**MEDIA ARTIST AGREEMENT**

**(WRITER, ILLUSTRATOR, PHOTOGRAPHER OR VIDEOGRAPHER)**

This Agreement is entered into this \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_ (the “Effective Date”), by and between the Texas Woman’s University (“TWU” or “University”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Artist”), having a principal place of business at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

The University desires to obtain certain artistic services, to include writing, illustrating, photography and/or videography services of Artist (the “Services”), and the Artist is qualified and willing to perform such Services for the University.

The parties agree as follows:

1. **Services.** The Artist is retained by the University to provide the Services set forth in Work Order(s), Exhibit A, attached and incorporated herein by reference.
2. **Independent Contractor.** Artist hereby acknowledges that it is an independent contractor and all persons employed to furnish services hereunder are employees of Artist and not of TWU. All individuals performing services hereunder will be employees of Artist, and Artist will pay for all wages, expenses, federal and state payroll taxes and any similar tax relating to such employees.

**3. Title and Copyright Assignment.** Any and all photographs, negatives, video footage, images, illustrations, renderings, written work, and other related materials created or produced by Artist in whatever form or medium, electronic or otherwise, in connection with the Services, shall be deemed the “Work.” The Work shall constitute a work made for hire as defined in the U.S. Copyright Act of 1976, as amended, 17 U.S.C. § 101. Artist acknowledges and agrees that the Work and all legal title and rights therein are the sole and exclusive property of the University. To the extent that any portion of the Work is not a work made for hire under applicable law, Artist hereby irrevocably assigns and transfers to the University all of the right, title and interest in the Work in perpetuity worldwide, including all works based upon, derived from, or incorporating the Work, and any income, royalties, damages and/or payments now or hereafter due or payable with respect to the Work.

**4. Representations and Warranties.** Artist represents and warrants that:

i) the entire Work is Artist’s original work, and/or;

 ii) it is derived from a pre-existing work which Artist owns, and/or;

 iii) it is derived from pre-existing work to which Artist has licensed the rights.

 Further, Artist represents and warrants that to the best of Artist’s knowledge, the Work does not infringe the rights of any third party.

**5. Payment.** Upon satisfactory completion of Services and acceptance of Work, University shall pay Artist a total sum of USD $\_\_\_\_\_\_\_\_\_\_. No other amount shall be due to Artist.

1. **Termination**. This Agreement shall begin on the Effective Date and shall continue until Date, unless earlier terminated by the University in its sole and absolute discretion. Termination will not affect the University’s continued ownership of and rights in the Work. Artist Upon such termination Artist shall immediately cease all services and TWU will only be liable for payment of services and products provided prior to such termination or for commitments existing at the time the notice of termination is received.
2. **Confidentiality**. Under this Agreement, Artist may (1) create, (2) receive from or on behalf of TWU, or (3) have access to, records or record systems (collectively, “University Records”). Artist represents, warrants, and agrees that it will: (1) hold University Records in strict confidence and will not use or disclose University Records except as (a) permitted or required by this Agreement, (b) required by applicable laws, or (c) otherwise authorized by TWU in writing. If TWU’s computer systems are accessed by Artist, Artist will comply with TWU rules regarding such access and use.

**8. Public Information.** TWU strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information under the Texas Public Information Act (“TPIA”), Chapter 552, Texas Government Code. Artist understand that this Agreement is not confidential information and may be disclosed by the University as required by the TPIA. Artist will make any information created or exchanged with University pursuant to this Agreement available to TWU on request.

**9.** **Press Releases and Usage of Logo.** Except when defined as part of the Services, Artist will not make any press releases, public statements, or advertisement referring to the work performed hereunder or the engagement of Artist as an independent contractor of University in connection with the work performed hereunder, or release any information relative to the work performed hereunder for publication, advertisement or any other purpose without the prior written approval of University. Artist agrees not to use the logo of TWU in any advertising material of any kind without the expressed written permission of TWU.

**10.** **State’s Sovereign Immunity**. The parties specifically agree that (i) neither the execution of this Agreement by University nor any other conduct, action or inaction of any representative of University relating to this Agreement constitutes or is intended to constitute a waiver of University’s or the state's sovereign immunity to suit; and (ii) University has not waived its right to seek redress in the courts.

**11. Insurance**. The Contractor shall maintain at its own cost, and provide proof of, insurance meeting TWU’s Third Party Insurance Standards ([www.twu.edu/media/documents/risk-management/TWU-Third-Party-Insurance-Standards.pdf](file:///C%3A%5CUsers%5Cksummers2%5CAppData%5CRoaming%5CRubex%5CCheckedOutFiles%5C141820585.TWU_Form%20Contract_Photographer-Videographer_Template%20EN%20Updates%20101121%5Cwww.twu.edu%5Cmedia%5Cdocuments%5Crisk-management%5CTWU-Third-Party-Insurance-Standards.pdf)). By requiring such minimum insurance, the Owner shall not be deemed or construed to have assessed the risk that may be applicable to the Contractor. Therefore, the Contractor shall assess its own risks and, if it deems appropriate, maintain higher limits and/or broader coverages. The Contractor is not relieved of any liability or obligations assumed or pursuant to the contract because of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. The Artist’s failure to comply with the requirements of this section shall be considered a breach of this Agreement. Proof of insurance coverage will be forwarded to TWU Risk Management by email at risk@twu.edu.

**12. Background Check**. Any Artist who will have regular contact with minors in performing the Services under this Agreement shall comply with the applicable requirements in [TWU’s Minors on Campus program](https://twu.edu/risk/minors-on-campus/), including background checks and registration with TWU’s Risk Management department.

**13. Choice of Law; Venue**. Denton County, Texas, will be the proper place of venue for suit on or in respect of this Agreement. This Agreement and all of the rights and obligations of the parties hereto and all of the terms and conditions hereof will be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas.

**14. Insolvency.** In the event of any proceedings in bankruptcy or insolvency by or against Artist, or in the event of appointment (with or without Artist’s consent) of an assignee for the benefit of creditors, or a receiver, TWU may terminate this Agreement without prior notice and without incurring any liability whatsoever to Artist.

**15. Subject to Appropriation.** The parties acknowledge and agree that nothing in this Agreement will be interpreted to create a future obligation or liability in excess of the funds currently appropriated to the Agency.

**16. Non-Waiver.** No covenant or condition of the Agreement may be waived except by written consent of the waiving party. Forbearance or indulgence by one party in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by the other party.

**17. Subcontracting.** In the event Artist subcontracts for any of the performances herein, the parties agree that all such subcontracts must bind subcontractors to subject to Section 7 (Confidentiality), Section 9 (Press Releases and Usage of Logo), Section 12 (Background Check) and Section 18 (Non-Discrimination) of this Agreement.

**18. Non-Discrimination.** The parties agree to comply with applicable state and federal rules governing non-discrimination, equal opportunity and affirmative action.

**19. Prohibited Bids and Contracts.** Under Section 2155.004 of the Texas Government Code, Artist certifies that it is not ineligible to receive this Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

**20. Suspension or Disbarment.** Artist certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, neither are in the process of being declared ineligible or being debarred, nor is either Artist or any of its principals voluntarily excluded from covered transactions by any federal department or agency. TWU may immediately terminate this Agreement without penalty if Artist’s certification herein is inaccurate or becomes inaccurate.

**21. State Auditor’s Office.** Artist understands that acceptance of funds under the Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, “Auditor”), to conduct an audit or investigation in connection with those funds pursuant to Sections 51.9335(c), 73.115(c) and 74.008(c), Texas Education Code. Artist agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation providing all records requested. Artist will include this provision in all contracts with permitted subcontractors.

**22. Payment of Debt or Delinquency to the State.** Pursuant to Sections 2107.008 and 2252.903, Texas Government Code, Artist agrees that any payments owing to Artist under the Agreement may be applied directly toward any debt or delinquency that Artist owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

**23. Tax Certification.** If Artist is a taxable entity as defined by Chapter 171, Texas Tax Code (“Chapter 171”), then Artist certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, or that Artist is exempt from the payment of those taxes, or that Artist is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.

**24. Texas Family Code Child Support Certification.** Pursuant to Section 231.006, Texas Family Code, Artist certifies that it is not ineligible to receive payments under the Agreement and acknowledges that the Agreement may be terminated and payment may be withheld if this certification is inaccurate.

**25. Buy Texas Certification.** As required by Section 2155.4441 Texas Government Code, Artist agrees that it will buy Texas products and materials for use in providing the services contemplated herein when such products and materials are available at a comparable price and within a comparable period of time when compared to non-Texas products and materials.

**26. Assignment**. Artist may not assign its rights, interests, and/or obligations under this Agreement without the prior written consent of University. The parties recognize that the Agreement is based upon the skill and expertise of the parties and therefore agree that the Agreement and the obligations thereunder may not be assigned or delegated without the written consent of the other party, except as expressly allowed by the Agreement.

**27.** **Boycott Certification.** Pursuant to Texas Government Code Chapter 2271.002, Artist certifies that either (1) it meets an exemption criteria under Section 2271.002; or (2) it does not boycott Israel and will not boycott Israel during the term of the Agreement. Artist acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate. If Artist meets an exemption, it shall provide TWU written notice of what that exemption is at the time the Agreement is made.

Pursuant to Texas Government Code Chapter 2274, if Artist has 10 or more full-time employees and the Artist is to receive $100,000 or more in value for goods and services provided to TWU under this Agreement, Artist certifies that it does not boycott energy companies and will not boycott energy companies during the term of this Agreement. Artist acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate. **[This second paragraph can be removed if purchase will be less than $100,000.]**

**28. Health and Safety Code Certification.** Artist will comply with Subchapter A, Chapter 161, Health and Safety Code 161.0085(c) which prohibits requiring a customer to provide any documentation certifying the customer ’s COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from the business.

**29. Anti Terrorism Certification**. As required by Texas Government Code Section 2252.152, Artist represents and warrants that it is not a company prohibited under Section 2252.152 or identified by (1) the Texas Comptroller as a company with business operations in Sudan; (2) the Texas State Pension Review Board as a company with business operations in Iran; or (3) the Texas Comptroller as a company known to have contracts with, or known to provide supplies or services to, a foreign terrorist organization. Excepted from this prohibition are companies the United States government affirmatively declares to be excluded from its federal sanctions regime relating to Sudan, Iran or foreign terrorist organizations.

**30. General Appropriations Act Certification.** Artist acknowledges and agrees that funds may not be distributed under this Agreement in violation of article IX, Section 6.25 of the General Appropriations Act.

**31. Firearm Certification.** As required by Subtitle F (State and Local Contracts and Fund Management), Title 10, Texas Government Code, if the total amount paid to Artist under this Contract by TWU equals one hundred thousand dollars ($100,000.00) or more, Artist represents and warrants that it (a) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (b) will not discriminate during the term of the contract against a firearm entity or firearm trade association. **[This clause can be removed if purchase will be less than $100,000.]**

**32. Duty to Maintain Records.** Artist shall maintain adequate records to support its charges, procedures, and performance to TWU for all work related to this Agreement to ensure proper accounting for all costs and performances related to this Agreement.

**33. Right to Audit.** Artist shall, at all times during the term of the Agreement and for a period of four years after the completion of the services thereunder maintain such records, together with such supporting or underlying documents and materials, and such records shall be made available to TWU upon TWU’s reasonable request.

**34. No Third Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to or shall confer upon any other person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

**35. Indemnification by Artist.** ARTIST SHALL INDEMNIFY AND HOLD TWU, ITS REGENTS, OFFICERS, EMPLOYEES AND AGENTS HARMLESS FROM ANY AND ALL MANNER OF SUITS, CLAIMS OR DEMANDS (1) ARISING OUT OF ARTIST’S, ITS EMPLOYEES’, AGENTS’ AND SUBCONTRACTORS’ ACTS OR OMISSIONS ARISING UNDER THE PERFORMANCE OF THIS AGREEMENT; (2) THE NEGLIGENCE OR WILLFUL MISCONDUCT OF ARTIST, ITS AGENTS, EMPLOYEES OR SUBCONTRACTORS; (3) ARTIST’S BREACH OF ANY REPRESENTATION, WARRANTY, COVENANT OR OTHER OBLIGATION HEREUNDER; AND (4) THE INFRINGEMENT OF ANY THIRD PARTY PROPRIETARY RIGHTS WITH RESPECT TO GOODS OR SERVICES SUPPLIED TO TWU IN CONNECTION WITH THIS AGREEMENT (ALL OF WHICH ARE “INDEMNIFYING ACTS”). ARTIST SHALL REIMBURSE TWU FOR ANY AND ALL COSTS, DAMAGES AND EXPENSES INCLUDING REASONABLE ATTORNEY’S FEES TO WHICH TWU MAY BE SUBJECT AS A RESULT OF THE OCCURRENCE OF ANY INDEMNIFYING ACT. THIS PROVISION SHALL SURVIVE ANY TERMINATION OF THIS AGREEMENT.

**[SIGNATURE PAGE TO FOLLOW]**

**TEXAS WOMAN’S UNIVERSITY**

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

Name: Nancy Cinnater

Title: Chief Procurement Officer

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**ARTIST**

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

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**EXHIBIT A**

**WORK ORDER NO. \_\_\_\_\_\_**

TYPE OF WORK TO BE PROVIDED:

LOCATION:

SUBJECT:

SPECIAL INSTRUCTIONS:

UNIVERSITY CONTACT INFORMATION:

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Department: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Telephone No.: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

E-mail: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

University reserves the right to review and approve the final Work product prior to acceptance.

All Artists taking photographs or videos of University events may be required to obtain a signed release form from any person who is visibly recognizable and a target subject in the photograph. Crowd scenes where no single person is the dominant feature may be exempt from requiring a release. These rules govern photographs and video recordings intended for use in any University publication of marketing or a public relations nature, such as newsletters, brochures, promotional items, or other such material.

Releases also must be obtained for photographs and video recordings used on the web. Although these rules are not in effect when photographs or video recordings are taken of news events solely for news purposes, photographs and video recordings taken for news purposes require a release for reuse in marketing materials. Additionally, Artists taking photographs or recording video on University property may be required to sign a location agreement with the University.