



## PHOTOGRAPHY/ VIDEOGRAPHY SERVICES AGREEMENT

This Photography/ Videography Services Agreement (this "Agreement") is entered into on \_\_\_\_\_ between Villanova University in the State of Pennsylvania, having an address at 800 E. Lancaster Avenue, Villanova, PA 19085 ("Villanova") and \_\_\_\_\_ [INSERT FULL PHOTOGRAPHER LEGAL NAME], having an address at \_\_\_\_\_ [INSERT PHOTOGRAPHER ADDRESS] ("Photographer"). For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, Villanova and Photographer hereby agree as follows:

### I. SERVICES

(a) **Description and Requirements.** In consideration for the fees set forth in the Statement of Work attached hereto as Exhibit A and hereby incorporated by reference herein, Photographer will provide to Villanova the services described in each such SOW and requested by Villanova (the "Services") during the term of this Agreement at Photographer's expense using Photographer's materials, equipment, tools, insurance, supervision, and labor, unless otherwise specified in the applicable SOW. The terms and conditions of each project, including, without limitation, the scope of the services, the form and format of the required work product, all designs, materials, and deliverables including without limitation photographs and videos in any format (collectively "Deliverables"), the project schedule and milestones, and any additional fees or expenses associated with such project will be described in a statement of work and signed by an authorized representative of Photographer and Villanova (each of which, including the Statement of Work attached hereto as Exhibit A, will be referred to as a "SOW").

(b) **Specifications.** The Services must conform to the quality and service standards included or referenced in this Agreement and each SOW ("Specifications"). Villanova may change the Specifications at any time by notifying Photographer and Photographer must comply with the changed Specifications within ten (10) days after notice. Photographer must tell Villanova promptly if a Specification change affects Photographer's costs or ability to deliver Services on time, and if Villanova asks Photographer to proceed under the changed Specifications anyway, Villanova and Photographer will negotiate a fair adjustment to the price or schedule.

(c) **Service Levels.** In the event Villanova is not satisfied, in its sole discretion, with the services being rendered by any employee or independent contractor of Photographer, Villanova shall notify Photographer in writing and, Photographer shall replace such employee or independent contractor with another who is reasonably satisfactory to Villanova and shall promptly re-perform or correct any unacceptable Services. If Villanova reasonably determines that the Services or any Deliverables did not comply with the Specifications, Photographer will provide them again in compliance with the Specifications within ten (10) days of being notified without additional Fees or reimbursable expenses. Villanova can also pursue other remedies.

(d) **Release Form.** For each person whose photograph or video likeness is being captured by Photographer in connection with the Services, Photographer shall ensure that such person executes the Photography/Videography/ Recording Release Form attached hereto as Exhibit B. Photographer shall deliver all original signed Release Forms to Villanova, together with all Deliverables, at the end of any project. Photographer shall indemnify, defend, and hold Villanova harmless from any liabilities relating to its failure to secure a signed Release Form from any person whose photograph or video likeness is being captured by Photographer in connection with the Services.

### II. FEES

Villanova will pay Photographer the fees set forth in the Agreement and the applicable SOW, if any, (collectively, the "Fees") in exchange for satisfactory completion of the Services and the Deliverables. Photographer will invoice Villanova for all Fees due and payable under this Agreement. Villanova will pay each correct, undisputed bill

within thirty (30) days of receiving it.

### III. TERMINATION

Villanova shall have the right to immediately terminate this Agreement for any reason with or without cause. In the event of such termination, Villanova shall pay Photographer in accordance with this Agreement for work completed up to the termination, less any damages or other expenses incurred by Villanova and arising from Photographer's performance.

### IV. WARRANTIES

(a) **Mutual.** Each of us warrants to the other that: (i) it has and will have full authority to enter into and perform under this Agreement, and (ii) no other agreement or understanding exists or will exist that would interfere with its obligations under this Agreement.

(b) **Photographer.** Photographer warrants to Villanova that: (i) Photographer is a duly qualified an expert in its field, will use best efforts in providing Services, and will provide Services in a professional and workmanlike manner and in compliance with all Specifications and applicable laws, rules, regulations and orders, including, without limitation, the Americans with Disabilities Act and any OSHA or other safety rules and regulations, using duly qualified, licensed and trained personnel; (ii) Photographer and Photographer's personnel are duly licensed and qualified in each applicable jurisdiction and will obtain and pay for all licenses, permits, and authorizations necessary to perform under this Agreement and any SOW; (iii) Photographer is in good standing with all governmental bodies and agencies and will remain in good standing; (iv) Photographer's disclosure to Villanova of any information does not breach any confidentiality obligation Photographer may have to anyone else; (v) all work and materials Photographer provides under this Agreement will be Photographer's original work and materials (or it will have acquired all rights in them) and will not infringe anyone else's rights; and (vi) no liens (including mechanics liens and third party security interests) affecting Villanova, any materials or equipment provided by Villanova, or the Services have been or will be created in connection with Photographer's performance under this Agreement. Photographer will promptly correct, repair or re-perform any Services and Deliverables that do not conform to this Agreement, including, without limitation, the warranties in this Section.

### V. CONFIDENTIALITY

(a) **Information Protection.** Photographer will treat as confidential any proprietary, trade secret or other non-public information, materials and samples that it obtains, sees, hears, reads, or otherwise learns in connection with Services relating to Villanova, whether obtained from Villanova or anyone else at the direction of Villanova ("Information"). Photographer will use Information only as needed to perform Services and not for any other purpose. Photographer will disclose Information only to its employees and independent contractors who need it to perform Services. Photographer will take all reasonable measures to guard against accidental disclosure of Information. Photographer is responsible for the actions of its employees, agents, subcontractors, and anyone else to whom it discloses Information.

(b) **Exceptions.** Information does not include information, materials, or samples that: (i) are or become publicly known through no fault of Photographer, (ii) were known to Photographer before Villanova's sharing it, (iii) were disclosed to Photographer by someone else having no confidentiality obligation to Villanova, or (iv) are independently developed by Photographer without using Information. If Photographer relies upon the exceptions above, its business records must support its reliance.

(c) **Information Ownership.** Villanova may share Information at its discretion and is not required to share any Information under this Agreement. Information remains Villanova's property and Photographer will not acquire any rights to it.

(d) **No Publicity.** Neither of us will publicly disclose this Agreement or our business relationship, nor use the other's name or trademark, without prior written approval.

(e) **Court or Government Orders.** If Photographer is required by court or government order to disclose Information, it must notify Villanova as soon as possible (unless Photographer is legally prohibited from doing

so) and cooperate with Villanova to secure a protective order or otherwise protect the Information. Photographer may disclose Information only to the limited extent required to comply with the order. The Information remains confidential and otherwise fully protected under this Agreement.

## VI. INDEMNITY

(a) Photographer shall indemnify, defend and hold Villanova (and its affiliates, trustees, employees and agents) harmless against all losses, damages, claims, liabilities, and expenses (including reasonable legal fees) (each a "Claim") to the extent resulting from (i) any breach of Photographer's obligations under this Agreement, (ii) any violation of applicable laws, rules, regulations or orders or infringement, violation or misappropriation of intellectual property rights by or in connection with the Services, the Deliverables or Villanova's use thereof in accordance with the terms and conditions of this Agreement (iii) Photographer's negligence or willful misconduct in performing under this Agreement, or (iii) any Claim against Villanova for workers compensation, unemployment compensation or any other employee compensation or benefit made by any employee, agent or subcontractor of Photographer. Photographer is responsible in connection with this Agreement and any SOW for the actions of its employees, agents, and subcontractors. Except for Claims for workers compensation made by any employee, agent or subcontractor of Photographer, Photographer will not be responsible under this section to the extent a Claim resulted from Villanova's breach, sole negligence, or willful misconduct.

(b) If Villanova is prohibited from using any Deliverables (defined below in the Work Product Ownership section) by court order, in addition to its indemnification requirements above, Photographer will, at its expense: (i) obtain for Villanova the right to continue using such Deliverables; (ii) replace the infringing Deliverables with a non-infringing one that functions the same in Villanova's reasonable judgment; (iii) modify the infringing Deliverables to make it non-infringing; or, if (i), (ii) and (iii) are not commercially feasible in Photographer's reasonable judgment, (iv) accept the return of any infringing Deliverables and refund the corresponding portion of the Fees as determined by Villanova in its reasonable judgment.

## VII. INSURANCE REQUIREMENTS

(a) Photographer agrees to carry adequate health, auto, and liability insurance. It is understood that Villanova assumes no financial obligation related to medical bills, including without limitation copays and deductibles, for injuries sustained or claimed to have been sustained while performing work or providing services to Villanova or while on Villanova's premises, and Photographer releases Villanova of such.

(b) If Photographer or any subcontractor thereof will be providing Services on Villanova's premises, Photographer and any subcontractor thereof shall, at its own expense, secure and maintain the following insurance during the longer of the term of this Agreement, in amounts not less than that specified for each coverage below. Such insurance shall be primary and non-contributory to Villanova's insurance. Photographer's Workers' Compensation shall include a waiver of subrogation in favor of Villanova. Photographer warrants and represents that any subcontractors will maintain Workers' Compensation, and Photographer further agrees to indemnify Villanova for any loss, cost, liability, expense and/or damage suffered by Villanova as a result of the failure of its subcontractors to maintain such insurance. Failure of Photographer, or any subcontractor thereof, to procure the following insurance or of Villanova in securing a Certificate of Insurance shall not relieve Photographer, and any subcontractor thereof, of any obligation or liability assumed under this Agreement, nor of any obligation or liability imposed by law. In no event shall the liability of Photographer, or any subcontractor thereof, be limited to the extent of any insurance or the minimum limits required herein. Any self-insured retentions, deductibles, and exclusions in coverage in the insurance required shall be assumed by and at the sole risk of Photographer. Photographer or its insurers agrees to provide thirty (30) days advanced written notice to Villanova of any cancellation or material reduction in their or their subcontractor's required insurance.

- i. **Workers' Compensation** for statutory obligations imposed by workers' compensation and occupational disease laws. **Employers' Liability** insurance shall be provided with sublimits of not less than \$100,000/ \$500,000/ \$100,000. If Photographer is a sole proprietor or otherwise not required by law to carry Workers' Compensation coverage, Photographer certifies that in lieu of Workers' Compensation coverage Photographer has health insurance to cover Photographer, and anyone Photographer hires to

provide services to Villanova on Photographer's behalf, to meet any and all needs for payment of medical costs for any injuries occurring on Villanova property or arising out of the Services.

Please initial here if Photographer is not required by law to carry Workers' Compensation: \_\_\_\_\_

- ii. **Automobile Liability** insurance (Bodily Injury Liability and Property Damage Liability) for all owned, leased, hired, non-owned vehicles with limits not less than \$1,000,000 Each Accident. If Photographer does not carry a business automobile liability policy, Photographer shall maintain an automobile liability policy in statutory amounts and provide a copy of the declarations page(s) of the personal automobile liability policy evidencing policy limits and dates.
- iii. **Commercial General Liability** insurance including coverage for premises and operations, products and completed operations, contractual liability, and personal injury for all operations, written on an occurrence basis with limits not less than \$1,000,000 Each Occurrence, which must apply to ongoing operations. "Villanova University" must be named as an additional insured.

A Certificate of Insurance evidencing the above coverage must be provided to Villanova at least one week prior to commencing work/providing services and/ or products to Villanova under the Agreement and as insurance policies renew during the term of the Agreement.

All insurance coverage must be written with an insurer rated not less than A- by A. M. Best.

## VIII. WORK PRODUCT OWNERSHIP

(a) **Definition and Ownership.** Each of Villanova and Photographer will continue to own all intellectual property it owned before making this Agreement. In exchange for the Fees, Photographer agrees that Villanova owns the Deliverables and all associated intellectual property rights. Villanova owns the copyright in Deliverables as a work-made-for-hire where the law recognizes it as a "work made for hire." In all other cases, Villanova owns the Deliverables by assignment, and Photographer now and hereby transfers and assigns to Villanova all worldwide rights, title and ownership of all Deliverables and associated intellectual property rights, free of all claims. Photographer will obtain from its employees and independent subcontractors and assign to Villanova (or any other person designated by Villanova) all right, title and interest in Deliverables. Photographer will assist Villanova to complete the transfer of rights described in this Agreement and to document, enforce, and protect those rights. To the extent permitted by applicable law, Photographer waives, and will have its employees waive, any moral rights and rights of reversion of ownership in the Deliverables. Villanova may change, reproduce, transfer, and distribute the Deliverables. Photographer hereby grants Villanova a perpetual, irrevocable, worldwide, royalty free, fully paid up right and license in any pre-existing or other intellectual property owned by Photographer and included in the Deliverables to use, copy, distribute, display, publish, perform, license and create any derivative works of such intellectual property in connection with the Deliverables. Photographer agrees that it retains no rights whatsoever in the Deliverables.

(b) **Contributors.** Photographer will obtain and give to Villanova, upon Villanova's request and at no additional cost to Villanova, an agreement signed by each contributor to the Deliverables stating that: (i) each contributor has read the terms of the grant and confirmation of proprietary rights in the Deliverables in this Agreement; (ii) each contributor acknowledges that Villanova was induced to enter into this Agreement based upon Photographer's representations that it has the right to convey or confirm Villanova's ownership of the Deliverables; and (iii) each contributor has or will grant and/or confirm by additional documents such rights in favor of Villanova if Photographer does not or cannot.

## IX. DISPUTE RESOLUTION

Villanova and Photographer will cooperate to resolve disputes under the Agreement, and no legal action may be brought until senior executives from each party have attempted in good faith for at least thirty (30) days to resolve the dispute. If that fails, any legal action or proceeding with respect to this Agreement may be brought in the courts of the Commonwealth of Pennsylvania or the United States District Court for the Eastern District of Pennsylvania. By execution and delivery of this Agreement, Photographer hereby irrevocably accepts for itself the

jurisdiction of such courts. Notwithstanding the foregoing, by written notice to Photographer, Villanova may require Photographer to submit to mediation or binding arbitration under the rules of the American Arbitration Association in Delaware County, Pennsylvania.

**X. INDEPENDENT CONTRACTOR**

This Agreement does not create a partnership or joint venture between us. Photographer is an independent contractor and has no authority to bind Villanova. Photographer is solely responsible for its employees and subcontractors and they will not be deemed employees or contractors of Villanova for purposes of workers compensation, unemployment compensation or any other employee benefits.

**XI. NOTICES**

Whenever Villanova or Photographer is required to notify each other under this Agreement, such party must do so in writing and the notice will be considered received on: (a) the date of personal or courier delivery; (b) the date of fax transmission, provided a confirmation copy is also sent no later than the next business day by first-class mail, return receipt requested, postage prepaid; or (c) 4 days after the date of deposit in the United States mail, registered or certified, return receipt requested, postage prepaid, addressed as follows:

If to Villanova: Villanova University  
800 Lancaster Avenue  
Villanova, PA 19085  
Attention: Director of Procurement and Vice President & General Counsel

If to Photographer: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

**XII. MISCELLANEOUS**

(a) **Assignment.** This Agreement is for personal services of Photographer. Neither of us will assign any of its rights or obligations under this Agreement without the other's written approval, which may not be unreasonably withheld.

(b) **Conflicts.** This Agreement overrides the preprinted terms and conditions on any standard forms used by Photographer, including work order, statement of work, terms of use, invoice, click-through, clickwrap or browsewrap terms or other terms made available, proposed or signed in connection with the Agreement. Any terms contained in Photographer's standard forms that are inconsistent with this Agreement are hereby specifically rejected and shall not form any part of this Agreement or the contractual relationship between the parties.

(c) **Entire Agreement.** This Agreement is the entire agreement between us regarding the Services. No changes to this Agreement are valid unless in writing, signed by us.

(d) **Governing Law.** The laws of the Commonwealth of Pennsylvania shall govern this Agreement, without regard to choice or conflict of laws principles thereof. Any claim or dispute arising in connection with this Agreement shall be subject to the jurisdiction of the courts located in Delaware County or Philadelphia County in the Commonwealth of Pennsylvania.

(e) **Non-Exclusivity.** This Agreement is not exclusive, and either of us is free to enter into similar agreements with anyone else, unless otherwise stated in this Agreement.

(f) **Severability.** If any provision in this Agreement cannot be enforced under applicable law, then the provision will be deemed modified to the extent needed to make it enforceable while remaining as consistent as possible with our intent as expressed in the Agreement.

(g) **Survival.** When this Agreement ends, Villanova's and Photographer's rights and obligations concerning remedies, warranties, confidentiality, indemnity, insurance, ownership, right to audit, dispute resolution, and

anything else which expressly survives or accrues before the Agreement's end, or by its nature should survive, will survive.

(h) **Taxes.** Unless we agree otherwise in writing, Photographer will be responsible for all sales, revenue, income, excise, and other federal, state, provincial, or local taxes related to Photographer's performance under this Agreement. Villanova may withhold from payments to Photographer and pay taxes to the extent required bylaw.

(i) **Audit.** Villanova shall have the right to, or to direct Villanova's agent, contractor, auditor or designee to, inspect, audit and request copies of any and all records related to Photographer's performance of and compliance with these terms at any time, and Photographer's shall promptly cooperate therewith. Photographer will retain such records during the entire term and for three (3) years thereafter.

Villanova's and Photographer's authorized representatives execute this Agreement by signing below. We may sign separate copies of this Agreement, and the separate copies will together form a fully signed copy of this Agreement.

VILLANOVA UNIVERSITY

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By: \_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

Name

\_\_\_\_\_  
Title

Title

\_\_\_\_\_  
Date

Date

**Exhibit A**  
**Statement of Work**

Photographer: \_\_\_\_\_

Telephone: \_\_\_\_\_ E-mail Address: \_\_\_\_\_

Date(s) and Time(s) of Service: \_\_\_\_\_

Event Name or Purpose of Services: \_\_\_\_\_

Compensation (Choose one):

\_\_\_\_\_ Total Amount Due: \_\_\_\_\_

\_\_\_\_\_ Hourly Rate: \_\_\_\_\_ Number of Hours: \_\_\_\_\_

\_\_\_\_\_ Payment not to exceed: \_\_\_\_\_

Deliverables:

\_\_\_\_\_  
\_\_\_\_\_

Duties:

Photographer will perform the following duties:

\_\_\_\_\_  
\_\_\_\_\_

**Exhibit B**

**Villanova University Photography/Videography/ Recording Release Form**

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Date(s) of Photography/Videography/ Recording

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Event Name

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Location

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Name of Photographer

I hereby irrevocably grant Villanova University, its licensees, agents, successors and assigns, the right but not the obligation, in perpetuity throughout the world and in all media, now or hereafter known, to use (in any manner it deems appropriate, and without limitation) in and in connection with the photography/videography/media project, by whatever means exhibited, advertised or exploited: my appearance in the video, still photographs of me, recordings of my voice taken or made of me by it, any music sung or played by me, my actual or fictitious name, and any quotes or testimonials given by me.

Furthermore, I understand that during my participation in the photography/videography project, I may be exposed to a variety of hazards and risks, foreseen and unforeseen, that may include, but are not limited to, personal injury, property damage and death. To the fullest extent allowed by law, I agree to waive, discharge claims and release Villanova University its officers, directors, employees, agents and leaders from any and all liability on account of, or in any way resulting from injuries or damages associated with my participation. I understand and intend that this assumption of risk and release is binding upon my heirs, executors, administrators and assigns, and includes any minors accompanying me on the project.

I affirm that I am 18 years of age or older.

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Printed Name

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Banner ID or Address

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Signature

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Date

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Witness Printed Name and department, title

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Signature

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Date