

**ZIVITY, LLC
PHOTOGRAPHER MASTER LICENSE AGREEMENT**

Photographer's legal name: _____

Photographer's Zivity alias: _____

Address: _____ **Email:** _____

_____ **Phone:** _____

Initial Photo Shoot Date*: Month/Day/Year _____ **Location:** City, State _____

You, as the Photographer identified above, and Zivity, LLC ("Zivity"), agree as to the following terms and conditions regarding the photographs taken during the initial Photo Shoot referenced above.

License: You grant to Zivity a digital license for each photograph that You provide to Zivity and that is published or publicly displayed by Zivity ("Zivity Photographs.") Additionally, if a user has voted for a Zivity Photograph, that user can continue to view the Zivity Photograph even after the expiration of the term of the license.

Additional Zivity Photographs: You may provide additional photographs to Zivity pursuant to an online submission process to which you will be granted access. If so, then each photograph submitted through such online process that is published or publicly displayed by Zivity shall be deemed a Zivity Photograph and shall be subject to the terms and conditions of this Agreement.

Term: The term of the license for each Zivity Photograph shall be for an initial two-year term from the date of publication of such Zivity Photograph, and will be extended for additional, successive two-year terms unless you elect to terminate such license as to an upcoming two-year term as provided in Exhibit A.

Compensation: Eighty percent (80%) of the value of the "User Votes" allocated to the Zivity Photographs through zivity.com (or any successor website) during the license term. "User Votes" are defined in the additional terms and conditions.

Payment: Payments shall be made within two-hundred-thirty (230) calendar days after the end of the calendar quarter in which the value of the User Votes is allocated to a Zivity Photograph. For example, if the value of the User Votes is allocated in December 2008, You will receive Your payment no later than August 15, 2009. This waiting period reduces the risk of credit card fraud.

Additional Terms and Conditions: The Additional Terms and Conditions attached as Exhibit A are part of our Agreement and go into more detail. You should therefore review them carefully.

PHOTOGRAPHER

ZIVITY, LLC

Sign legal name: _____

By: _____

Print legal name: _____

Name: _____

Title: _____

Zivity Agreement Tracking No. _____

***In the event that the Initial Photo Shoot takes place at a different date and/or location than listed above, You shall promptly notify Zivity of the actual date and location at Zivity's email address listed below.**

Zivity, LLC
660 4th St. #473
San Francisco, CA 94107
photography@zivity.com
Fax: 415-541-7859

EXHIBIT A
ADDITIONAL TERMS AND CONDITIONS

1. **Delivery of Zivity Photographs.** Any photographs that You deliver to Zivity shall be accompanied by true and legible copies of the “Documentation” (defined in Section 7(d)) for such photographs. The decision as to whether Zivity shall publish or publicly display a photograph is within the sole discretion of Zivity.

2. **Additional License Details.** The license to the Zivity Photographs is sublicensable and worldwide, to use, publish, publicly display, reproduce, modify and distribute the Zivity Photographs in any digital medium now known or hereafter devised. At the end of each two-year term for a Zivity Photograph (whether the initial term or any subsequent term), You may elect to not renew such license for a subsequent two-year term through Zivity’s then-current non-renewal process between 10 and 90 days prior to the expiration of such term. If you do not so provide notice, then the license to such Zivity Photograph pursuant to this Agreement shall automatically be renewed for another two-year term. Regardless of whether the term for a Zivity Photograph has expired, if a user has given a User Vote for a Zivity Photograph, such user can continue to view such Zivity Photograph in perpetuity after the expiration of the term. Expiration of the term of the license for a particular Zivity Photograph shall not affect the term of any other Zivity Photograph.

3. **Use of Name.** Zivity and its licensees, in their discretion, may use Your name (but only with Your permission) or the Alias listed above, as well as the name and alias of any person featured or in any way visible in a Zivity Photograph (each a “Model”), in connection with the Zivity Photographs (but Zivity makes no guaranty that they will do so), and shall have the right to superimpose their trademarks, web addresses and logos on the Zivity Photographs.

4. **User Votes.** “User Votes” means the system by which users or members of, or visitors to, zivity.com, specifically acknowledge a Zivity Photograph or Photo Set, with value associated with such acknowledgement. “Photo Set” shall mean a grouping of one or more Zivity Photographs taken during the Photo Shoot listed above that are thematically-related based on the aesthetic elements of the Zivity Photographs (e.g. costume, hair style, setting), as determined in the good faith judgment of Zivity. The use of the term “User Votes” shall also refer to any successor or replacement program to the user vote system defined above, regardless of the terminology employed. You agree that zivity.com contains the current description of the “user vote” system, which is hereby incorporated by reference and which the operators of zivity.com may modify at any time in their reasonable discretion.

5. **Payment Details.** Payment shall be made to the same address used for notice purposes below and shall be deemed made under the same provisions as when notice is deemed delivered. Prior to receipt of payment, You must complete, execute and return to Zivity either [IRS Form W-9](#) (for U.S. persons) or [IRS Form W-8BEN](#) (for non-U.S. persons). See the instructions to these forms to determine the applicable form. If you have any questions, please consult a tax professional. You agree that, other than as expressly set forth in this Agreement, You shall receive no compensation for use, by Zivity or its licensees, of the Zivity Photographs or of Your name as set forth above. Zivity’s payment obligation under the license shall also terminate prior to the expiration of the two-year term upon Your death.

6. **Payment Exceptions.** You shall not engage in actions designed to improperly generate User Votes. The determination of whether actions are improper shall be as determined in the reasonable good faith judgment of Zivity. Zivity will have no obligation to pay, may deduct or withhold from any future payments, and may seek as compensation from You, any amounts determined to have resulted from actions designed to improperly generate User Votes. In addition, Zivity will have no obligation to pay, may deduct or withhold from any future payments, and may seek as compensation from You, any amounts that Zivity must refund due to credit card chargebacks or other reasons. This is in addition to any remedies that Zivity may have, including termination.

7. **Warranties.** You hereby covenant, warrant and represent that:

- (a) You have the authority and right to provide Zivity with the rights granted herein.
- (b) Neither Zivity's nor its licensees' exercise of the rights granted herein will infringe upon any intellectual property, contractual or other right of any person anywhere in the world, including, without limitation, the rights of any Model.
- (c) Neither Zivity nor its licensees shall be required to make any payments to third parties in connection with exploitation of the Zivity Photographs, including, without limitation, to any Model.
- (d) Any person featured, or in any way visible, in any Zivity Photograph was nineteen (19) years of age or older at the time the Zivity Photograph was taken, and has provided documentation sufficient to document his/her true identity and age at such time ("Documentation"), including, without limitation, a government-issued photo ID and any pseudonym ever used.
- (e) You shall cause each Model to execute a valid Model Release for the Zivity Photographs, which shall grant Zivity the right to use, re-use, publish, and republish the Zivity Photographs in which such Model may be included intact or in part, and in which they may be nude or semi-nude, composite or distorted in character or form, without restriction as to changes or transformations, or reproduction thereof in color or otherwise, in any and all media now known or hereafter devised for illustration, art, promotion, advertising, trade, or any other purpose whatsoever, including, without limitation, merchandising.
- (f) The Zivity Photographs are in compliance with Zivity's content guidelines available at <http://zivity.com/contentguidelines>.
- (g) You will fully comply with all applicable laws and regulations, including, without limitation, 18 USC § 2257 and its regulations, as amended.

8. **Indemnity.** You will indemnify, defend, and hold harmless Zivity, its parents, subsidiaries, affiliates, and their respective directors, officers, employees, licensees and agents, with respect to any claim, demand, cause of action, or debt or liability brought by or claimed by any third party (including, without limitation, by any Model), including reasonable outside attorneys' fees (collectively "Claims"), to the extent that any such Claim is based upon or arises out of a breach of any of Your representations, warranties, covenants, or obligations hereunder.

9. ZIVITY SHALL NOT BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR PUNITIVE DAMAGES ARISING OUT OF OR CONNECTED WITH THE SUBJECT MATTER OF THIS AGREEMENT. WITHOUT LIMITING THE FOREGOING, EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, ZIVITY MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY OR OTHERWISE WHICH WOULD EXTEND BEYOND THE EXPRESS REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS AGREEMENT. IN NO EVENT SHALL ZIVITY'S AGGREGATE LIABILITY UNDER THIS AGREEMENT FOR ANY CLAIM EXCEED THE AMOUNT OF MONEY PAID TO YOU BY ZIVITY.

10. **Miscellaneous.** Notices shall be made first to the email address listed above as to each party, and shall be deemed delivered upon delivery to the email address listed above, unless the party sending notice is unable to deliver to such email address two (2) consecutive times, in which notice must be made to the postal address listed below such party's name, which shall be deemed delivered with proof of delivery to such postal address. The provisions of this Agreement that are intended to survive pursuant to their context shall survive termination or expiration of this Agreement for any reason. In the event that any provision of this Agreement shall be determined to be illegal or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. Under no circumstances will You be entitled to seek to enjoin the reproduction, distribution or exploitation of any Zivity Photograph, for any reason, it being understood that Your sole remedy shall be the right to recover damages with respect to any such breach. No changes or modifications or waivers to this Agreement will be effective unless in writing and signed by both parties. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to conflicts of law provisions thereof. The sole jurisdiction and venue for actions related to the subject matter hereof shall be the California state and U.S. federal courts located in San Francisco County, and both parties hereby consent to such jurisdiction and venue. In any action to enforce rights or obligations under this Agreement, the prevailing party shall be entitled to recover costs and attorneys' fees. Zivity may assign this Agreement, in whole or in part, to any third party. You may not assign this

Agreement to any third party without the prior written consent of Zivity. Any assignment in violation of the foregoing shall be void.