

AGENCY AGREEMENT

THIS AGREEMENT, dated as of _____, 20____, is by and between _____ [herein called "Agent"] and _____ [herein called "Artist"], both of whom are fully identified on Attachment #1 that is affixed to and by this reference made a part of this agreement.

BY THESE PRESENTS, Artist, who an established photographer of proven talents, hereby employes Agent, who is an established agent of proven talents, to represent Artist in marketing Artist's service as described in this Agreement and promises to compensate Agent for such representation under the terms and conditions set forth herein.

1. TERM. This agreement will take effect on _____, 20 __ and remain in full force and effect until terminated as provided in section ____.

2. AGENT'S SERVICES. Agent agrees to use its best efforts to showcase Artist's work, showing Artist's portfolio at every opportunity, for the purpose of procuring assignments for Artist in Advertising Photography, which is defined as photography provided to persons or organizations that buy advertising, plus the advertising agencies, graphic design firms and others that assist such organizations in planning, creating, and placing advertisements. Agent will negotiate the terms of any assignment offered, but Artist will have the right to reject any assignment if he or she finds the terms thereof unacceptable. In addition, Agent shall be responsible, jointly with Artist, for the development of plans to market Artist's services, preparing bids or proposals for the sale of Artist's services, (see Section 13), Billing clients (see Section 14), and forwarding net revenues to Artist. This agreement does not authorize Agent to procure assignments for Artist outside the advertising industry, for example, with publishers of periodicals, textbooks and professional journals (sometimes called "Editorial Photography"); the right to procure such assignments is reserved to Artist alone, unless and until Editorial Photography is added to this agreement by the parties' execution of an amendment hereto.

3. AGENT'S TERRITORY. Agent shall be Artist's exclusive representative for marketing Artist's services in Advertising Photography, as herein defined, within the following geographical territories:

_____;

and, Agent shall be paid a commission on all Gross Revenue, as herein defined, earned by Artist within said territories during the term of this agreement. Also, Agent shall be paid a commission on all revenue earned by Artist outside of aforesaid geographical territories if (a) Agent has advertised or promoted Artist's work with Artist's prior knowledge and consent and if (b) no other agent is then serving as Artist's agent in that territory.

4. AGENT'S DISCLOSURE. Artist acknowledges that Agent represents other artists and will not seek to limit or restrict Agent from serving other artists.

5. EXCUSED PERFORMANCE; LIABILITY LIMITATIONS. In performing its services hereunder, Agent shall not be liable for delays in performance caused by acts of God, governmental intervention, inclement weather, labor disputes, fire or other casualty, unavailability of utilities, materials or transportation, nor for clients' or prospects' delays in responding to communications, giving approvals or making payments. Agent shall never be liable to Artist for any lost profits, consequential damages or punitive damages.

6. CONFIDENTIAL INFORMATION. Agent may not divulge to any third parties any confidential or proprietary information about Artist's creative and artistic processes, but may divulge information about Artist's biography and Artist's office and business management habits and preferences.

7. PRINCIPAL & AGENT. This agreement creates the relationship of principal and agent between Artist and Agent and the standard of care each owes the other in the performance of this agreement is that of ordinary care.

8. INDEPENDENT BUSINESSES. Agent and Artist own and operate separate, independent businesses. Except as specifically stated otherwise in this agreement, neither party has any responsibility for the other's personnel, office management, studio management, insurance coverages, banking, investments, or compliance with governmental regulations such as business licenses and compliance with tax laws.

9. PROMOTIONAL EFFORTS BY AGENT. To secure assignments for Artist in Advertising Photography, Agent will use a combination of promotional methods including the following:

(1) Agent will maintain a website in which Artist will be included. Artist is responsible for providing work to Agent in a timely manner. Current work should be given to Agent for the site at least three times a year. Artist is responsible for \$500 (or actual cost for site modification) to initially join Agent's site. After the

initial Artist set-up Agent is responsible for all costs associated with maintaining Agent's website.

(2) Agent, at Agent's sole expense, will maintain memberships in professional organizations and subscribe to publications Agent deems necessary to be fully informed regarding marketing opportunities for Artist.

(3) Agent, at Agent's sole expense, will develop and maintain contact lists for clients and client prospects. Such lists will remain the property of Agent.

10. PROMOTIONAL EFFORTS BY ARTIST. Artist agrees to participate in marketing activities as directed by Agent, including but not limited to the following:

(1) Artist will provide Agent with a minimum of 3 portfolios consisting of at least 20 samples of Artist's work. These and all samples will be duplicates, not one-of-a-kind originals. In addition, Artist will provide Agent with a minimum of an updated portfolio including 50% or more new work each calendar year, plus any such samples as are necessary for the purpose of securing assignments. This should result in a considerable updating of the portfolio annually. Artist will be responsible for 100% of portfolio costs, including cases for shipping, portfolio insurance, and any costs incurred for the purpose of creating and maintaining the portfolio. Portfolio will remain the property of Artist. Agent will take reasonable care to protect the portfolio from loss or damage, but will be not be liable for such loss or damage during normal course of business. Loss or damage incurred will be repaired and paid for by Artist.

(2) Artist, at Artist's expense, shall establish and maintain a website. Content on the site should be updated, at a minimum, as often as Artist's portfolio.

(3) Artist shall participate in group promotions conducted by Agent, that is, promotions that present Artist and, at the same time, present other artists Agent represents. Artist will share advertising and marketing costs (including associated portfolio showing expenses) associated with Agent's group promotions. The total costs will be split equally among all artists. A proposed budget will be established by Agent and reported to all participating artist in advance.

(4) Supplemental to Agent's promotional efforts, Artist, at Artist's expense, will periodically conduct individual marketing and public relations tasks such as direct mail, advertising in publications or online directories, and memberships in professional organizations.

(5) Artist agrees to reimburse Agent, within 30 days after billing, for 75% of Agent's travel expenses (including but not limited to airfare, ground transportation, client or prospect meals, and lodging) incurred while traveling to show and promote Artist's work. Agent's bills will itemize all expenses and, if requested by Artist, will include copies of expense receipts. If and when Agent's travel includes showing and promoting the work of other artists, the 75% reimbursement will be split among all represented artists.

(6) Artist will refer to Agent all inquiries for samples of Artist's work and requests for estimates from prospective clients; further, Artist will provide Agent with his or her current list of contacts, and continue to provide contacts that he or she is interested in pursuing. To effectively support Agent's representation, Artist agrees that Agent's name and contact information shall be listed with Artist's name in all promotional materials distributed by Artist formatted approximately as follows: _____ [Artist's name] represented exclusively by _____, Inc. in _____ [geographical territory], followed by _____ approved contact information.

(7) Artist agrees to continuously cooperate with Agent in developing and refining consolidated marketing plans which (a) demonstrate how Artist's individual marketing efforts will be coordinated to compliment Agent's marketing efforts for Artist, (b) target prospective clients or industries, (c) describe promotional efforts to be undertaken, and (d) provide cost estimates that both parties may rely on for budgeting.

11. INDEMNIFICATION. Artist shall indemnify, defend and hold harmless Agent from and against any and all loss, damages, costs and expenses, including reasonable attorneys' fees, arising out of or connected with any third party claim, demand or action arising from (1) a breach or alleged breach of any warranties, representations, agreements and/or covenants made in any client purchase order, nondisclosure agreement, or contract signed by Agent on Artist's behalf, (2) claims or actions of any kind or nature resulting from the use of the work furnished by Artist, including but not limited to violation of third party intellectual property rights, privacy rights or trade secrets, and (3) Artist's negligence or willful misconduct.

12. AGENT'S COMPENSATION. Artist agrees to pay Agent a commission equal to twenty-five (25%) of the Revenue received by Artist while associated with Agent under this agreement. "Revenue" is defined as (a) all fees charged for Artist's time, including but is not limited to shooting, pre-lighting, scouting, casting, pre and post production, and computer assembly (sometimes called

“Creative Fees”), and (b) all fees charged for Artist’s services as procurer of crews, producers, caterers, props, wardrobe, etc. (sometimes called “Production Markup Fees;” typically a percentage of the amount paid to production vendors), and (c) all fees charged for the use of Artist’s images (sometimes called “Licensing Fees”).

13. HOUSE ACCOUNTS. “House Accounts” are defined as the following persons or organizations who hired Artist to provide Advertising Photography prior to the date of this agreement:_____.
During the first year of this agreement Artist shall pay Agent a commission equal to fifteen (15%) of the Revenue, as herein defined, received by Artist from House Accounts. During all subsequent years this agreement remains in force, Artist shall pay Agent a commission on House Accounts at the rate stated in Section 12 of this agreement. Agent shall at all times manage Artist’s business relationship with House Accounts exactly as Agent manages Artist’s business relationship with Artist’s other clients.

14. ESTIMATES AND INVOICES. Agent will author all estimates and invoices to clients on behalf of Artist, with consultation and input from Artist. Agent and Artist are mutually committed to rendering estimates and invoices that are professional and timely.

15. COLLECTIONS (Sequential liability): Agent will have the responsibility of collecting accounts receivable, and Agent will provide Artist copies of all invoices rendered to clients. Agent will collect Agent’s compensation out of each payment and forward Artist’s portion of the payment to Artist within 14 days of receiving payment from client. No payments shall be due to Artist or Agent on assignments for which clients have failed to make payment, regardless of the reason payment is not made. Artist can hold Agent liable only to the extent that payment has been received and must hold client liable for the remainder.

16. AGENT’S SEMI-ANNUAL ACCOUNTING. Semi-annually, if requested, Agent will provide Artist with accountings showing all assignments for the period, clients’ names, fees paid, dates of payment, amounts on which Agent’s commissions are to be calculated, amounts paid and balances due.

17. INSPECTION OF BOOKS AND RECORDS. For the duration of this Agreement and for a period one year following its termination, Agent will maintain records of commissions at its place of business, and permit Artist to inspect those records during normal business hours upon reasonable notice. Upon termination of this Agreement, Artist will maintain records of Post-

termination Commissions, as herein defined, owed to Agent and permit Agent to inspect those records during normal business hours upon reasonable notice for 1 year following the period during which commissions are payable after termination.

18. TERMINATION. This Agreement may be terminated at any time by mutual agreement or by either party giving the other party 30-days written notice. Except as provided in paragraph (5) of this section, when termination occurs, in recognition of the services rendered by Agent and the goodwill and continuing sources of income established by Agent's services, Artist agrees to pay to Agent a "Post-termination Commission" commencing upon termination of this agreement, as follows:

(1) Agent's average monthly commission for the 12 months prior to the termination date shall be added together and then divided by 12, thus establishing a average called a "Month's Commission".

(2) If this agreement has been in effect for less than one year, Agent shall be entitled to six Month's Commissions. If this agreement has been in effect for more than one year, Agent shall be entitled to six Month's Commissions plus one additional Month's Commission for each year or part thereof this agreement has been in effect, not to exceed a maximum of 12 Month's Commissions altogether.

(3) The total post-termination commission due Agent shall be paid in monthly installments each equal in amount to one Month's Commission, the first such installment being due on the 5th day of the calendar month following the calendar month in which termination takes effect. Provided, however, if the monthly installments are not paid when due, the total Post-termination Commission shall immediately become due and payable as a lump sum, together with interest at 7% per annum and reimbursement of Agent's costs and attorney's fees if Agent was required to use arbitration (or any other legal processes) to collect said Commission. Post-termination commission will be reduced if Artist elects to prepay it; specifically, if Artist prepays the entire outstanding balance at any time while post-termination payments are being made, Agent agrees to accept the then outstanding balance reduced by eighteen percent (18%).

(4) Agent promises that, following termination, Agent (a) shall forward all prospective client inquiries to Artist or Artist's new Agent and (b) shall continue to manage, collect and distribute payments from all accounts unpaid on the effective date of termination, and (c) shall return all portfolios, printed, and other

promotional materials to Artist. Artist promises that, following termination, Artist will reimburse Agent for printed and other promotional materials Agent had purchased or committed to purchase before termination.

(5) The death or permanent disability of Artist shall terminate Artist's obligation to pay Post-termination Commissions.

19. ARBITRATION. Artist and Agent have agreed and do hereby agree that any controversy or claim arising out of or relating to this agreement, or the breach thereof, shall be settled by binding arbitration in accordance with the Georgia Arbitration Code [O.C.G.A. § 9-9-1 *et seq*] and administered by the American Arbitration Association (herein called "AAA") in accordance with its Commercial Arbitration Rules [available at www.adr.org]. The arbitration shall be conducted in Metropolitan Atlanta, Georgia before a single arbitrator who shall apply the substantive law of Georgia. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitrator shall have the authority to award pre-award interest at the rate of eight percent (8%) per annum from the time of the act or condition giving rise to the award and the authority to award reimbursement of filing costs and reasonable attorney's fees to the prevailing party. The arbitrator shall not have the authority to award lost profits, punitive damages or consequential damages. Artist and Agent understand and agree that any summons or directive issued to either party by the AAA or an AAA arbitrator shall have the same legal force as if it had been issued by a court of law.

20. NOTICES. All notices, demands or claims from one party to another may be mailed to their respective Mailing Addresses or hand delivered to their respective Courier Addresses shown on Attachment #1. Both parties have a duty to notify the other in writing if any of their addresses changes.

21. ENTIRE AGREEMENT; GOVERNING LAW. This agreement constitutes the complete and exclusive understanding and agreement of the parties with respect to the subject matter hereof and supersedes all prior understandings and agreements, whether written or oral. This Agreement will be governed by the laws of the State of Georgia.

22. NO WAIVER. The waiver on one or more occasions of any breach of any provision of this agreement will not constitute a waiver of that provision as to any subsequent breach, nor shall it be construed as operating to amend this agreement.

23. AMENDMENTS. All amendments to this Agreement must be written and signed by both parties.

24. SUCCESSORS. This agreement shall inure to the benefit of and be binding upon Agent and Artist and their respective heirs, legal representatives, and organizational successors.

Note to User: This space is the correct place to write in additional sections covering new subjects or special stipulations that modify other sections of the Agreement. Delete this Note before printing final versions of the agreement.

IN WITNESS WHEREOF, Agent and Artist have signed and sealed three counterpart copies of this agreement, intending to create three originals.

Agent:

Artist:

By: _____

Signature

Title: _____

Name Printed

CONTACT INFORMATION

Agent

Artist

[Full Legal Name]

[Full Legal Name]

Contact Person (Name & Title):

Contact Person (Name & Title):

M

[Title]

[Title]

Mailing Address:

Mailing Address:

Courier/Street Address:

Courier/Street Address:

Telephone Numbers:

Telephone Numbers:

Voice: ()

Voice: ()

Cell: ()

Cell: ()

Fax: ()

Fax: ()

E-Mail Address:

E-Mail Address:
