

HARRIS PUBLICATIONS, INC

1115 BROADWAY, NEW YORK, NY 10010 (212) 807-7100

PHOTOGRAPHER AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which hereby is acknowledged, _____ (“Photographer”) and Harris Publications, Inc. (“Harris”) (together, “Parties”) agree that effective _____, 20____ (“Effective Date”) and from time to time, Photographer will create and submit to Harris photographs (“Photographs”) intended for publication by Harris and/or its designees, subject to the following terms and conditions; and the Parties further agree that Photographs that Photographer submitted to Harris prior to the Effective Date (“Pre-Agreement Material”) also will be subject to certain of the following terms and conditions, as further detailed herein:

1. Photographer will create and submit the Photographs in accordance with a written and/or oral work order that identifies, in part, the subject matter, deadlines and compensation for the Photographs (“Work Order”). Photographer will use best efforts to ensure that the Photographs conform to the specifications set forth in the Work Order, and to any other guidelines or requirements for the Photographs provided by Harris (together, “Specifications”). Photographer will use best efforts to submit all Photographs to Harris in publishable quality and on or before the applicable deadlines.
2. Photographer will submit all Photographs to Harris in non-publication form for Harris’ preliminary review and selection. If Harris reasonably determines, in its sole discretion, that the Photographs do not materially conform to the Specifications then Harris may reject the Photographs. If Harris reasonably determines on any other content, form, style, or third party right and/or release-based grounds that the Photographs are not publishable as intended, then Harris may reject the Photographs.
3. If Harris approves the Photographs, Harris will select one or more of the Photographs for potential publication (“Selected Photographs”). Thereupon Photographer will submit the Selected Photographs to Harris in high-resolution publication-ready form, as reasonably requested by Harris. Harris may require Photographer to retouch, crop and/or otherwise modify the Selected Photographs, or Harris may undertake such activity itself and/or through a third party and require Photographer to assist. Photographer will use best efforts to cooperate with all such requirements. Photographer will receive no additional compensation for undertaking said activity or providing said assistance.
4. Photographer will own the copyright to the Photographs and hereby irrevocably grants to Harris a perpetual, worldwide, fully-sublicensable and royalty-free license to use and exploit all Photographs and all Pre-Agreement Material in any and all media, and in connection with any and all products, services and/or other purposes. Such license will be non-exclusive except as set forth in Paragraph 5 of this Agreement. For the avoidance of doubt, Harris’ rights will include and are not limited to: (a) unlimited use of any and all Photographs and Pre-Agreement Material accompanied by articles and/or other Harris magazine editorial content of all kinds, (b) unlimited use of any and all Photographs and Pre-Agreement Material in connection with commercial products which may or may not be branded or co-branded with a Harris magazine title, (c) unrestricted right to grant to third-party media outlets or companies permission to reproduce, display, distribute and otherwise use the Selected Photographs and Pre-Agreement Material in the context of the Harris magazine editorial setting in which they appeared (if any), and (d) unlimited use of any and all Photographs and Pre-Agreement Material for Harris magazine editorial purposes in print, online, electronic and/or digital media, including without limitation for a database, archive and/or compilation of Harris print and online magazines, to accompany new editorial content, for Harris-generated e-mail newsletters, for Harris-generated blogs, and/or for a RSS or other format news feed.
5. Photographer additionally irrevocably grants to Harris the following exclusivity rights: for the period running from Harris’ approval of the Photographs, through three (3) years from the date of first

publication in a Harris print magazine of one or more associated Selected Photographs, if any, ("Exclusivity Period"), the exclusive worldwide right to reproduce, publish, republish, display, transmit and otherwise use all associated Selected Photographs. For the avoidance of doubt, the end of the Exclusivity Period will be measured from the date of publication of a Selected Photograph in a Harris print magazine, if any, and not from the date of publication of a Selected Photograph in any other media and/or for any other purpose. Notwithstanding the forgoing, Photographer may use the Selected Photographs as part of their portfolio but can not resell or relicense the images during the Exclusivity Period.

6. Except as expressly permitted by Harris in writing, all photographs with the same subject matter specified in a Work Order that Photographer creates pursuant to an opportunity obtained through that Work Order will be deemed Photographs and will be subject to the exclusivity and all other provisions of this Agreement.
7. Should Harris seek to use the Photographs and/or the Pre-Agreement Material in a matter not set forth in this Agreement, the Parties agree to negotiate such usage, including without limitation any fee for such usage, in good faith.
8. Any disclosure of Selected Photographs by Photographer, by anyone working for or with Photographer, and/or by any other person for the benefit of Photographer, during the Exclusivity Period will cause Photographer to forfeit in full the compensation specified in the associated Work Order, in addition to any other relief that Harris may seek. Further, in such instance, and notwithstanding its lack of any payment obligation to Photographer, Harris still will receive all rights to the Photographs set forth in this Agreement.
9. Harris may, but will have no obligation to, use Photographer's name, likeness, actual or paraphrased statements and biography (including without limitation professional credits) to identify Photographer as the creator of a Photograph, Selected Photograph and/or Pre-Agreement Material, and/or as a photographer published by Harris. Notwithstanding anything otherwise set forth in this Agreement, and except as otherwise separately agreed to by Harris and Photographer in writing, Harris will have no obligation to publish or otherwise use any Photograph, Selected Photograph and/or Pre-Agreement Material in any way. Photographer waives any right to inspect and/or approve any use by Harris or its designees of a Photograph, Selected Photograph, and/or Pre-Agreement Material.
10. If Harris does not approve the Photographs, and notwithstanding anything otherwise set forth in the Work Order, Photographer will receive no compensation, including without limitation fees or expenses, for the Photographs. In such instance Harris will have no right under this Agreement to use the Photographs in any way. If Harris cancels a photo shoot the day before or the day of a photo shoot, the Parties will negotiate a kill fee which is not to exceed 50% of the compensation specified in the Work Order.
11. Photographer represents and warrants that each Photograph and all Pre-Agreement Material, in whole and in part, is and will be: (a) the original work product of Photographer alone, except for third party material to which Photographer has secured all necessary rights, and/or material in the public domain, (b) not previously published and/or provided to any third party for publication, except for Pre-Agreement Material, and except for third party material to which Photographer has secured all necessary rights and/or material in the public domain; and (c) free from defamatory, obscene, offensive, injurious, unlawful and/or otherwise inappropriate material. Additionally, Photographer represents and warrants that: (d) the use of each Photograph and all Pre-Agreement Material as permitted by this Agreement does not and will not violate or infringe any third party right, including without limitation any copyright, moral right, trademark, right of privacy or publicity, other intellectual property and/or contract right, (e) Photographer has the right to enter into this Agreement and all Work Orders, and to provide the services, grant the rights and assume the obligations set forth in this Agreement and all Work Orders, and that the same will not violate the rights of any third party, and (f) Photographer has not made and will not make any disposition of any copyright or other interest in any Photograph or Pre-Agreement Material, in whole

or in part, that would interfere with the rights granted and obligations assumed by Photographer under this Agreement, and with the full ownership and enjoyment thereof by Harris and/or its designees.

12. Photographer will indemnify and hold harmless Harris and its directors, officers, employees, parents, subsidiaries, affiliates, successors, partners, licensees, agents, independent contractors, assigns and designees from and against all claims, actions, liabilities, damages, costs and expenses (including without limitation reasonable attorneys fees) of any kind arising out of (a) Photographer's breach of any representation, warranty and/or other provision of this Agreement and/or any Work Orders; (b) Photographer's negligence and/or willful misconduct; and/or (c) Harris's use of any Photograph and/or Pre-Agreement Material as permitted by this Agreement.

13. This Agreement, together with all Work Orders, sets forth the entire understanding and agreement of the Parties, and supersedes any and all prior agreements, relating to the subject matter hereof; except, however, that this Agreement will supersede any inconsistent, conflicting and/or irreconcilable terms, and supplement any missing terms, of any and all prior agreements to the limited extent that such terms relate to Pre-Agreement Material, but any and all other terms of such prior agreements that relate to Pre-Agreement Material will remain unchanged and in full effect. All projects entered into by Photographer for Harris after the Effective Date, including without limitation all projects entered into by Photographer pursuant to a Harris-issued Work Order, are expressly governed by and limited to the provisions of this Agreement, and Harris hereby objects to any different and/or additional terms and/or conditions contained in any invoice or other proposal offered by Photographer, unless expressly agreed to by Harris in signed writing. Harris' failure to object to such different and/or additional terms and/or conditions hereafter, or payment to Photographer upon their submission of an invoice, will not be deemed an acceptance of such terms and/or conditions and/or a waiver of this provision. Photographer may not assign any of its rights and/or obligations under this Agreement and/or any Work Order without the prior express written approval of Harris. This Agreement and/or any Work Order may not be modified except in a writing signed by both Parties. A Party's delay or failure to exercise all or part of any of its rights under this Agreement will not constitute a waiver of that right or of any other right. No waiver of any provision of this Agreement will be valid except in a writing signed by both Parties. This Agreement and all Work Orders are binding upon and will inure to the benefit of the Parties' respective successors and permitted assigns. This Agreement and all Work Orders, and all issues related thereto, will be governed by and construed in accordance with the laws of the State of New York, without regard to its choice and conflict of law principles. Any litigation or other legal action between the Parties arising out of this Agreement and/or any Work Order may be maintained only in a federal or state court located in New York County, New York, and the Parties hereby each consent to the personal jurisdiction of and venue in such courts. At all times Photographer will be acting as an independent contractor and not as an employee of Harris and/or its designees.

Agreed To And Accepted

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HARRIS PUBLICATIONS, INC.

PHOTOGRAPHER

Name: _____

Name: _____

Title: _____

Date: _____, 20__

Date: _____, 20__