

FREELANCE PHOTOGRAPHY AGREEMENT

This Freelance Photography Agreement (“Agreement”) is made and entered into this _____ day of _____, 201____ (“Effective Date”) by and between Xavier University (“University”), an Ohio nonprofit corporation whose principal address is 3800 Victory Parkway, Cincinnati, OH 45207 and _____ (individually and/or on behalf of a business entity, “Photographer”), an independent contractor whose principal address, phone number, and facsimile number are [street]_____ [city]_____ [state]_____ [phone number]_____ [fax number]_____

In consideration of the covenants and conditions contained in this Agreement and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Purpose.** This Agreement constitutes the standard terms and conditions under which Photographer shall perform photography assignments (“Assignments”) for the University. The specific requirements for each Assignment shall be described on separate assignment sheets (“Assignment Sheet”) in form substantially similar to Exhibit A. Each Assignment Sheet accepted by Photographer and together with the Master Agreement shall constitute the terms and conditions (“Terms”) of each Assignment. The existence of this Agreement does not guarantee any or a certain number of Assignments.

2. **Performance of Assignment Services.**

A. Photographer agrees to perform the photography services and provide all materials, tools, and supplies applicable to the provision of such services (collectively, the “Services”) for each Assignment. Unless otherwise agreed to in writing by the University, Photographer is responsible for all expenses and providing all equipment, lighting, film, props, support staff, studio use or rental, and all other resources necessary to complete each Assignment in accordance with the corresponding Assignment Sheet. Photographer shall arrange for and provide his or her own transportation as required. Time is of the essence in performance of the Services.

B. Photographer shall perform the Services of each Assignment in a professional manner and shall deliver all photographs taken on assignment to the University as either digital files, analog film, or in any other form or media as required by the respective Assignment Sheet. Photographer shall ensure that all recognizable individuals depicted sign a release in the form substantially similar to Exhibit B where required by the Assignment Sheet. Photographer shall submit such photographs together with any releases and any relevant information, including, but not limited to, captions, names,

dates, and location, as required by each Assignment Sheet, to the University by the date as set forth in the respective Assignment Sheet.

C. Unless otherwise authorized by a separate written permission, Photographer is limited to public access areas of the University in performing the Services. This Agreement does not grant Photographer access to any restricted areas, including, but not limited to, dormitories, construction areas, rooftops, catwalks, and any other areas designated by the University as restricted or hazardous.

3. **Terms of Payment.** Following completion of the Services and compliance with all Terms of each Assignment, the University shall pay to Photographer the sum set forth in the respective Assignment Sheet. All taxes and insurance (including worker's compensation insurance, if applicable) of any kind whatsoever are the sole responsibility of Photographer. Should any breach whatsoever of the Terms by Photographer occur, no payment shall be due or owed by the University, and Photographer shall be liable for any and all damages suffered and/or incurred by the University as a result of Photographer's breach. Photographer agrees to provide the University with a completed standard IRS form W-9 prior to receiving payment from the University unless such W-9 is already on file and Photographer's legal reporting status has not changed.

4. **Term.** This Agreement shall commence as of the Effective Date and shall continue until terminated by a party giving thirty (30) days prior written notice to the other party of its intention to terminate the Agreement. Termination or expiration of this Agreement shall not affect any prior licenses or rights previously granted pursuant to this Agreement.

5. **Indemnification and Insurance.** Photographer hereby releases the University, including, but not limited to, all past and present directors, trustees, officers, employees, agents, insurers, attorneys, successors, affiliates, subsidiaries, assigns, licensees, faculty members, and students (collectively, "Affiliates") from any and all claims, including negligence, that may arise out of Photographer's performance of this Agreement, whether foreseen or unforeseen, known or unknown, and Photographer assumes full responsibility for any injuries, damages, or losses that may arise out of Photographer's performance of this Agreement. Photographer hereby agrees to indemnify and hold harmless the University and its Affiliates from any and all liabilities and claims that may arise out of or in connection with (i) photographic use of the campus, students, employees, guests, visitors, and the like, (ii) any actions, whether of omission or commission, that may be committed by Photographer (or any of its directors, officers, employees, agents, affiliates, or subsidiaries, where applicable) in connection with or arising from Photographer's performance of this Agreement, or (iii) any breach by Photographer of any term, condition, or representation contained in this Agreement, whether foreseen or unforeseen, known or unknown, including, without limitation, claims

based on alleged defamation, invasion of privacy, or infringement of copyright, trademark, service mark, or any other intellectual property rights, together with any costs and expenses (including reasonable attorney fees) that may be incurred by the University in defending any such claim. Photographer shall maintain comprehensive liability insurance, through a reputable carrier licensed to do business in the State of Ohio, with minimum limits of \$1,000,000 per occurrence and \$2,000,000 aggregate. Photographer will provide the University with satisfactory proof of insurance prior to providing any Services. Photographer shall immediately notify the University in writing of any lapse, cancellation, or modification of the insurance coverage required herein. The terms and conditions of this Section shall survive expiration, termination, and cancellation of this Agreement.

6. **Representations and Warranties.** Photographer represents and warrants that he or she has the legal right and authority to enter into this Agreement in his or her individual capacity and/or as an officer or authorized representative of the entity contracting with the University for Photographer's services. Photographer represents and warrants that he or she is and shall be the sole author and creator of the photographs, images, videos, and/or any other deliverables created or produced pursuant to the Assignment Sheet (collectively, "Images"), that the Images are original and do not infringe on the rights of privacy or publicity or any statutory or common law copyright, trademark or other intellectual property rights, defame any third party, or violate any other third party right.

7. **LIMITATIONS OF LIABILITY.** The University and its Affiliates shall not be liable to Photographer for any indirect, incidental, consequential, punitive, or special damages arising from or related to conduct or performance of Services under this Agreement, including any injury to any person or damage to any equipment or other property. If, despite Section 7, liability is nevertheless imposed on the University for any reason, such liability shall be limited to the amount of the Services fee, excluding any and all expenses, for the particular Assignment as provided in the applicable Assignment Sheet.

8. **Laws, Rules and Regulations.** Photographer agrees to abide by all policies, rules, and regulations promulgated by the University and all laws, ordinances, rules, orders and regulations of federal, state, and local governments that are applicable in any way to the provision of the Services by Photographer and/or the use of University property. Photographer understands and agrees that any violation of the University's rules and regulations by Photographer shall constitute a material breach of this Agreement.

9. **Copyright.** Unless otherwise provided for in the respective Assignment Sheet, copyright to all the Images shall be held by Photographer with the following restrictions:

A. Photographer grants the University an exclusive, irrevocable, and unlimited right to use, re-use, alter, sell, distribute, publish, re-publish, license, assign, and create derivative works of the Images except that Photographer shall retain the following rights:

- i. Photographer shall have the right to use, re-use, alter, distribute, publish, and re-publish all Images for personal and non-commercial purposes; and
- ii. Photographer shall have the right to use, re-use, alter, sell, distribute, publish, re-publish, license, and assign the Images for editorial purposes. Photographer shall not use, re-use, alter, sell, distribute, publish, re-publish, license, or assign the Images for any other commercial purpose without the written approval of the University. The University reserves the right to deny approval with or without reasonable cause.

B. Photographer shall not use, re-use, alter, sell, distribute, publish, re-publish, license, assign, or create derivative works of any Image in contravention of the University's exclusive rights except as otherwise provided for herein;

C. Photographer agrees that at no time will the University's name, nicknames, trademarks, service marks, logos, symbols, buildings, or unit names be used in commercials, advertisements, or any other publication or broadcast without the University's prior written approval.

D. Photographer is responsible for any use of University students, employees, guests, visitors, and the like in any of Photographer's Images or any other products, and shall obtain releases prior to any use of the name, personal likeness, and images of any University students, employees, guests, visitors, and the like for any non-University use.

10. **Control.** Photographer retains the sole and exclusive right to control or direct the manner or means by which the Services described herein are to be performed. The University retains only the right to control the ends by providing art direction and general instructions to ensure conformity with the Terms of the particular Assignment. Photographer is an independent contractor. This Agreement does not create any agency, employment, joint employer, joint venture, or partnership between Photographer and the University. Neither party will have the right, power, or authority to act for the other in any manner whatsoever. Photographer is responsible for any and all income or other tax liabilities resulting from any payments hereunder.

11. **Choice of Law.** This Agreement, including any exhibit or attachment hereto, shall be construed in accordance with the laws of the State of Ohio, except to

the extent that federal law preempts those laws. The parties hereby agree that any action relating in any manner to this Agreement must be pursued in federal or state court located in Hamilton County, Ohio, and the parties specifically and irrevocably consent to the jurisdiction of such courts.

12. **Assignment and Amendments.** This Agreement may not be assigned by Photographer without the written consent of the University. Any use of agents or subcontractors by Photographer must be approved in advance, in writing, by the University. This Agreement may not be amended by either party except by a written amendment executed by a duly authorized representative of each party. This Agreement shall be binding upon and inure to the benefit of the parties and their respective family members, heirs, executors, administrators, representatives, dependents, successors, affiliates, and assigns.

13. **Drafting and Interpretation.** This document was drafted by counsel to the University and shall not be interpreted in any manner to provide representation or counsel to Photographer. Both parties acknowledge and represent that this Agreement is a result of an arm's length negotiation and any ambiguity that may arise now or in the future shall not be construed against the drafter in favor of Photographer.

14. **Notices.** Any notices pursuant to this Agreement shall be sent by U.S. first class mail to the addresses set forth above, or to such other addresses as either party may designate to the other in writing. Delivery of any notice will be deemed to be effective five days after mailing, or on the date of personal delivery, if applicable.

15. **Severability and Waiver.** If any provision of this Agreement is held invalid or unenforceable by any law or regulation of any government or by any court of competent jurisdiction, such invalidity shall not affect the enforceability of other provisions herein, which shall continue in full force and effect and remain binding upon the parties. Failure by either party to enforce one or more of the provisions contained herein shall not be deemed or construed to constitute a waiver of default or waiver of any other violation or breach of any of the Terms.

16. **Integration.** This Agreement, together with any exhibits, attachments, and Assignment Sheets, supersedes any and all other past agreements, either oral or written, and contains the entire agreement of the parties.

17. **Conflicts.** In the event a conflict arises between the terms and conditions set forth in the main body of this Agreement and any exhibits, attachment, or Assignment Sheet attached hereto, the terms set forth in the main body of this Agreement shall control.

18. **University Identification Card.** If the University provides Photographer with a University identification card, such card shall remain the property of the

University at all times. Photographer warrants that use of the University identification card shall be for official photography business of the University only and shall return the identification card the sooner of immediate demand by the University or the termination of this Agreement.

(Remainder of Page Intentionally Left Blank.)

IN WITNESS WHEREOF, the parties have executed this Agreement on the Effective Date as set forth above.

XAVIER UNIVERSITY

Print Name and Title

Signature

PHOTOGRAPHER

Print Name

Signature