

# WINTERTHUR



## Work-For-Hire Agreement Photography

This Work-For-Hire Agreement is made as of \_\_\_\_\_ between the Henry Francis du Pont Winterthur Museum, Inc. (“**Winterthur**”) and \_\_\_\_\_ (“**Photographer**”).

WHEREAS, Winterthur desires to engage Photographer to take certain professional photographs on its behalf and to deliver those photographs to Winterthur for use by Winterthur on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual obligations, covenants, and conditions hereinafter set forth, and other valuable considerations, the parties hereto agree as follows:

**1. Photographs.** The Photographer agrees to take on Winterthur’s behalf high quality professional photographs (the “**Photographs**”) of the following (attach a separate page if needed):

**2. Delivery.** Photographer shall deliver each Photograph to Winterthur no later than \_\_\_\_\_ AM/PM on \_\_\_\_\_, 20\_\_ as a digital file via a file-sharing website, USB flash drive, or external hard drive. All Photographs shall conform to the following technical specifications:

TIFF file, Adobe RGB (1998) color,  
8 or 16 bit, a minimum of 8 x 10 inches at 600 ppi (4800 x 6000 pixels)

**3. Acceptance.** Winterthur shall inspect each Photograph and notify Photographer within [ten (10) days] whether each Photograph is reasonably acceptable to Winterthur. If any of the Photographs are not reasonably acceptable to Winterthur, Photographer agrees, at Winterthur’s

request, to retake each such Photograph at no extra charge and to deliver such Photographs to Winterthur for inspection.

**4. Credit.** Winterthur shall use reasonable efforts to include the following photographic credit line whenever it displays or otherwise uses one of the Photographs: Winterthur Museum, Photo by \_\_\_\_\_. Notwithstanding the forgoing, any failure by Winterthur to use such photographic credit line shall not constitute a breach of this agreement and shall not entitle Photographer to any damages or other remuneration.

**5. Metadata.** Photographer will include at minimum the following metadata embedded within each Photograph:

(Creator)	Photographer's name
(Description)	MM/YYYY, Subject matter
(Credit line)	Winterthur Museum, Photo by...
(Copyright Notice)	Copyright YYYY, Winterthur Museum, Garden and Library
(Copyright Status)	Copyrighted

**6. Ownership.** Photographer agrees that each Photograph constitutes a "work for hire" as defined by the United States Copyright Act (17 US Code, section 101) and that, as a result, Winterthur is the sole owner of all rights, title and interests, including all copyrights and other intellectual property rights, in and to each Photograph. Without limiting the foregoing, Winterthur shall own worldwide rights to each Photograph in any medium. To the extent that Photographer may be deemed to have any right, title, or interest, including any copyrights, in any Photograph under any applicable law, Photographer hereby assigns all such rights, titles, and interest to Winterthur and waives any and all "artist's rights" pursuant to any US state or federal statutes and any foreign law regarding all Photographs. Winterthur hereby grants a nonexclusive license to Photographer to use, reproduce, and publish each Photograph solely in connection with the advertising or marketing of Photographer's services. At any time and from time to time, Photographer agrees, at no charge to Winterthur but at Winterthur's sole expense, to sign and deliver to Winterthur such further documents as Winterthur considers necessary or desirable to evidence the assignment of all right, title and interest in and to any Photograph from Photographer to Winterthur and Winterthur's ownership of all such right, title and interest, and to do any lawful act and to sign and deliver to Winterthur any document necessary to apply for, register, prosecute or enforce any copyright or other right or protection relating to any Photograph in any country of the world.

**7. Payment and Taxes.** In consideration for taking and delivering the Photographs in accordance with the terms of this agreement, Winterthur will pay to Photographer, within [thirty (30) days] after satisfactory receipt of the Photographs, the amount of \$\_\_\_\_\_. This is a one-time compensation for Photographer's services and comprises Photographer's complete and sole payment. Winterthur will not pay or withhold Federal, state, or local income or other payroll taxes on behalf of Photographer. It is understood that Photographer shall report and pay all applicable taxes.

**8. Photographer's Warranty.** Photographer represents and warrants to Winterthur that (a) Photographer has sufficient expertise, training and experience to take, and each Photograph shall be a, high quality professional photograph, (b) Photographer has the authority to enter into, and to be bound by, this Agreement and, to the extent applicable, to assign all rights in each Photograph to Winterthur, (c) no Photograph will infringe any rights, including any copyrights or other intellectual property rights, of any person, (d) no Photograph will contain libelous or unlawful matter, and (e) no Photograph will violate privacy rights of any person. Photographer agrees to indemnify and hold harmless Winterthur against any claims, damages or losses resulting from, or caused by, any breach of the foregoing representations and warranties.

**9. Use of Winterthur Name/Trademarks.** Photographer shall not use Winterthur's name or trademarks in any advertising, marketing, or other promotional materials without Winterthur's prior written consent for each specific use. Notwithstanding the foregoing, Photographer may name Winterthur in a client list or personal resume.

**10. Termination.** This agreement shall automatically terminate following the delivery of the Photographs in accordance with the terms hereof and the payment by Winterthur pursuant to Section 7 above. The provisions of Sections 4, 6, 8, 9, 10 and 11 shall survive the termination of this Agreement.

**11. Miscellaneous.** This Agreement is the entire agreement between the parties and may not be amended except in writing signed by both parties. This Agreement shall be governed by, and construed and enforced pursuant to, Delaware law. The parties consent to the exclusive jurisdiction and venue in the federal and state courts sitting in New Castle County, Delaware. The relationship of Photographer to Winterthur pursuant to this Agreement shall be that of independent contractor. Photographer shall not be deemed an employee of Winterthur for any purpose. This Agreement constitutes the entire understanding between the parties. Its terms can be modified only by an instrument in writing signed by both parties.

[signature page follows]

**Signed by:**

**Photographer**

Name (Company) \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Phone: \_\_\_\_\_

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

\_\_\_\_\_

**Date** \_\_\_\_\_

**For Winterthur**

Henry Francis du Pont Winterthur Museum, Inc.

5105 Kennett Pike

Winterthur, DE 19735

\_\_\_\_\_

**Date** \_\_\_\_\_

\_\_\_\_\_

Title