

## Wildscreen Exchange

### Donor Terms

Last updated 25 May 2018

#### Background

- (A) Wildscreen Exchange is a web based platform established and operated by the Library in order to enable not-for-profit organisations to use images of the natural world in their conservation communications and campaigns.
- (B) You may submit material to Wildscreen Exchange (i) by uploading it via the Wildscreen Exchange website or (ii) by emailing it to Wildscreen Exchange.
- (C) This document sets out the terms of the agreement between You and the Library relating to the material You submit to Wildscreen Exchange (**the Agreement**) while our [Privacy Policy](#) explains how we collect and use your personal information.
- (D) You wish to appoint The Library to grant third parties licences in respect of the Rights in the Images throughout the Territory in all media.

#### Agreed terms

##### 1 Interpretation

- 1.1 The definitions and rules of interpretation in this clause apply in the Agreement.

**Agreement:** has the meaning ascribed to it in paragraph (C) of the Background section.

**Fees:** the payments to be made under clause 7.1.

**Images:** The still and moving images, that You submit (or are submitted on your behalf) to the Wildscreen Exchange platform at any time, and any other photographic material, including transparencies, negatives, prints or any physical or electronic material including captions and other rights management information.

**Library:** WILDSCREEN incorporated and registered in England and Wales with company number 02206559 whose registered office is at 4th Floor, 36 King Street, Bristol, BS1 4DZ.

**Net Revenue:** means the gross income derived by the Library from the exploitation of the Rights, less:

- (a) any amounts deducted by subagents or licensees;
- (b) expenses paid by the Library; and
- (c) Value Added Tax.

**the Parties:** You and the Library.

**the Rights:** the rights to grant, market, license, sell or assign all rights in the Images, including the rights to grant reproduction rights in the Images for print, motion picture, television, video, cable, computer, radio, cartoon and/or Internet, to make the Images available on electronic equipment, CD-ROM, DVD and other similar media or via the Internet, and to include them in any catalogue, Internet sites or marketing in any form.

**Territory:** the world.

**You:** the person who submits Images to the Wildscreen Exchange platform, including that person's executors, administrators, heirs and assigns or successors in business.

- 1.2 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 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

## 2 **The Images**

- 2.1 The Library may at any time remove from its website any Images which it considers outdated or surplus to its requirements and any such material will no longer form part of the Agreement.

## 3 **Warranties**

- 3.1 You warrant that:
  - 3.1.1 the Images are and will be your original work;
  - 3.1.2 all captions or rights management information pertaining to the Images are and will remain full and accurate;
  - 3.1.3 You are and will remain during the term of the Agreement, the exclusive owner of the whole copyright in the Images;
  - 3.1.4 You are the exclusive owner of the Rights;
  - 3.1.5 You hold all permissions needed for the exploitation by third parties of the Rights, including from subjects or owners of products or property depicted in the Images and/or original clients for whom the Images may have been created;
  - 3.1.6 any exercise by the Library or its licensees of the Rights shall not violate the rights of any third party (including the rights of the subject of the Images), in particular with regard to laws relating to trade marks, copyright, privacy, publicity and defamation within the UK or elsewhere;
  - 3.1.7 You have not entered, and will not enter, into any agreement in respect of the Images which would adversely affect the Rights;
  - 3.1.8 there are and will be no claims by any party in connection with the use or reproduction of any of the Images; and
  - 3.1.9 You have not entered, and will not enter, into any agreement that conflicts with the Library's licensing of the Images.

## 4 **Indemnities**

You will indemnify, defend (at the request of the Library) and hold the Library and its sub-licensees and assigns harmless against any prejudice, damage, liability or costs (including reasonable lawyers' fees) which any of the indemnified parties incur arising from or in respect of any claim that there has been a breach of your representations and warranties in the Agreement. This clause 4 will remain in force after the termination or expiration of the Agreement.

## 5 **Rights**

- 5.1 You hereby appoint the Library as your non-exclusive licensee to exploit the Rights in the Territory in all media whether current or yet to be developed.
- 5.2 Subject to clause 5.3, the Library has full authority to negotiate all terms of commissions and licences and reproduction rights in the Images including the fee, duration and scope of any licence. You authorise the Library to agree to any cropping, manipulation, combining and creation of derivative images and also the negotiation of credit lines. The Library is free to negotiate licences for terms capable of exceeding the duration of the Agreement.

- 5.3 Any licence granted by the Library in respect of any Image will be for non-commercial use only.
- 5.4 For the avoidance of doubt, the Library has the right to scan or make prints or duplicates of any Images and store and deliver them digitally. The Library reserves the right to charge You the cost (plus VAT if applicable) of scanning or making prints or duplicates of your Images any such charge to be agreed with You in advance.

## 6 Appointment

- 6.1 The Library shall act as your independent licensee in respect of the Images and does not act as an agent. The Library will invoice You in respect of all commissions or licences granted.
- 6.2 The Library reserves the right to use subagents or licensees in overseas territories or to sublicense your work through portals or other such electronic agencies and to negotiate commission payable to such agencies.

## 7 Fee

- 7.1 Not all Images submitted will attract a Fee.
- 7.2 Whether a Fee is due will depend on the particular licence under which the Images will be available for users of Wildscreen Exchange.
- 7.3 The Library shall pay You:
- 7.3.1 50% of the Net Revenue; plus
  - 7.3.2 If applicable, VAT at the currently prevailing rate. You must inform the Library whether You are registered for VAT in the United Kingdom and must inform the Library if at any time the position changes.

## 8 Payment

The Library will provide You not later than 30 days after the end of each quarter, with a statement setting out all payments received for use of the Images in the preceding quarter and will pay You all monies due. However, if the amount due is under £100 no statement will be sent or payment made and the amount shall be carried forward, and a payment will be made within 30 days, after the end of the first subsequent quarter in which the total amount due reaches £100.

## 9 Books and records

You or your professionally qualified financial adviser shall be entitled to inspect the books and records of the Library relating only to the Images at the offices of the Library during normal business hours provided You give reasonable written notice of at least seven days to the Library and there is no more than one inspection in any calendar year. The Library shall forthwith pay You any sums found due on such examination.

## 10 Non residence

If You are resident outside the United Kingdom, You and the Library will negotiate with a view to obtaining a certificate of non residence so that any commission payable by the Library to You may be remitted without deduction of income tax or withholding tax. Unless such a certificate is obtained the Library may deduct appropriate withholding tax from all monies paid to You.

## 11 Loss of images

In case of any loss, damage or destruction to any physical Images, any money that is received either by You or the Library by way of compensation, damages or otherwise from any third party shall, after deduction of legal costs and expenses, be shared between the Library and You in the proportions in which Net Revenue is split as specified in clause 7.3.1.

## 12 **Litigation**

Each party shall promptly inform the other of any actual or suspected infringement of copyright, loss of Images, breach of moral rights or other matter giving rise to threat of proceedings or claims or demands in respect of any of the Images. You and the Library shall negotiate in good faith with a view to cooperating in any proposed legal proceedings but the Library shall be under no obligation to institute any legal proceedings nor take steps for the recovery of any fees payable in respect of use of the Images whether permitted or unauthorised.

## 13 **Duration**

13.1 The Agreement shall continue until terminated in accordance with its terms.

13.2 Either party may terminate the Agreement by giving at least 12 months' written notice to the other.

13.3 Either party may terminate the Agreement immediately by notice in writing to the other if the other:

13.3.1 is declared bankrupt or goes into liquidation or receivership or an administrative receiver is appointed over all or any part of its assets or a meeting of creditors is called;

13.3.2 breaches any terms of the Agreement which breach is not capable of effective remedy;

13.3.3 breaches any term of the Agreement which is capable of remedy but which is not remedied within 30 days of the date of the notice specifying the breach and requiring that party to comply with that term.

13.4 Termination of the Agreement shall not prejudice any licences already entered into between the Library and third parties prior to the date of termination.

13.5 After termination:

13.5.1 no further licences shall be granted;

13.5.2 the Library shall return to You by a safe method affording proof of delivery any Images and any scans, prints or duplicates for which You have paid pursuant to clause 5.4 as soon as reasonably practical. The Library will enclose a delivery note detailing and totalling the returned Images and will send a copy of that note by separate post, fax or email. Reasonable endeavours will be made by the Library to return the Images within 12 months of termination;

13.5.3 the Library shall delete any digital Images within 28 days; and

13.5.4 if the Library has scanned or made prints or duplicates of any Images pursuant to clause 5.4 above and has not charged You the cost then it will delete or destroy any such material within 28 days. However, the Library may, at its option, offer such material to You for purchase on payment to the Library of the cost of making the material.

## 14 **Fees after termination**

Following termination for any reason, the Library shall be entitled to be paid by You its share of Net Revenue plus VAT on all exploitations of Rights negotiated during the term of the Agreement or on extensions or renewals thereof, irrespective of whether such income is received during the term of the Agreement or at any time thereafter.

15 **Entire understanding**

The Agreement supersedes any previous agreement, including any previous agreement for use of the Images, between the Parties and constitutes the entire understanding between the Parties and is binding upon them, their executors, successors or assigns. It may not be varied except in writing signed by both Parties.

16 **Disputes and governing law**

The Agreement shall be governed by and interpreted in all respects in accordance with the laws of England and Wales. If any dispute shall arise between You and the Library in connection with or in relation to the Agreement the matter shall be resolved by the courts of England and Wales.