made without HIE's prior written consent.
- 6.3 HIE may set off any amount owing at any time from the Photographer to HIE against the Price of the Services payable by HIE to the Photographer.

7 Liability, Loss and Insurance

- 7.1 The Photographer's total liability to HIE shall be limited to the Contractor Liability Cap. Such limit of liability shall not apply to: (i) liability arising under or in connection with Clauses 8 (Intellectual Property Rights); Clauses 10 (Confidentiality); and 11 (Data Protection), and (ii) any claim by any third party arising out of a breach of the Contract by the Photographer.
- 7.2 HIE's total liability to the Photographer shall not exceed the amount payable for Services under the Contract nor include any loss of profits or indirect or consequential losses.
- 7.3 Neither party excludes or limits liability for death or personal injury arising from the breach of duty of such party, fraud or fraudulent misrepresentation, any breach of obligations implied by Section 12 of the Sales of Goods Act 1979, any loss or corruption of data, or any other liability which cannot be excluded or limited by law.
- 7.4 The Photographer will pay to HIE on demand the amount of any loss, costs and expenses which it incurs as a result of its negligence, any breach by the Photographer of the Contract, any infringements of a third party's intellectual property rights or any damage to the property or injury or death caused by the Photographer in the supply of the Services.
- 7.5 During the Term of the Contract the Photographer shall maintain in force insurance policies with reputable insurance companies, against all risks that would normally be insured against by a prudent business person in connection with the risks associated with this Contract (including insurance in respect of equipment and public liability), and to cover the liabilities that may arise under or in connection with the Contract, and shall, on HIE's request, produce both the insurance certificates giving details of cover and the receipt for the current year's premium in respect of each insurance.
- 7.6 Where the Photographer is an individual, upon request by HIE, they shall provide HIE with evidence of their self-employed status. HIE is entitled to assume that the Photographer is self-employed, and the Photographer will make sure that HIE does not have to bear the cost of paying the Inland Revenue or any other Government Department any tax, national insurance or similar payments on the basis that the Photographer is not self-employed.

8 Intellectual Property Rights

- 8.1 All intellectual property rights in the Finished Product(s) shall remain the property of the Photographer.
- 8.2 Immediately on provision of the Finished Product(s) to HIE and in consideration of the Price, the Photographer grants to HIE a non-exclusive, irrevocable, and sub-licensable, licence to use, reproduce, modify and adapt the Finished Product(s) for the full period of copyright in them including all periods of renewal, extension and revival of the copyright and thereafter in perpetuity to enable HIE to publish, distribute, exhibit, alter, use and otherwise exploit the Finished Product(s) whether alone or incorporated in or in conjunction with other works worldwide and in all media whether now known or hereafter devised and for all purposes necessary for the operation of its functions and in accordance with the provisions of Clause 8.3 (the "Purpose").
- 8.3 Without prejudice to the generality of the foregoing, in exercising its rights under the licence granted at clause 8.2, HIE shall be entitled to:
- 8.3.1 sub-licence the Finished Product(s) to its Partners for their own operational purposes, subject to the provisions of Clause 8.5;

8.3.2 sub-licence the Finished Product(s) to third parties who are commissioned by HIE to carry out work on HIE's behalf. HIE shall inform any such third party with whom the Finished Product(s) are shared that they shall not be entitled to use or reproduce the Finished Product(s) out with the purposes of its contract with HIE; and

8.3.3 to utilise the Finished Product(s) in accordance with the terms of the licence in Clause 8.2, in respect of the Projects.

8.4 Except as narrated within Clause 8.3, HIE will not share the Finished Product(s) directly with any third party companies or organisations without the prior written consent of the Photographer.

8.5 HIE shall procure that credit in the following completed form: "© [YEAR OF CREATION] [PHOTOGRAPHER] and Highlands and Islands Enterprise", shall be applied to any Finished Product(s) that is shared with its Partners. Such credit shall be clearly displayed in readable font on such Finished Product(s).

9 Warranties, Undertakings and Moral Rights

9.1 The Photographer warrants and undertakes that:

9.1.1 it shall be the sole owner of the Finished Product(s) with full authority to grant the rights licensed under this Contract;

9.1.2 the Finished Product(s) shall not, to its reasonable knowledge and belief, incorporate any material that infringes the copyright or any other rights of any third party, including any right of confidentiality or privacy, nor contain any obscene, blasphemous or defamatory matter, and its exploitation shall not, to its reasonable knowledge or belief, place any person in contempt of court nor in breach of any provision of any statute;

9.1.3 it shall procure that all persons appearing in the Finished Product(s) shall sign a Model Release Form or in the case of children under the age of sixteen (16) that a parent or guardian does so on their behalf, and it shall provide the completed form to HIE via a secure file transfer;

9.1.4 at the time of delivery it is not aware of any claim by any third party that the Finished Product(s) or any pre-existing material incorporating the Finished Product(s) or included within the Finished Product(s) or the exploitation of the Finished Product(s) by either of party, has infringed or will infringe any rights of any third party and agrees to immediately inform HIE if it becomes aware of any such claim; and

9.1.5 it shall secure all third party permissions and releases necessary to grant the rights licensed to HIE and it has made or will make in a timely manner all payments due to any such third parties necessary to enable HIE to exercise the rights granted to it under this Contract. The Photographer acknowledges that HIE shall not be liable for any such payments.

9.2 The Photographer waives in favour of HIE and all assignees and successors in title all moral rights in the Finished Product(s) to which the Photographer is entitled under the Copyright, Designs and Patents Act 1988 as amended from time to time.

10 Confidentiality

10.1 Each party undertakes that it shall not disclose to any person any Confidential Information concerning the business, assets, affairs, customers, clients or suppliers of the other party, except as permitted by Clause 10.2.

10.2 Each party may disclose the other party's Confidential Information to: its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's Confidential Information comply with this Clause 10 and as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority. Neither party shall use the other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

11 Data protection

11.1 Both Parties shall comply with the Data Protection Legislation and this Clause 11 and shall not by their act or omission cause the other party to breach Data Protection Legislation.

11.2 The parties agree and acknowledge that the factual arrangement between them dictates the classification of each Party as controller in respect of the Data Protection Legislation and each Party agrees to comply with all obligations imposed on a controller under the Data Protection Legislation.

11.3 Each party agrees and acknowledges that limited Personal Data shall be required to be shared between them during the course of this Contract which shall be limited to only that Personal Data which is necessary to be shared for the purposes of this Contract.

11.4 To the extent that either party shares Personal Data with the other party it will ensure that such disclosure is fair, lawful and transparent in the context of the purposes for which the Personal Data is to be processed by the receiving party and otherwise complies with the requirements of Data Protection Legislation.

11.5 The parties shall indemnify and keep indemnified each other in full from and against all claims, proceedings, actions, damages, reasonable costs, fines, expenses and any other liabilities which may arise out of, or in consequence of, any breach of this Clause 11 and / or any breach of the Data Protection Legislation in relation to the provision of the Services.

11.6 Breach by a party of Clause 11 shall be deemed a non-remediable material breach of this Contract and shall entitle the other party to terminate the Contract.

11.7 The provisions of this Clause 11 shall survive termination or expiry of this Contract.

12 Termination

12.1 HIE may tell the Photographer if it thinks the Photographer has breached any of its obligations or warranties under the Contract. If such a breach of Contract is capable of remedy, HIE will give the Photographer an opportunity to remedy it to HIE's satisfaction within fourteen (14) days.

12.2 If the breach cannot be remedied, or if the Photographer fails to do so within the fourteen (14) days, HIE may terminate the Contract in whole or in part immediately by written notice.

12.3 If the Photographer believes that HIE have failed to pay a valid undisputed invoice for sums properly due under the Contract, it should notify HIE in writing. HIE will have

twenty-one (21) days from receiving such notification to assess the Photographer's claim and make payment if appropriate. If HIE has not paid the Photographer's valid undisputed invoice for sums properly due within thirty (30) days of when HIE receives the Photographer's written notification asking HIE to do so, the Photographer may terminate the Contract by written notice to HIE.

12.4 Without affecting any other right or remedy available to HIE, HIE may terminate a Contract with immediate effect, in whole or in part, by giving written notice to the Photographer if:

12.4.1 the Photographer enters into any form of insolvency or bankruptcy proceedings or if HIE believes that it is unable to pay, or if the Photographer ceases to pay, its debts as they fall due;

12.4.2 the Photographer fails to comply with its obligations under Clause 3.5;

12.4.3 the Photographer fails to comply with its obligations under Clause 3.7;

12.4.4 the Photographer suffers a change of Control which has not been pre-approved by HIE in writing; or

12.4.5 the Photographer, as a result of any act or omission, in HIE's sole opinion, causes damage or risk to HIE's reputation.

12.5 Notwithstanding the Term, HIE may terminate the Contract, in whole or in part, at any time by giving the Photographer at least thirty (30) days' notice in writing.

13 Consequences of termination

13.1 On termination or expiry of the Contract the Photographer will provide HIE with a report on the work that it has carried out under the Contract. HIE will pay the Photographer for all work completed in accordance with the Contract unless HIE has terminated the Contract under Clauses 12.1 to 12.4 and HIE will have no further loss or liability to the Photographer.

13.2 On termination of the Contract, the Photographer shall immediately deliver to HIE all deliverables whether or not they are complete, stop using and destroy any Confidential Information of HIE's held in paper or electronic form. Until they have been returned or delivered, the Photographer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

13.3 Termination or expiry of the Contract shall not affect the parties' rights and remedies that have accrued as at termination or expiry including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

13.4 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

14 General

14.1 **Assignment and Subcontracting.** The Photographer shall not assign or subcontract any of its rights and obligations under the Contract without the prior written consent from HIE. If HIE consents to any assignment or subcontracting by the Photographer, the Photographer shall remain responsible for all the acts and omissions of its agents and subcontractors as if they were the Photographer's own.

14.2 Subject to Clause 14.1, any subcontract the Photographer enters must comply with, and incorporate, the following provisions:

- 14.2.1 the subcontract is to be formed between the Photographer and the subcontractor. It should be noted in the subcontract that it is a subcontract by the Photographer under Contract;
- 14.2.2 The Photographer, as the contractor, is required to pay the subcontractor, engaged in connection with the Contract, any undisputed sums within thirty (30) days of receiving a valid invoice; and
- 14.2.3 if the subcontractor has difficulty in securing payment from the Photographer they have the right to refer the matter to HIE. Any complaints relating to late payment should be addressed to the Photographer in the first instance and in the second instance HIE at hieprocurement@hient.co.uk.
- 14.3 **Notices.** Any notice given to the Photographer under or in connection with the Contract shall be in writing and shall be given by hand or sent by first class recorded delivery post to the address shown in the Contract Details. Any notice given to HIE under or in connection with the Contract shall be in writing and shall be sent by email and followed up by first class recorded delivery to HIE's address shown in the Contract Details. Either party can change its address for notices by telling the other in writing. If sent to the correct address, notices shall be deemed given two (2) Business Days after the date of posting.
- 14.4 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this Clause 14.4 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 14.5 **Waiver.** A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.
- 14.6 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 14.7 **Third party rights** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contract (Third Party Rights) (Scotland) Act 2017 to enforce any term of the Contract.
- 14.8 **Variation.** Except as set out in these Terms and Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the parties or their authorised representatives.
- 14.9 **Governing law/Jurisdiction.** The Contract shall be governed by and construed in accordance with the law of Scotland and any court action relating to the Contract will take place exclusively in the courts in Scotland.
- 15 **Definitions**
- 15.1 In these Terms and Conditions, certain words and phrases have defined meanings as set out below:
- "Business Day"** means a day other than a Saturday, Sunday or public holiday in Scotland, when banks in Edinburgh are open for business;

"Commission" means HIE's commission for the Finished Product(s), as per the Contract Details;

"Commission Date(s)" any specific date(s) upon which the Photographer is obliged to undertake the Services, as per the Contract Details;

"Commission Location" means the location of the Commission, as more accurately narrated within the Contract Details;

"Commission Payment" means the description of the charges payable by HIE for the supply of the Services by the Photographer and any specific payment terms which might apply, as per the Contract Details;

"Completion Date " means the later of (i) the date on which the Photographer has successfully completed all of the Services required under the Contract including provision of the Finished Product(s); or (ii) payment by HIE of all Commission Payments due under the Contract;

"Confidential Information" means confidential information directly or indirectly disclosed by a party to the other party in the course of their dealings relating to this Contract, whether before or after the Commission Date, in any medium or format (including written, oral, visual or electronic, and whether or not marked or described as 'confidential') together with all copies, which by their nature are clearly confidential, information of a commercially sensitive nature relating to a party, its employees, officers, clients, suppliers, business, intellectual property rights, assets or operations or which a party has indicated to the other party that, if disclosed by the other party, would be likely to cause a commercial disadvantage or financial loss;

"Contract" means the contract between HIE and the Photographer for the supply of the Services in accordance with the Contract Details and these Terms and Conditions;

"Contract Details" means the specific details of the Commission as set out in the Photography Commission Form;

"Contractor Liability Cap" means 150% of the Price payable for the Services under the Contract;

"Control" has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression Change of Control shall be interpreted accordingly;

"Data Protection Legislation" means all applicable law relating to data protection and the processing of Personal Data from time to time in the United Kingdom applying to a party under this Contract, including (i) the Data Protection Act 2018 (and regulations made thereunder), (ii) the UK GDPR, (iii) the Privacy and Electronic Communications Regulations 2003 (as amended), and (iv) any other applicable law relating to data protection, the processing of Personal Data and privacy in force from time to time and any successor legislation;

"Delivery Date(s)" means the date(s) specified for the provision of the Finished Product(s) to HIE, as specified in the Contract Details;

"Finished Product(s)" means the photograph(s) to be delivered on the Delivery Date(s);

"HIE" means Highlands and Islands Enterprise, established by the Enterprise and New Towns (Scotland) Act 1990 and having their principal office at An Lòchran, 10 Inverness Campus, Inverness, IV2 5NA;

"Mandatory Policies" means HIE's business policies and codes as notified to the Photographer and as updated from time to time;

"Model Release Form" means a form recording an individual's consent for their image to be used by HIE, as provided to the Photographer by HIE from time to time;

"Partners" means the following entities: Cairngorm Mountain Scotland Limited, Wave Energy Scotland (WES), Orkney Research & Innovation Campus (ORIC), HIE Orkney (and any other present or future subsidiaries of HIE), Inverness Campus Owners Association (ICOA), Scottish Development International, Scottish Enterprise, the Scottish Government, South of Scotland Enterprise, Skills Development Scotland, Visit Scotland.

"Permissions" means any licences and explicit consents required for the provision of the Services in accordance with applicable laws and regulations, including, where relevant, land owner permission where operating on private property and registration and appropriate licensing of drones with the Civil Aviation Authority.

"Personal Data" has the meaning ascribed to it in the Data Protection Legislation;

"Photographer" means the individual or entity supplying the Services as per the Contract Details;

"Photography Commission Form" means the form issued by HIE's marketing department containing the specific details of the Commission and which has been agreed by the Photographer;

"Price" means the total amount payable by HIE under the Contract for the Finished Product(s), as per the Contract Details.

"Projects" means the following projects and brands facilitated, managed or administered by HIE or its Partners as part of their public functions: Scottish Land Fund, Inverness Airport Business Park, Northern Innovation Hub, Enterprise Park Forres, European Marine Science Park and Brand Scotland.

"Services" means the photography services to be provided by the Photographer including and resulting in the provision of the Finished Product(s), as more accurately narrated within the Contract Details;

"Subject(s)" means any person who is displayed within the photographs produced under the Contract;

"Term" has the meaning given in clause 2.1; and

"Terms and Conditions" means these terms and conditions set out in clause 1 (Introduction) to clause 15 (Definitions) (inclusive).