

This agreement is made and entered into this Click to type date day of Click to enter month, 20Click and enter yr, by and between Texas A&M University (“TAMU”), a member of The Texas A&M University System, an agency of the State of Texas (“University”), and Click to enter Party , a Corporation *[or Individual]* having a principal place of business at (“Licensee”), collectively referred to herein as “Parties” and each individually as a “Party” hereto, who mutually agree to the terms and conditions of this License Agreement.

University owns a number of photographic images and video footage, including the copyrights therein (“University Images”); and

Licensee wishes to obtain limited rights to use University Images or University Video Footage for the purposes indicated below. University is willing to permit that use subject to the following terms and conditions.

1. Definitions

1.1 “Licensed Material” means the still photographic images or video footage identified in Exhibit A. Any reference in this Agreement to the Licensed Material is to each image within the Licensed Material and also to the Licensed Material as a whole.

1.2 “Licensed Use” means the use described in Exhibit B, including limitations to the enumerated and described instances of use.

2. Grant of Rights

2.1 University grants Licensee a nonexclusive, non-transferrable and non-sublicensable license right to use the Licensed Material, solely for the Licensed Use, and subject to all restrictions specified in this Agreement, including the Exhibits to this Agreement.

2.2 The rights granted to Licensee by University and obtained by Licensee as a result of or in connection with this Agreement are limited use license rights only, and nothing in this Agreement assigns any or all of University’s ownership rights in the Licensed Material.

3. Use of the Licensed Material

3.1 The rights granted under this Agreement are limited to the Licensed Use. Licensee represents that any actual or ultimate product incorporating the Licensed Material will be a faithful rendition of use approved by University.

3.2 Licensee *[may crop Licensed Material, provided that the editorial integrity of the Licensed Material is not compromised, but]* may not, under any circumstances, *[otherwise]* rotate, alter, change, or tamper with Licensed Material without University’s express written permission.

3.3 To the extent that the Licensed Material includes any caption, description or other textual information, University does not warrant that any such information is accurate.

3.4 University’s trademarks, logos, and service marks, are and will remain the sole property of University. Nothing in this Agreement confers upon Licensee any right of ownership in University’s trademarks, logos, or service marks.

3.5 In partial consideration for the license conveyed hereby, Licensee agrees not to, directly or indirectly, challenge, contest, impair, or invalidate University’s rights in any of University Images as they relate to the Licensed Use.

3.6 Licensee agrees to include the following credit line adjacent to the Licensed Material: “© *[Year of first publication, Texas A&M University]*.”

3.7 Licensee must immediately notify University if it becomes aware or suspects that any third party that has gained access to the Licensed Material through Licensee or is wrongfully using the Licensed Material, in whole or in part, or is violating any of University's intellectual property rights.

4. Prohibited Uses

4.1 Licensee may not at any time:

- (a) Use Licensed Material for any commercial, promotional, advertising, or merchandising use, unless University has granted additional rights as specifically set out in Exhibit B;
- (b) Use any colorable imitation of any Licensed Material, or any variant form of any Licensed Material not specifically approved;
- (c) Incorporate Licensed Material into a logo, trademark, or service mark;
- (d) Make Licensed Material available in any medium in a manner intended to allow or invite persons to download or extract Licensed Material;
- (e) Take any action that would bring Licensed Material into public disrepute including use of Licensed Material for any pornographic, defamatory, or otherwise unlawful use, whether directly or in context or juxtaposition with specific subject matter; or
- (f) Make any claim or indication that University endorses Licensee's products or services or portray itself as an agent, servant, or employee of University.

4.2 The Licensed Uses may not depict or imply endorsement of:

- (a) Partisan political activity;
- (b) Alcohol;
- (c) Illegal drugs;
- (d) Gambling products;
- (e) Tobacco products;
- (f) Firearms or other weapons;
- (g) Racist, sexist, hateful, demeaning or degrading language or statements;
- (h) Profanity;
- (i) Sexual acts;
- (j) Statements impugning other universities.

5. Compensation

5.1 Licensee must pay to University a fee in the amount of \$[] as a condition precedent to University granting the rights to use the Licensed Material under this Agreement.

5.2 Licensee must provide University with one copy, best edition, of the work containing Licensed Material at no charge upon completion of that work.

6. Disclaimers, Limitation of Liability, and Indemnification

6.1 University represents that it, according to its information and belief, has all necessary rights and authority to enter into and perform this Agreement. Except as to University's own copyrights or trademarks, University has not obtained any permissions, licenses, or releases for the use of any names,

likenesses, trademarks, service marks, logos, or works of authorship depicted in the Licensed Material and Licensee is solely responsible for determining what other, if any, permissions, licenses, or releases are necessary for the Licensed Use.

6.2 University makes no other representations or warranties, express or implied, as to the Licensed Material, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose. University will not be liable for any punitive, special, indirect, consequential, or incidental damages, or any other damages, costs, or losses arising out of this Agreement, even if University has been advised of the possibility of such damages, costs, or losses.

6.3 Licensee must defend, indemnify, and hold University and The Texas A&M University System and their respective regents, officers, and employees harmless from all damages, liabilities, and expenses (including reasonable attorneys' fees) arising out of or as a result of claims by third parties relating to:

- (a) Licensee's use of any Licensed Material outside the scope of this Agreement;
- (b) Any other actual or alleged breach by Licensee of this Agreement; or
- (c) Licensee's failure to obtain any required permission, license, or release.

7. Term and Termination

7.1 The term of this Agreement is set out in Exhibit B, unless terminated earlier under this Article 7.

7.2 This Agreement and all rights granted under this Agreement will automatically terminate without notice from University if Licensee:

- (a) Breaches any term of this Agreement and fails to remedy the breach within 30 days of receiving written notice of the breach from University;
- (b) Attempts to assign, sublicense, transfer, or otherwise convey rights under this Agreement, without first obtaining University's written consent, any of the rights granted to Licensee under this Agreement;
- (c) Uses the Licensed Material in a manner in violation of, or otherwise inconsistent with, the restrictions imposed by or in connection with Article 3 of this Agreement; or
- (d) Uses the Licensed Material in a manner not expressly permitted by this Agreement.

7.3 All rights granted by this Agreement, including, without limitation, Licensee's right to use the Licensed Material, will expire upon termination of this Agreement, and upon termination Licensee must immediately cease and desist from all use of the Licensed Material.

8. General Provisions

8.1 **Relationship of the Parties.** Nothing contained in the Agreement shall be construed as creating any agency, partnership, or other form of joint enterprise between the Parties. The relationship between the Parties shall at all times be that of independent contractors. Neither Party shall have authority to contract for or bind the other in any manner whatsoever. The Agreement confers no rights upon either Party except those expressly granted herein.

8.2 **Notices.** Notices or other communications required by this Agreement will be sufficiently made or given if mailed by certified First Class United States mail, postage pre-paid, or by commercial carrier (e.g., FedEx, UPS, etc.) when the carrier maintains receipt or record of delivery, addressed to the address stated below, or to the last address specified in writing by the intended recipient.

If to University: Shane Hinckley
Assistant VP for Business Development, TAMU
205 Bizzell Hall East
College Station, TX 77843-1137

If to Licensee:

8.3 Assignment. This Agreement, with the rights and privileges it creates, is assignable only with the written consent of both Parties.

8.4 Governing Law. The Agreement shall be construed in accordance with, and all disputes hereunder, shall be governed by the laws of the State of Texas.

8.5 Jurisdiction and Venue. The Texas state courts of Brazos County, Texas (or, if there is exclusive federal jurisdiction, the United States District Court for the Southern District of Texas) shall have exclusive jurisdiction and venue over any dispute arising out of the Agreement, and Licensee hereby consents to the jurisdiction of such courts.

8.6 Headings. Headings are solely for convenience of reference and are not part of, and may not be used to construe, this Agreement.

8.7 Severability. If any provision of this Agreement is invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired. A waiver of any breach of this Agreement does not waive any other breach of the same or other provision of this Agreement. A waiver is not effective unless made in writing.

8.8 Privileges and Immunities. University is an agency of the State of Texas and nothing in this Agreement waives or relinquishes University's right to claim any exemptions, privileges, or immunities as may be provided by law.

8.9 Entire Agreement. This Agreement contains the entire understanding of the Parties as to the Licensed Marks, and supersedes all other written and oral agreements between the Parties as to the Licensed Marks. This Agreement may be modified only by a written amendment signed by the Parties.

8.10 Counterparts. The Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

University

[Licensee]

By: _____

By: _____

[Name]

[Name]

[Title]

[Title]

Date: _____

Date: _____

Exhibit A

Licensed Material

Exhibit B

Licensed Use

Type of Use: [commercial, non-profit, educational, etc.]

Medium: [book, textbook, periodical, website, exhibition, etc.]

Work: [title, author, publisher, anticipated publication dates, etc., as applicable]

Description of Work and Intended Use: [description of the work in which the Licensed Material will be used and how it will be used within the work]

Duration:

Specific Restrictions: [any restrictions on the use other than those in the body of the agreement and below]

Licensee's Contact Information

Contact Name:

Address:

Telephone:

Fax

Email:

Texas A&M Contact Information

Contact Name:

Address:

Telephone:

Fax

Email: