

Photographer’s Agreement

This **AGREEMENT** is made as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, by and between **ALBERT EINSTEIN COLLEGE OF MEDICINE,** a New York not-for-profit corporation with its principal place of business at 1300 Morris Park Avenue, Bronx, NY 10461 (“Einstein”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, with its principal place of business at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Photographer”).

**WHEREAS,** Einstein desires to engage Photographer to provide professional photography services;

**WHEREAS**, Photographer wishes to provide such services to Einstein;

**NOW**, **THEREFORE**, in consideration of the terms, conditions and covenants contained herein, the parties agree as follows:

**Article 1.** *Statement of Work:* Photographer shall furnish all labor, materials, and services for the completion of professional photography services as described herein (“Services”), including without limitation:

[INSERT DESCRIPTION OF THE SERVICES TO BE PERFORMED]

**Article 2.** Einstein will pay Photographer for the Services acceptable to Einstein in accordance with the fees set

forth in Photographer’s Rate Sheet attached hereto as Exhibit A, up to a maximum total amount of $\_\_\_\_\_\_\_\_\_\_\_\_. Einstein shall make payment within sixty (60) days of the date an invoice is received by Einstein. All invoices must include the applicable purchase order number and should be sent directly to Accounts Payable, at the following address:

Albert Einstein College of Medicine Accounts Payable

1300 Morris Park Avenue Bronx, NY 10461

**Article 3.** Standard Einstein Procurement Policy is to be followed for all Services by Photographer hereunder and requires that Photographer ensure receipt of a purchase order number from the applicable Einstein department and provide a certificate of insurance evidencing coverage in amounts required by Einstein before commencing any Services. The number of and schedule of days on which the Services are to be performed shall be mutually agreed upon by the parties.

**Article 4.** Photographer must notify Einstein’s Office of Communications and Public Affairs in the event that Photographer is contacted by any Einstein department for provision of Services. Such notification must be sent by email to dcpaphotos@einsteinmed.edu prior to provision of such Services.

**Article 5.** The processed high-resolution jpeg files produced in the Services must be sent to both the Einstein department requesting such Services and to Einstein’s Office of Communications and Public Affairs. All photos must be labeled and include IPTC data.

**Article 6.** Timely and accurate delivery of the Services according to the deadlines and specifications requested by Einstein is the essence of this Agreement. Einstein reserves the right in its sole discretion to withhold any and all payments due to Photographer in the event Photographer fails to meet specified deadlines, or fails to deliver Services according to Einstein’s written specifications.

**Article 7.** Photographer warrants that the Services will be original, will not plagiarize another’s work, infringe another’s copyright or trademark or other proprietary right of any third party, and will contain no libelous or otherwise unlawful material. Photographer further warrants that the Services provided hereunder will not have appeared in any other publication in whole or in part.

**Article 8.** Photographer retains actual ownership of the photographs taken pursuant to this Agreement, provided, however, that Photographer hereby grants an exclusive irrevocable right and license to Einstein to reproduce and use such photographs in Einstein’s publications, websites, advertisements, and for other Einstein purposes. Photographer will not use the photographs taken pursuant to this Agreement for any purpose that is not specified herein. Photographer and Einstein may not sell or license such photographs to any third party without the prior written consent of both parties. In the event that the Services include deliverables other than photographs, Photographer and Einstein agree that such deliverables will be “works made for hire” within the meaning of the Copyright Act of 1976, as amended (17 U.S.C. §101) and that ownership in such works vests exclusively with Einstein.

**Article 9.** The term of this Agreement shall commence on \_\_\_\_\_\_\_\_\_\_\_\_\_\_ and shall remain in effect until \_\_\_\_\_\_\_\_\_\_\_, unless earlier terminated in accordance with Article 10.

**Article 10.** Either Einstein or Photographer may terminate this Agreement (i) upon thirty (30) days’ written notice to the other party, or (ii) in the event of material breach by the other party of the terms of this Agreement, which breach is not cured within thirty (30) days after written notice thereof. In the event of termination, Einstein agrees to pay to Photographer the reasonable value of Photographer’s Services provided and non-cancellable commitments incurred prior to the date of termination, to the extent consistent with the fees set forth in Exhibit A, and Photographer shall promptly deliver any Services created prior to the date of termination to Einstein. Articles 7, 8, 11, 12, 13, 14, 16, and 17 shall survive termination or expiration of this Agreement.

**Article 11.** Photographer warrants that all communications with Einstein will be treated as confidential by Photographer and shall not be disclosed to any third party by Photographer without Einstein’s consent.

**Article 12.** Photographer agrees to waive any and all claims or demands of whatever nature against Einstein, including, but not limited to, property damage, personal injury and wrongful death, arising out of the performance of this Agreement by Photographer or any of its employees or agents.

**Article 13.** Photographer understands and agrees that all reports, correspondence, records, and other documents prepared by Photographer hereunder or pertaining to the Services, are the property of Einstein. Photographer further agrees to keep confidential and not to disclose such reports, correspondence, records and other documents unless required by legal process, provided that prior written notice is provided to Einstein.

**Article 14.** Photographer agrees promptly to return, following the termination of this Agreement or upon Einstein’s earlier request, all materials in the possession of Photographer either (i) supplied by Einstein in conjunction with Photographer’s Services under this Agreement or (ii) generated or prepared by Photographer in the performance of Services under this Agreement. Photographer shall be allowed to retain one copy for its files, which will be kept confidential in accordance with above Articles 11 and 13 of this Agreement.

**Article 15.** Photographer, including any and all of its employees and agents, agrees that it is not an employee of Einstein and that its relationship with Einstein under this Agreement is that of an independent contractor. Photographer specifically acknowledges that it is not entitled to any employment rights or benefits of or from Einstein and that Photographer, and not Einstein, is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any sort, including but not limited to, workers' compensation insurance, with respect to its services provided under this Agreement. Photographer further agrees that it shall have no authority to bind or act as agent for Einstein or its employees for any purpose.

**Article 16.** Photographer shall not use the name, logo, symbol, trademark, or service mark of Einstein or its affiliates or their employees, faculty, or students for any purpose, including but not limited to advertising and/or promotion without prior written consent of Einstein and/or the individual, as applicable.

**Article 17.** Photographer shall defend, hold harmless, and indemnify Einstein, its affiliates, trustees, officers, directors, employees, faculty, students, agents, and representatives from and against any and all claims (including without limitation negligence, tort and strict liability), damages, judgments, suits, demands, and legal proceedings, and any and all costs and expenses in connection therewith, including attorney fees, arising out of or in connection with (i) any claim that Einstein’s use of the Services infringes any patent, copyright, trademark, trade secret, or other proprietary right belonging to a third party, or (ii) Photographer’s acts, omissions, representations or misrepresentations or the acts, omissions, representations or misrepresentations of Photographer’s employees, agents or representatives within the scope and/or terms of the relationship created by the terms of this Agreement.

**Article 18.** All notices hereunder shall be in writing and shall be deemed sufficient if delivered or mailed by certified mail (return receipt requested) as follows:

If to Einstein:

Albert Einstein College of Medicine Office of Communications and Public Affairs

1300 Morris Park Avenue

Bronx, NY 10461

Attn: Creative Services, Photography

With copies to:

Peter Bernacki, Senior Director Business Services and

Office of the General Counsel Attn: Dana Lee, Esq.

If to Photographer:

[INSERT PHOTOGRAPHER CONTACT]

**Article 19.** This Agreement shall be binding upon the parties hereto. Each party represents to the other that the execution and delivery of this Agreement by the representatives of each of the parties set forth below has been fully authorized by all necessary actions or approvals and this Agreement, when executed by such representatives, constitutes the valid and binding obligation of each of the parties enforceable in accordance with its terms.

**Article 20.** This Agreement and any claim or dispute arising out of, relating to or in connection with this Agreement whether in contract, tort or otherwise, shall be governed by and construed in accordance with the laws of the State of New York without giving effect to its conflicts of law principles.

**Article 21.** Performance of this Agreement by each party shall be pursued with reasonable due diligence in all requirements hereof; however, neither party shall be liable to the other for any loss or damages for delay or for non-performance due to causes not reasonably within its control including, without limitation, failure to obtain any government approval required for full performance, general labor disturbances or disputes, general civil disorders or commotions, acts of aggression or terrorism, acts of God, explosions, failure of utilities, damage or destruction of facilities, or other such occurrences. The party affected shall promptly notify the other in writing of the nature, cause, date of commencement thereof, and the anticipated extent of such delay or non-performance.

**Article 22.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes any prior oral or written understanding between the parties with respect hereto. This Agreement may be modified only by a written instrument executed by duly authorized representatives of the parties. If any provision of this Agreement shall be held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. In such a case, the parties shall replace the invalid provision with a legally admissible arrangement, which comes nearest to the intended purpose of the invalid provision. No waiver by either party of compliance with any condition or provision of this Agreement to be performed by the other party shall be deemed a waiver of similar or dissimilar provisions or conditions at that time or any prior or subsequent time. This Agreement may not be assigned by either party without the prior written consent of the other party. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same agreement.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed as of the date first written above.

**[INSERT ENTITY NAME]**

(Photographer)

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

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

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

**ALBERT EINSTEIN COLLEGE OF MEDICINE, INC.**

(Einstein)

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

Name: \_\_\_Peter Bernacki\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_Senior Director Business Services\_\_\_\_\_\_\_\_\_\_

**Exhibit A**

**Photographer’s Rate Sheet**