

# REAL ESTATE PHOTOGRAPHY TERMS OF SERVICE

This Photographer Licensing Agreement (the “Agreement”) is entered into at the time of booking the clients session. All references to the Client in this Agreement shall include Client’s parent companies, affiliates, and subsidiaries.

**Scope of Terms:** This Agreement applies to any photograph, graphics, digital assets, or digital images created or taken by Photographer and delivered to the Client (collectively known as “Photos”) for any properties. This Agreement governs the relationship between the parties and in no event shall any e-mail communication or other exchange, amend or otherwise modify the terms of this Agreement unless agreed to in writing.

**Rights:** All Photos and rights relating to them, including copyright and ownership rights in the media in which the Photos are stored, remain the sole and exclusive property of the Photographer. This license provides the Client with the limited right to reproduce, publicly display, and distribute the Photos only for promotional or advertising purposes directly related to the sale of the Property. Photos used for any purpose not directly related to the sale of the Property must be with the express permission of Photographer and the payment of additional fees, unless otherwise agreed to in writing.

Photos may be uploaded to any MLS listing service solely for promotion of the Property during the pendency of this Agreement. However, regardless of any terms and conditions of the MLS, at no time does this Agreement provide Client with the right to transfer copyright, or any other exclusive rights as provided by the Copyright Act 17 U.S.C § 106. Photos may contain copyright management information (CMI) at the discretion of the Photographer in the form of either 1) a copyright notice © and/or 2) other copyright and ownership information embedded in the meta data or elsewhere, unless otherwise agreed to by the Parties. Removing and/or altering such information is prohibited and constitutes violation of the Digital Millennium Copyright Act (DMCA) and Client will be responsible to the Photographer for any penalties and awards available under the statute. Client is responsible for ensuring that the Photos are removed from MLS databases at the expiration of this Agreement.

Unless otherwise specifically provided elsewhere in this document or other signed agreement between the parties, any grant of rights is limited to a term of either one (1) year from the date of this Agreement, or (2) at the termination of Client’s representation of the Property, whichever occurs first. Further use of images beyond one (1) year requires Photographer’s permission and additional fees. Rights are assigned to the Client immediately upon delivery of the Photos.

**Relationship of the Parties:** The parties agree that Photographer is an independent contractor, and that neither Photographer, nor Photographer’s employees or contract personnel are, or shall be deemed to be, employees of Client. No agency, partnership, joint venture, or employee-employer relationship is intended

or created by this Agreement. Neither party is authorized to act as agent or bind the other party except as expressly stated in this Agreement. Photographer and the Photos or any other deliverables prepared by Photographer shall not be deemed a work for hire as defined under Copyright Law. All rights granted to Client are contractual in nature and are expressly defined by this Agreement.

**Creation:** The manner and method of creating any Photographs is solely at the discretion of Photographer and the Client has no right to control Photographer's manner and method of performance under this Agreement. Photographer will use his/her best efforts to: (a) ensure that the Photos conform to Client's specifications; and (b) submit all Photos to Client in publishable quality, on or before the applicable deadlines.

**Delivery:** Photographer may select delivery of photographs in JPEG, TIFF, PNG, or other standard format, at a resolution that Photographer determines will be suitable for the Photos as licensed. It is the Client's responsibility to verify that the Photos are suitable for reproduction and that if the Photos are not deemed suitable, to notify the Photographer with five (5) business days. Photographer's sole obligation will be to replace the Photos at a suitable resolution but in no event will Photographer be liable for poor reproduction quality, delays, or consequential damages.

Unless otherwise specifically provided, Photographer is not responsible to provide images 1) larger than 3000 ppi on the longest edge of the image . Photographer has no obligation to retain or archive any Photos delivered to Client.

**Fees:** All fees and expenses payable under this agreement are required no later than ten (5) business days from the delivery of the Photos and payable irrespective of whether Client makes actual use of the Photos. If full payment has not been received within thirty (10) days all rights are revoked at Photographer's discretion. In the event rights are revoked, all images in the possession of Client will be removed from all forms of media and permanently destroyed within ten (10) days. Client shall provide Photographer with written statement that all images have been removed and destroyed.

**Cancellation:** If Client cancellation of this Agreement occurs prior to 1) the Property shoot or 2) within one (1) month of this agreement, Client will pay any expenses incurred. For Client cancellation within two (2) days of the Property shoot, Client is responsible for 100% of the fee and any expenses incurred.

**No Exclusivity:** This Agreement does not create an exclusive relationship between the parties. Client is free to engage others to perform services of the same or similar nature to those provided by Photographer, and Photographer shall be entitled to offer and provide design services to others, solicit other clients and otherwise advertise the services offered by Photographer.

**Transfer and Assignment:** Client may not assign or transfer this agreement or any rights granted under it. No amendment or waiver of any terms is binding unless in writing and signed by the parties. However, the invoice may reflect, and Client is bound by authorizations that could not be confirmed in writing because of insufficient time or other practical considerations.

**Indemnification:** Client will indemnify and defend Photographer against all claims, liability, damages, costs, and expenses, including reasonable legal fees and expenses, arising out of the creation or any use of the Photos or materials furnished by Client. It is the Client's responsibility to obtain the necessary model or property releases and ensure they are full effect and in force.

**General Law/Arbitration:** This Agreement sets forth the entire understanding and agreement of the parties, and supersedes any and all prior agreements between the parties. This Agreement shall be governed and interpreted and enforced in accordance with the laws of the State of **Texas**. Any claim or litigation arising out of this Agreement or its performance may be maintained only in courts physically located in Denton county Texas and the parties hereby consent to the personal jurisdiction of such courts. In the event of any litigation arising out of or relating to this Agreement, the prevailing party shall be entitled to recover its attorneys' fees incurred in the litigation. If parties are unable to resolve the dispute by negotiation, either party may start mediation and/or binding arbitration in a forum mutually agreed to by the parties.

**Severability:** If one or more of the provisions contained in the Agreement is found to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not be affected. Such provisions shall be revised only to the extent necessary to make them enforceable.

**Waiver:** No action of either party, other than express written waiver, may be construed to waive any provision of this Agreement and a single or partial exercise by either party of any such rights or remedies will not preclude further exercise of other rights or remedy.