

Terms & Conditions

The right to reproduce or use any image is subject to each and every one of the following conditions

1. **DEFINITIONS:** This Agreement is by and between DONALD J. FADEL, JR (“Licensor”) and the “Client” named on the front of this Agreement. “Image(s)” means the visual and/or other forms of film, print, slides, chromes and any other visual materials in any format including digital information supplied by Licensor to Client. Licensor is the sole creator of the Image(s). “Service(s)” means the photography and/or related digital or other related services described on the front of the Agreement that Client is specifically commissioning Licensor to perform pursuant to this Agreement. “Transmit” or “Transmission” means distribution by any device or process whereby an Image or copy of same, is fixed beyond the place from which it was sent. “Copyright Management Information” or “Metadata” means the name and other image identifying information of Licensor and/or terms and conditions for uses of the Images, and such other information that Licensor may provide.
2. **FEES, CHARGES, AND ADVANCES:** Client and Client’s representatives are jointly and severally responsible for full payment of all fees, charges, expenses and advances. The rights licensed, fees, charges, and advances set forth in this Agreement apply only to the original specification of the Services. Additional fees and charges shall be paid by Client for any subsequent charges, additions or variations requested by Client. All advance payments are due in full prior to production.
3. **POSTPONEMENTS AND CANCELLATIONS:** If Client postpones or cancels any photography “shoot date” or other Services, in whole or in part, without first obtaining Licensor’s written consent, Client shall pay Licensor 50% of Licensor’s quoted fees. Client shall in any event pay all expenses and charges incurred in connection with any postponed or cancelled shoot date or other Service.
4. **FORCE MAJEURE:** Licensor shall not be in default of this Agreement by reason of its delay in the performance of or failure to perform, in whole or in part, any of its obligations hereunder, if such delay or failure results from occurrences beyond its reasonable control and without its fault or negligence. Client will pay 100% of Licensor’s daily weather delay fee (as set forth in the front of this Agreement) for any delays due to weather conditions or any acts or occurrences beyond Licensor’s reasonable control, plus all charges incurred.
5. **CLIENT APPROVAL:** Client is responsible for having its authorized representative present during all “shooting” and other appropriate phases of the Service(s) to approve Licensor’s interpretation of the Service(s). If no representative is present, Licensor’s interpretation shall be deemed as “accepted.” Client shall be bound by all approvals and job changes made by Client’s representatives.
6. **OVERTIME:** In the event any Services extend beyond eight consecutive hours in one day, Client agrees to and shall timely pay overtime for crew members and assistants at the rate of 1-½ times their hourly rates or fees, and if the Services extend beyond 12 hours in one day, Client agrees to and shall pay overtime for crew members and assistants at the rate of double their regularly hourly rates or fees.
7. **LIMITATION OF LIABILITY AND INDEMNITY:** Even if Client’s exclusive remedy fails of its essential purpose, Licensor’s entire liability shall in no event exceed the license fee paid to Licensor. UNDER NO CIRCUMSTANCES SHALL LICENSOR BE LIABLE FOR GENERAL, CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES ARISING FROM THIS AGREEMENT, THE IMAGE(S) OR ANY ACTS OR OMISSIONS OF LICENSOR. Client shall indemnify , defend and hold Licensor and Licensor’s representatives harmless from any and

all claims, liabilities, damages, and expenses of any nature whatsoever, including actual attorney's fees, cost of investigation, and court costs arising from or relating to Client's direct or indirect distribution, display or other use of any Image.

8. RIGHTS LICENSED: The licensed rights are transferred only upon: (1) Client's acceptance of all terms in this Agreement, (2) Licensor's **actual receipt of full payment**, and (3) the use of proper copyright notice and other Copyright Management Information requested or used by Licensor in connection with the Image(s). Licensor is willing to license the Image(s) to Client only upon the condition that Client accepts **all** terms of this Agreement. Unless otherwise specifically stated on the front of this Agreement, all licenses are non-exclusive; the duration of any license is one year from the date of Licensor's invoice and is for English language use in the United States of America only. Licensor reserves all rights in the Image(s) of every kind and nature, including, without limitation, copyright, electronic publishing and use rights, in any and all media, throughout the world, now existing and yet unknown, that are not specifically licensed or transferred by this Agreement. No license is valid unless signed by Licensor. This Agreement may not be assigned or transferred without the prior written consent of Licensor and provided that the assignee or transferee agrees in writing to be bounded by all of the terms, conditions, and obligations of this Agreement. Any voluntary assignment or assignments by operation of law of any rights or obligations of Client shall be deemed a default under this Agreement allowing Licensor to exercise all remedies including, without limitation, terminating this Agreement, the right to all net worth or financial information of any assignee and the fullest censor with a full and complete disclosure of any and all uses of each Image and provide Licensor with three (3) copies, without charge, of each and every use of each Image.
9. RETURN OF ANALOG IMAGE(S): Client assumes all risk for all Image(s) supplied by Licensor to Client, from the time of Client's receipt, to the time of the safe return receipt of the Image(s) to the possession and control of the Licensor. If no return date appears on the front of this Agreement or on any related delivery memo, Client shall return all Image(s) in undamaged, unaltered and unretouched condition not later than 90 days after the date of delivery unless otherwise agreed in writing. Client acknowledges that the failure to return any image(s) to Licensor within the agreed upon time period(s) will cause economic damage to Licensor. Client agrees to pay the sum of \$_____ per week per image as and for a "holding fee." Such fee reflects Licensor's costs and expenses attendant to its inability to license, offer for license, maintain its picture archive and or grant exclusivity to any prospective licensee with respect to any such images improperly retained. Client acknowledges that such calculation is fair and reasonable and bears a relationship to the inconvenience, damages, lost income, costs, and expenses incurred by Licensor as a result of such failure. In the event an image is not returned within _____ days of delivery to Client, such images shall be deemed "lost" and Client shall pay to Licensor damages in accordance with paragraph "6" herein. Notwithstanding, Licensor may assert a claim for lost or unreturned images at any time subsequent to the agreed upon return date(s).
10. LOSS OR DAMAGE: IN CASE OF LOSS OR DAMAGE OF ANY ORIGINAL IMAGE(S), CLIENT AND LICENSOR AGREE THAT THE REASONABLE VALUE OF EACH ORIGINAL IMAGE IS AS SET FORTH ON THE FRONT PAGE OF THIS AGREEMENT. Once original Image(s) are lost or damaged the parties acknowledge it is extremely difficult, costly, impracticable and possibly impossible to fix the exact individual value in a court of law. Accordingly, Licensor and Client agree that the reasonable liquidated value of each original Image is in such amounts as set forth on the front of this Agreement. Client agrees to pay Licensor such enumerated amount(s) for each lost or damaged original Image (irrespective of the total number of images lost or damaged) and Licensor agrees to limit Licensor's claim

to that amount without regard to any claimed actual value of such Image. An Image shall be considered an original if no high reproduction quality duplicate of that Image exists. Client specifically agrees that the amount(s) set forth on the front of this Agreement is reasonable, reasonably related to the value of the image(s). Both parties have duly considered or have had ample opportunity to assess the number of images covered by this Agreement as well as their content, subject matter, historical or newsworthy significance, reputation of the Licensor, cost of creation, any existing model and/or property releases, market cost of comparable images (if any) and other business considerations to be considered including but not limited to the ability or lack thereof to recreate any lost image and whether the subject images can, in fact, be recreated.

The parties agree that the damage provisions agreed upon herein is not/are not punitive and that the establishment of such clause and amount is in the mutually beneficial economic interest of both the Client and the Licensor in the event of loss or damage to any/all images. Client's agreement to these terms serves as a material inducement to Licensor to deliver to Client the requested analog images.

11. DELETION OF DIGITAL IMAGE(S): For all images supplied in digital format, Client agrees to delete all such images from its internal files, FTP servers/sites and backup or storage media within 90 days after their delivery date unless a longer retention period is agreed to in writing. In the event Client loses, fails to timely locate, or renders a digital image unusable, Client agrees to pay Licensor all fees and expenses charged by Licensor to retransmit or otherwise redeliver such image(s).
12. PAYMENT AND COLLECTION TERMS: Invoices from Licensor are payable upon receipt by Client. Client agrees to pay a late payment fee equal to 1.5% per month on any unpaid amount or balance. Such late fee(s) shall commence to run thirty (30) days after the issuance of this invoice. Such late fee(s) shall in no event exceed the lawful maximum permitted in the State of Florida with respect to commercial transactions of this type. In any action to enforce the terms of this Agreement, the prevailing party shall be entitled to receive their actual attorneys' fees, court costs and all other non-reimbursable litigation expenses such as expert witness fees and investigation expenses. The parties hereto consent to the jurisdiction of the courts of the State of Florida, Duval County. The parties agree that any dispute arising out of this Agreement shall be governed by the laws of the State of Florida.
13. TAX: Client shall pay and hold Licensor harmless on account of any sale, use, or other taxes or governmental charges of any kind, however denominated, imposed by any government, including any subsequent assessments in connection with this Agreement, the Image(s), the Service(s) or any income earned or payments received by Licensor hereunder. To the extent that Licensor may be required to withhold or pay such taxes, Client shall promptly thereafter furnish Licensor with fund in the full amount of all sums withheld or paid.
14. RELEASES: No model, property, trademark, or other such releases exist for any Image(s) unless Licensor submits to Client a separate release signed by a third party, model, or property owner.
15. ELECTRONIC RIGHTS: No electronic usage rights of any kind are licensed or granted unless as specifically set forth on the front of the Agreement. Licensor specifically reserves all rights not specifically conveyed to Client hereunder. Such rights reserved include but are not limited to all rights of publication, distribution, display, or transmission in electronic and digital media of any kind, now existing and yet unknown. Usage rights for any kind of revision of a collective work including any later collective work in the same series, are expressly reserved by Licensor.

16. MODIFICATIONS, GOVERNING LAW AND MISCELLANEOUS: The Agreement sets forth the entire understanding and agreement between Licensor and Client regarding the Service(s) and/or the Image(s). This Agreement supersedes any and all prior representations and agreements regarding the Service(s) and/or the Image(s), whether written or verbal. Neither Licensor nor Client shall be bound by any purchase order, term, condition, representation, warranty or provision other than as specifically stated in this Agreement. No waiver or modification may be made to any term or condition contained in this Agreement unless in writing and signed by Licensor. Waiver of any one provision of this Agreement shall not be deemed to be a waiver of any other provision of this Agreement. Any objections to the terms of this Agreement must be made in writing and delivered to Licensor within ten days of the receipt of this Agreement by Client or Client's representative, or this Agreement shall not be binding. Notwithstanding anything to the contrary, no Image(s) may be used in any manner without Licensor's prior written consent, and Client's holding of any Image(s) constitutes Client's complete acceptance of this Agreement. The formation, interpretation, and performance of this Agreement shall be governed by the laws of the State of Florida, excluding the conflict of laws rules of Florida. All paragraph captions in this Agreement are for reference only, and shall not be considered in construing this Agreement. This Agreement shall be construed in accordance with its terms and shall not be construed more favorably for or more strongly against Licensor or Client.
17. COPYRIGHT/ENFORCEMENT OF EXCLUSIVE LICENSE: The sole right to pursue or defend any and all claims sounding in infringement of Licensor's copyright(s), trademark and/or intellectual property rights in the Image(s), free from any claims by Client or other person, whether or not the rights granted to Client are exclusive or non-exclusive shall be deemed retained by Licensor. If Licensor is determined not to possess such rights Client agrees to execute and deliver to Licensor such documents as Licensor reasonably requests to carry out the purpose of this clause so as to allow Licensor the right to pursue and/or defend any and all claims sounding in infringement of its copyright(s), trademark and/or intellectual property rights in the Image(s). Nothing contained herein shall be construed as limiting or waiving Client's right to enforce, defend or protect any copyright, trademark or intellectual property owned by it.
18. Client agrees whenever commercially reasonable to include the photo credit: © Donald J. Fadel, Jr. | Kidona.com in conjunction with all uses of Licensor's Image(s).
19. Client acknowledges that it has received and executed this two-sided Agreement and has been provided a copy of same.

Photographer/Licensor	Date	Client/Licensee	Title	Date
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