

## CONTENT LICENSE AGREEMENT

This Agreement governs the terms by which you can use photographic images and other publications (“content”) purchased on occasionalclimber.co.nz (the “Site”), or otherwise made available by Carpe Diem 2014 Ltd.

Last Updated: October 2014

### 1. Background of Agreement

(a) By making a purchase from the Site you accept this Agreement and agree to be bound by its provisions. If you are accepting on behalf of your employer, client or other entity that is the account holder, you represent and warrant that you have full legal authority to bind your employer, client or such other entity. If you do not have such authority or you do not accept or agree with these terms, do not make a purchase from the site.

(b) In this Agreement: (i) “you” means you or, if you are accepting on behalf of your employer, client or account entity, then “you” means that employer, client or entity; (ii) the “Site” is occasionalclimber.co.nz; (iii) “Carpe Diem 2014 Ltd” or “we” means the party who owns and operates the Site and all content therein; and (iv) “Content” means any photographic image generated optically, electronically, digitally or by any other means or in any media or other material that you are downloading from the Site, together with any other publications.

(c) In this Agreement, “Editorial Use” means: (i) use in blogs; (ii) use for editorial purposes in magazines, newspapers, and newsletters, but specifically not in advertorials which include brand or product names or where a fee is received from a third-party advertiser or sponsor; (iii) non commercial use relating to events that are newsworthy or of general interest.

### 2. Permitted Uses

Only content expressly identified as purchasable via the site section BUY IMAGES is permitted to be downloaded from the Site, upon confirmation of receipt of payment.

Subject to the Prohibited Uses in Section 4 below and the termination provision in Section 5, Carpe Diem 2014 Ltd hereby grants to you a perpetual, non-exclusive, non-transferable, non-sublicensable, and worldwide right to display, use, reproduce, publish, alter, and manipulate, in an unlimited number of projects, in whole or in part, via any medium, and by whatever means, the Content for any purpose (the “Permitted Use(s)”), except in the case of images identified to be for editorial use only, which are granted to you on a one time use basis. All other rights in and to the Content, including, without limitation, all copyright and other intellectual property rights relating to the Content, are retained by Carpe Diem 2014 Ltd.

### 3. Use Restrictions

Only you are permitted to use the Content, although you may transfer files containing Content or Permitted Derivative Works to your clients, printers, or ISP for the purpose of reproduction for Permitted Uses, provided that such parties shall have no further or additional rights to use the Content and cannot access or extract it from any file you provide. You may install and use the Content on only one computer or other electronic device at a time. You may physically transfer the Content and its archives from one computer or electronic device to another, in which case you may use the Content at the new computer or electronic device instead.

If you require the Content to be in more than one computer or other electronic device or accessible by more than one person within your organisation, you must license the Content from the Site for each such use. You may make one (1) copy of the Content solely for back-up purposes, and you must reproduce all proprietary notices on this single back-up copy.

#### 4. Prohibited Uses

You may not:

use the Content in electronic or digital template applications intended for resale or other distribution, whether on-line or not, including, without limitation, website templates, Flash templates, business card templates, electronic greeting card templates, calendar templates and brochure design templates;

use or display the Content on websites or other venues designed to induce or involving the sale, license or other distribution of "on demand" products (e.g. products in which Content is selected by a third party for customisation of such product on a made to order basis) including, without limitation, postcards, mugs, t-shirts, posters and other items (this includes custom designed websites);

use the Content in connection with any goods or services intended for resale or distribution where the primary value lies in the Content itself including, without limitation, cards, stationary items, paper products, calendars, apparel items, posters (printed on paper, canvas or any other media) or other items for resale, license or other distribution for profit;

use any of the Content as part of a trade-mark, design-mark, trade-name, business name, service mark, or logo;

incorporate the Content in any product that results in a re-distribution or re-use of the Content (such as electronic greeting card web sites, web templates and the like) or is otherwise made available in a manner such that a person can extract or access or reproduce the Content as an electronic file;

use the Content in a fashion that is considered by Carpe Diem 2014 Ltd (acting reasonably) as or under applicable law is considered pornographic, obscene, immoral, infringing, defamatory or libelous in nature, or that would be reasonably likely to bring any person or property reflected in the Content into disrepute. This includes, but is not limited to: the use of Content in pornography; ii) tobacco ads; iii) ads for adult entertainment clubs or similar venues, or for escort or similar services; iv) advertisements for pharmaceutical products, including, but not limited to personal hygiene or birth control products; and v) uses that are defamatory, or contain otherwise unlawful, offensive or immoral content;

If any Content featuring a model or property is used in connection with a subject that would be unflattering or unduly controversial to a reasonable person, you must accompany each such use with a statement adjacent to the Content that indicates that: (i) the Content is being used for illustrative purposes only; and (ii) any person depicted in the Content, if any, is a model, unless the Content itself clearly and undisputedly reflects the model or person in such potentially sensitive subject matter in which case the Content may be used or displayed in a manner that portrays the model or person in the same context and to the same degree depicted in the Content itself;

to the extent that source code is contained within the Content, reverse engineer, decompile, or disassemble any part of such source code;

remove or modify any notice of copyright, trademark or other proprietary right, or any other copyright management information or metadata, from any place where it is on or embedded in the Content;

sub-license, re-sell, rent, lend, assign, gift or otherwise transfer or distribute the Content or the rights granted under this Agreement;

install and use the Content in more than one location at a time or post a copy of the Content on a network server or web server for use by other users;

use or display the Content in an electronic format that enables it to be downloaded or shared in any peer-to-peer or similar file sharing arrangement;

either individually or in combination with others, reproduce the Content, or an element of the Content, in excess of 100,000 times in physical (hard-copy) prints. For the purposes of counting the number of reproductions:

- (a) each printed item (e.g one business card, letter or catalogue) will be one reproduction;
- (b) each online publication (e.g webpage) will be one reproduction;
- (c) each identifiable copy used in décor will be one reproduction; and
- (d) each identifiable copy used in a video, film or broadcast will be one reproduction.

If the Content is reproduced on a social media platform or other third party website, (i) the rights granted herein shall automatically be revoked in the event that the platform website seeks to exploit purported rights to the Content contrary to the terms of this Agreement, and (ii) in such event, upon Carpe Diem 2014 Ltd's request, you shall remove any Content from such platform or website.

## 5. Term of Agreement

(a) This Agreement is effective until it is terminated. You can terminate this Agreement by destroying the Content and any Permitted Derivative Works, along with any copies or archives of it or accompanying materials (if applicable), and ceasing to use the Content for any purpose. The Agreement also terminates without notice from Carpe Diem 2014 Ltd if at any time you fail to comply with any of the terms of this Agreement. Upon termination, you must immediately cease using the Content for any purpose; destroy or delete all copies and archives of the Content or accompanying materials; and, if requested, confirm to Carpe Diem 2014 Ltd in writing that you have complied with these requirements.

(b) Carpe Diem 2014 Ltd reserves the right to elect at a later date to revoke or amend the license granted by this Agreement and replace the Content with an alternative for any reason. Upon notice, sent to the address or contact information provided by you for your member account, or such other address as you may advise us in writing to use, from time to time, of such replacement, the license for the replaced Content immediately terminates for any products that do not already exist, and this license automatically applies to the replacement Content. You agree not to use the replaced Content, or any Permitted Derivative Works, for future products and to take all reasonable steps to discontinue use of the replaced Content, or any Permitted Derivative Works, in products that already exist.

(c) Upon notice from Carpe Diem 2014 Ltd, or upon your knowledge that any Content is subject to a threatened, potential or actual claim of infringement of another's right for which Carpe Diem 2014 Ltd may be liable, you must immediately and at your own expense (i) stop using the Content; (ii) delete or remove the Content from your premises, computer systems and storage (electronic or physical); and (iii) ensure that your clients, printers or ISPs do likewise. Carpe Diem 2014 Ltd shall provide you with replacement Content (which shall be determined by Carpe Diem 2014 Ltd in its reasonable commercial judgment) free of charge, but subject to the other terms and conditions of this Agreement.

## 6. Carpe Diem 2014 Ltd Representations and Warranties

(a) Carpe Diem 2014 Ltd warrants that: (i) your use of the Content in accordance with this Agreement and in the form delivered by Carpe Diem 2014 Ltd will not infringe on any copyright, trademark or other intellectual property right; (ii) YOU ACKNOWLEDGE THAT MOST CONTENT, PURCHASABLE OR NOT, THAT FEATURES SPECIFICALLY IDENTIFIABLE PEOPLE HAS BEEN VERBALLY CONSENTED ONLY. IF YOU HAVE ANY CONCERN ABOUT THIS WITH REGARDS TO YOUR INTENDED USE OF PURCHASABLE CONTENT PLEASE CONTACT CARPE DIEM 2014 LTD (SEE SECTION 10) TO DISCUSS. IN SUCH CASES, YOU SHALL BE SOLELY RESPONSIBLE FOR DETERMINING WHETHER RELEASE(S) IS/ARE REQUIRED IN CONNECTION WITH ANY PROPOSED USE OF THE CONTENT, AND SHALL BE RESPONSIBLE FOR OBTAINING SUCH RELEASE(S).

(b) While we have made reasonable efforts to correctly categorise, caption and title the Content, Carpe Diem 2014 Ltd does not warrant the accuracy of such information. Additionally, Carpe Diem 2014 Ltd does not warrant the accuracy of any metadata that may be provided with the Content.

(c) OTHER THAN AS EXPRESSLY PROVIDED IN SECTION 6(a), THE CONTENT IS PROVIDED “AS IS” WITHOUT REPRESENTATION, WARRANTY OR CONDITION OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED REPRESENTATIONS, WARRANTIES OR CONDITIONS OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. CARPE DIEM 2014 LTD DOES NOT REPRESENT OR WARRANT THAT THE CONTENT WILL MEET YOUR REQUIREMENTS OR THAT ITS USE WILL BE UNINTERRUPTED OR ERROR FREE. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE CONTENT IS WITH YOU. SHOULD THE CONTENT PROVE DEFECTIVE, YOU (AND NOT CARPE DIEM 2014 LTD) ASSUME THE ENTIRE RISK AND COST OF ALL NECESSARY CORRECTIONS.

(d) Certain jurisdictions do not allow the exclusion of implied warranties, so the above exclusion may not apply to you. You have specific rights under this warranty, but you may have others, which vary from jurisdiction to jurisdiction.

## 7. Your Indemnification

You agree to indemnify, defend and hold Carpe Diem 2014 Ltd, its affiliates, its Content providers and their respective directors, officers, employees, shareholders, partners and agents (collectively, the “Carpe Diem 2014 Ltd Parties”) harmless from and against any and all claims, liability, losses, damages, costs and expenses (including reasonable legal fees on a solicitor and client basis) incurred by any Carpe Diem 2014 Ltd Party as a result of or in connection with any breach or alleged breach by you or anyone acting on your behalf of any of the terms of this Agreement.

## 8. Carpe Diem 2014 Ltd Indemnification and Limitation of Liability

(a) Provided that the Content is only used in accordance with this Agreement and you are not otherwise in breach of this Agreement and as your sole and exclusive remedy for breach of the representations and warranties set forth in Section 6 (a) above, Carpe Diem 2014 Ltd shall, subject to the terms of Sections 8(b),(c),(d) and (e) defend, indemnify and hold harmless you, your parent, subsidiaries and affiliates and respective directors, officers and employees from all damages, liabilities and expenses (including reasonable outside legal fees), arising out of or connected with any actual or threatened lawsuit, claim or legal proceeding alleging that the possession, distribution or use of the Content by you is in breach of the representations and warranties set forth in Section 6(a) above. The foregoing states Carpe Diem 2014 Ltd’s entire indemnification obligation under this Agreement.

(b) The indemnification set out in Section 8(a) above is conditioned on your prompt notification in writing to Carpe Diem 2014 Ltd of such claim and our right to assume the handling, settlement or defence of any claim or litigation. You agree to cooperate with Carpe Diem 2014 Ltd in the defence of any such claim or litigation and shall have the right to participate in such litigation at your sole expense. Carpe Diem 2014 Ltd shall not be liable for legal fees and other costs incurred prior to the notice of the claim.

(c) IN NO EVENT SHALL CARPE DIEM 2014 LTD OR ANY OF ITS AFFILIATES OR CONTENT PROVIDERS OR THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, SHAREHOLDERS, PARTNERS OR AGENTS BE LIABLE FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING DAMAGES FOR LOSS OF PROFITS, INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS) IN CONNECTION WITH ANY CLAIM, LOSS, DAMAGE, ACTION, SUIT OR OTHER PROCEEDING ARISING UNDER OR OUT OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION YOUR USE OF, RELIANCE UPON, ACCESS TO, OR EXPLOITATION OF THE CONTENT, OR ANY PART THEREOF, OR ANY RIGHTS GRANTED TO YOU HEREUNDER, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER THE ACTION IS BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OR OTHERWISE. NO ACTION, REGARDLESS OF FORM OR NATURE, ARISING OUT OF THIS AGREEMENT MAY BE BROUGHT BY OR ON BEHALF OF YOU MORE THAN TWO (2) YEARS AFTER THE CAUSE OF ACTION FIRST AROSE.

(d) NOTWITHSTANDING ANY OTHER TERM HEREIN, CARPE DIEM 2014 LTD SHALL NOT BE LIABLE FOR ANY DAMAGES, COSTS OR LOSSES ARISING AS A RESULT OF MODIFICATIONS MADE TO THE CONTENT BY YOU OR THE CONTEXT IN WHICH THE CONTENT IS USED BY YOU.

(e) NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT, THE TOTAL MAXIMUM AGGREGATE LIABILITY OF CARPE DIEM 2014 LTD UNDER THIS AGREEMENT AND ANY OTHER AGREEMENT UNDER WHICH YOU HAVE LICENSED THE SAME CONTENT, REGARDLESS OF THE FILE SIZE, OR THE USE OR EXPLOITATION OF ANY OR ALL OF THE CONTENT IN ANY MANNER WHATSOEVER AND THE OBLIGATION OF CARPE DIEM 2014 LTD UNDER SECTION 8(a) SHALL BE LIMITED TO AN AGGREGATE OF ONE THOUSAND (\$1,000) NZ DOLLARS PER PIECE OF CONTENT. FOR GREATER CLARITY, CARPE DIEM 2014 LTD'S LIABILITY TO YOU IN RESPECT OF THE PIECE OF CONTENT SHALL NOT EXCEED ONE THOUSAND (\$1,000) NZ DOLLARS REGARDLESS OF THE NUMBER OF TIMES THAT YOU LICENSE THE SAME PIECE OF CONTENT FROM CARPE DIEM 2014 LTD.

(f) Some jurisdictions do not allow for the limitation or exclusion of liability for incidental or consequential damages, so the above limitation or exclusion may not apply to you.

## 9. General Provisions

(a) You specifically agree and acknowledge that you have reviewed the terms of this Agreement and you agree to be bound by them. In the event of any inconsistency with any other agreement, the terms of this Agreement shall govern.

(b) Carpe Diem 2014 Ltd's failure to insist upon or enforce strict performance of any provision of this Agreement shall not be construed as a waiver of any provision or right.

(c) This Agreement is personal to you and is not assignable by you without Carpe Diem 2014 Ltd's prior written consent. Carpe Diem 2014 Ltd may assign this Agreement without your consent to any other party so long as such party agrees to be bound by its terms.

(d) No terms or conditions may be added or deleted unless made in writing and either accepted in writing by an authorised representative of both parties or issued electronically by Carpe Diem 2014 Ltd and accepted in writing by your authorised representative.

(e) Upon reasonable notice, you shall provide sample copies of uses of the Content to Carpe Diem 2014 Ltd. In addition, upon reasonable notice, Carpe Diem 2014 Ltd may, at its discretion, either through its own employees or through a third party, audit your records directly related to this Agreement and use of Content in order to verify compliance with the terms of this Agreement.

(f) Any use of Content in a manner not expressly authorised by this Agreement constitutes copyright infringement, entitling Carpe Diem 2014 Ltd to exercise all rights and remedies available to it under copyright laws around the world. You shall be responsible for any damages resulting from any such copyright infringement, including any claims by a third party. In addition to other termination rights hereunder, Carpe Diem 2014 Ltd reserves the right to terminate this Agreement in the event you enter in to this Agreement after having received notice of unauthorised use from Carpe Diem 2014 Ltd relating to the Content.

(g) If all or part of any provision of this Agreement is wholly or partially unenforceable, the parties or, in the event the parties are unable to agree, a court of competent jurisdiction, shall put in place of such whole or part provision an enforceable provision or provisions, that as nearly as possible reflects the terms of the unenforceable whole or part provision.

(h) You agree to pay and be responsible for any and all sales taxes, use taxes, value added taxes and duties imposed by any jurisdiction as a result of the license granted to you, or of your use of the Content, pursuant to this Agreement.

(i) This Agreement will be governed under the laws of New Zealand applicable therein (without reference to conflicts of laws principles). This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. You consent to service of any required notice or process upon you by registered mail or overnight courier with proof of delivery notice, addressed to the address or contact information provided by you at the time the Content was downloaded, or such other address as you may advise us in writing to use, from time to time.

(j) Any and all disputes arising out of, under or in connection with this Agreement, including without limitation, its validity, interpretation, performance and breach, shall be finally and confidentially settled under the Rules of Arbitration of the International Chamber of Commerce by a single Arbitrator appointed in accordance with such rules. The arbitration shall take place in New Zealand, and shall be conducted in the English language. The prevailing party shall be entitled to recover its reasonable legal costs relating to that aspect of its claim or defense on which it prevails, and any opposing costs awards shall be offset. The judgment may be entered on the arbitration award and enforced by any court of competent jurisdiction. Notwithstanding the foregoing, Carpe Diem 2014 Ltd shall have the right to commence and prosecute any legal or equitable action or proceeding before any court of competent jurisdiction to obtain injunctive or other relief against you in the event that, in the opinion of Carpe Diem 2014 Ltd, such action is necessary or desirable. The parties agree that, notwithstanding any otherwise applicable statute(s) of limitation, any arbitration proceeding shall be commenced within two years of the acts, events or occurrences giving rise to the claim.

## 10. Contact

If you have concerns relating to this Agreement, please contact Carpe Diem 2014 Ltd using Contact on the Site, or via phone at 64 21 446 725.

## 11. Acknowledgement

YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND HAD AN OPPORTUNITY TO SEEK INDEPENDENT LEGAL ADVICE PRIOR TO AGREEING TO IT. IN CONSIDERATION OF CARPE DIEM 2014 LTD AGREEING TO PROVIDE THE CONTENT, YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. YOU FURTHER AGREE THAT IT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN YOU AND CARPE DIEM 2014 LTD, WHICH SUPERSEDES ANY PROPOSAL OR PRIOR AGREEMENT, ORAL OR WRITTEN, AND ANY OTHER COMMUNICATION BETWEEN YOU AND CARPE DIEM 2014 LTD RELATING TO THE SUBJECT OF THIS AGREEMENT.